

## **Task and Finish Group on the future outlook for the media in Wales**

### **Response from Professor Thomas P O'Malley, Aberystwyth University**

9<sup>th</sup> November 2011.

1. This inquiry is a welcome initiative and hopefully will address some of the outstanding constitutional issues that have arisen since devolution in relation to the role of the National Assembly for Wales' powers and responsibilities over broadcasting in Wales.
2. The issues that arise from the fact that communications was not a devolved power at devolution have been the subject of regular public debate and academic discussion. Some of this work has pointed both to the complexity of the issues posed by granting more powers to Wales over its media space<sup>1</sup>, and to the deficiencies that have arisen as result of the fact that the National Assembly lacks sufficient powers to intervene in policy creation and implementation in Wales<sup>2</sup>.
3. This submission takes as given the contemporary crisis in the media in Wales, exemplified most dramatically in recent years by the retreat of ITV from the production of adequate programming made in and for Wales, the destruction of the autonomy of S4C, and the extensive cuts imposed on the BBC as a result of the 2010 licence fee settlement. This is on top of the longer term problems in relation to uneven digital roll out and the continuing crisis in Welsh newspapers. It therefore focuses on the measures that could be taken by the National Assembly for Wales which might improve the constitutional position of the Assembly and the Welsh Assembly Government in relation to the media in Wales.
4. The fundamental problem faced by the people of Wales in relation to their media is that policy is made in London. At times this has been seen as useful way of keeping some controversial issues well in the hands of the Whitehall policy makers, not least

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<sup>1</sup> L.Andrews, L (2006) 'The National Assembly For Wales and broadcasting policy, 1999-2003' *Media, Culture and Society*, Vol.28, 2 (2006), 191-210.

<sup>2</sup> D.Barlow, P. Mitchell and T. O'Malley, *The Media in Wales* (Cardiff, 2005); T.O'Malley, 'Wales, ITV and Regulation' *Cyfrwng* Vol. 8 (2011), 7-22' ; T.O'Malley, 'The Government, the BBC and S4C: A submission to the Welsh Affairs Select Committee Inquiry into the Welsh Language Broadcaster S4C', in, House of Commons Welsh Affairs Committee, *S4C: Fifth Report of Session 2010-12 Volume II. Additional written evidence* London, House of Commons, published 23 and 30 November and 14 December 2010, Ev w9-Ev w11

of all the funding of S4C and the running of the BBC. But as recent events have shown, the impotence of the Welsh people in the face of high-handed Whitehall decisions is both galling and dangerous to the continued health of the Welsh media.

5. It is now time that communications policy be devolved in large part to the Welsh Assembly Government acting through the National Assembly. It is perfectly possible to maintain essential economies of scale across the UK, and to allow for the proper implementation of any cross UK frequency and funding issues, whilst at the same time allowing WAG and the NAFW a greater say in key issues.

**6. The Welsh Assembly Government should focus on the following issues in the run up to the Communications Bill:**

[a] As the report of the Broadcasting Committee of the NAFW (2008) recommended the Assembly ‘should establish a standing committee on communications which should be responsible for scrutinising the work of Welsh ministers in relation to broadcasting and related cultural and creative industries’.<sup>3</sup> The committee should have powers to conduct on going, independent research into the media in Wales and media policy. This could feed into public debate over the forthcoming Communications Bill by engaging in widespread consultation. It could also examine in detail the ways in which powers over communications could be devolved to Wales. This should be done immediately by NAFW with WAG’s support.

[b] It should seek to establish the principle that the Welsh Assembly Government, in consultation with the NAFW should be able to appoint up to 50% of the board of S4C and appoint to both the Ofcom main board and the BBC Trust.

[c] It should seek to establish the principle that in key areas, such as the maintenance of services on ITV, the BBC and S4C, WAG should have the right to be consulted when service provision is to be significantly altered. It should also have reserve powers to order the broadcasters and Ofcom to consult the public prior to any major changes and to require them to give reasons why they do not accept arguments put to them in public consultations.

[d] In the medium term there should be a publicly funded independent advisory body, a kind of Standing Commission on Communications. It should be funded by WAG, but established so that it can act independently. It could consist of representatives, appointed by as democratic a method as possible, of people with interests and specialisms in the area, as well as people from organisations in civil society. Its job would be to analyse policy, consult widely on it and act as an independent source of advice to the politicians, a kind of counterweight to the industry lobby and the regulator, Ofcom. The Commission could also fund organisations in civil society that need money to enable them to intervene effectively

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<sup>3</sup> National Assembly For Wales, *Broadcasting Committee Report*, (Cardiff, 2008), 69.

in the policy process. These measures could be taken without recourse to legislative change at Westminster, but would be of benefit in the medium term by widening participation in debate on policy.

[e] One of the fundamental problems that face people trying to reform the governance of the media in Wales has been Ofcom. It prioritises the interests of industry over the interests of the public; in spite of the fact that its terms of reference were altered as a result of public campaigning to make it promote the interests of citizens. It is staffed at the highest levels by people with a particular, market orientated view of what how the media should be run, a problem that has blighted the development of policy ever since. Like the government in Westminster, where Ofcom is concerned, there is a distinct sense that policy is made by a very few people, with a clear set of values, conducted under a smokescreen of consultation. The Welsh Government should seek to consult as widely as possible so as to discover and support measures to democratise the governance of Ofcom and to broaden both its remit.<sup>4</sup>

[f] The Communications Bill will be a major intervention into the governance of the media in the UK. The de-regulatory thrust of policy has been signalled clearly by Jeremy Hunt. To counter this, or at least to keep the issue of Wales to the fore, WAG may wish to establish a Communications Bill Research Unit, whose job would be to shadow the developments in the Bill, advise WAG, devise support for Welsh MPs and peers during the passage of the Bill and do the research necessary to ensure that the government gets full and detailed input from Wales.

[g] Finally, the ethical standards of the media, and issues of media ownership are subjects that affect the media in Wales. This makes the Leveson Inquiry a matter of real importance, and the Welsh Assembly Government should be intervene to represent Welsh interests in this important debate.

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<sup>4</sup> For a discussion of the closed and undemocratic nature of media policy making in the UK, see D. Freedman, *The Politics of Media Policy* (Cambridge, Polity, 2008).