

# media *policy brief* 6



## **Reforming the PCC: Lessons from Abroad**

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## Key Messages

- The current model of press regulation in the UK has failed. Journalism ethics in future needs to be enforced by a more robust organisation with support from a wider group of stakeholders. Where the old system had strengths they must be built upon and lessons learned from the experience of the PCC and European counterparts.
- In the long term, it is likely that ethical codes will be applied to journalism rather than a particular mode of delivery. Current reforms should establish incentives for the development of a cross media ethics body to which journalists on all platforms are able to opt- in, supported by legal and fiscal incentives.
- There is a role for the state in press self-regulation, in providing incentives to join, setting criteria for the formation of a self-regulatory body, and/or part funding the body. There is a range of options between light state support for self-regulation and co-regulation, but other press and journalism councils have state involvement without state capture.<sup>1</sup>
- The PCC's replacement should be a genuinely multi-stakeholder body designed to balance interests of the public, journalists and owners. The body should therefore be established by both media owners and journalists, with prominent public representation, and cover all media. Lay members of the public should be involved in decisions.



## Introduction

Following the phone hacking scandal the Press Complaints Commission (PCC) was heavily criticised by the public, politicians, media experts and journalists. In March 2012 the PCC announced its closure and its intention to work with newspaper owners to form another self-regulatory body to replace it. In parallel, the Leveson Inquiry into the Culture, Practice and Ethics of the Press is due to propose new policy and a new regulatory regime for the press by the end of 2012.

The PCC was itself born at a moment of similar crisis with the existing Press Council at the time. Public outrage with the behaviour of the press industry forced the conservative government to appoint a committee to look into matters of privacy, resulting in the Calcutt Report.<sup>2</sup> Despite the Press Council's willingness to reform, the industry withdrew its support and formed

*"This is positively the last chance for the industry to establish an effective non-statutory system of regulation, and I strongly hope that it will seize the opportunity that the committee has given it."*

*(Secretary of State for the Home Department, Mr. David Waddington, House of Commons debate on the Calcutt Report, 21 June 1990)*

the PCC in 1991, partly in line with the committee's recommendations. Now, in looking for replacement for the PCC, there is no need to start completely from scratch. There are things that were working at the PCC and those working on its replacement would be well advised to learn both what worked and what went wrong, as well as from similar mechanisms in other countries.

The PCC was not doing a terrible job back in 2011 when the hacking scandal emerged. The PCC had been regarded by some as reasonably successful as a mediator between newspapers and complainants and in dealing with complaints against violations of the press code<sup>3</sup>, considering the limited scope and resources granted by the publishers and given the degree of misconduct of some newspapers. From the beginning the PCC

has been funded entirely by the publishers and completely voluntary. It has no sanctioning power, but makes use of notices to newspapers and its role as a mediator of complaints and in recent years, large newspaper groups have simply pulled out.

At one time the PCC was perceived as a role model in other European countries and was involved in spreading the idea of press self-regulation across the continent. Numerous variations on the model emerged. Given the current crisis, the time has come to look at models of press self-regulation in



other countries and learn from experiences abroad. While national context obviously matters and no one best solution exists, there is **no need to reinvent the wheel** and no reason not to get some inspiration for the new system of press self-regulation in the UK.

This policy brief draws on two research projects on media self-regulation<sup>4</sup> and outlines some features of press and journalism councils in EU and EFTA member states, highlighting some good practices. It draws from these practices recommendations for those who will be deciding what will replace the PCC.

## Press Councils in Comparison

### 1. Organizational Structures of Self-Regulatory Bodies

Looking at the **founding or constituent organizations** of self-regulatory bodies, it becomes apparent that in most countries they are established jointly by associations of journalists and media owners or publishers. In the Netherlands, Norway and Switzerland, editors-in-chiefs are also represented by their own organizations. In some countries, third parties like news agencies, audio-visual production firms or NGOs are also involved.

**Table 1: Founders of Self-Regulatory Bodies**

	AT	BE/CF	BE/VG	BG	CH	CY	DE	DK	EE	ES	ES/CAT	FI	IE	IS	LU	MT	NL	NO	PL	SE	SI	UK
Journalists	•	•	•	•	•	•	•	-	-	•	•	•	•	•	•	•	•	•	•	•	•	-
Publishers	•	•	•	•	•	•	•	•	•	-	•	•	•	-	•	-	•	•	•	•	-	•
Broadcasters	-	•	•	•	•	•	-	•	-	-	•	•	-	-	•	-	•	•	•	-	-	-
Other	-	•	•	•	-	-	-	-	-	-	•	-	-	-	-	-	•	-	-	-	-	-

Only in Estonia and Denmark and the UK are owners, in the form of publishers and broadcasters the sole organizations constituting the self-regulatory body. In Malta, Iceland, Spain and Slovenia there are press councils founded by journalists associations alone. While there are differences between countries, it is worth observing that self-regulatory bodies that are constituted by journalists as well as owners are likely to enjoy wider legitimacy.

**In most countries, self-regulatory bodies are joint enterprises between associations of journalists and media owners or publishers. This helps establish legitimacy among all stakeholders, including the public.**

Looking at the **internal organization** of these self-regulatory bodies shows that in half of the cases the founding organizations are represented in some kind of board or assembly of trustees or both. The comparison also reveals that only very few of them have a two-tier system with an ombudsman as a first instance in place (Flemish Community of Belgium, Ireland, Austria and Sweden). Several of them have special complaints commissions within their overall structures. In some countries additional bodies exist such as appointment committees or bodies responsible for revising the press code.

**Table 2: Structural Elements of Self-Regulatory Bodies**

	AT	BE/CF	BE/VG	BG	CH	CY	DE	DK	EE	ES	ES/CAT	FI	IE	IS	LT	LU	MT	NL	NO	PL	SE	SI	SK
Body of Trustees	•	•	•	•	•	-	•	-	-	-	•	•	-	-	-	-	-	•	•	•	•	-	•
Main Council	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Ombudsman	•	-	•	-	-	-	-	-	-	-	-	-	•	-	-	-	-	-	-	-	•	-	-
Complaints Commission	•	•	•	-	•	-	•	•	-	•	•	-	-	-	-	•	-	•	-	-	•	-	-

While only few self-regulatory bodies feature an ombudsman who deals with complaints as a first instance before the press council is getting involved, such two-tier systems have proven to be successful.

**Two-tier systems offer an accessible route for mediation and raise the acceptance of self-regulation within the industry.**

Regarding **responsibility** or scope, most press councils are, despite their name, actually media councils dealing with not only the printed press but also with broadcasting and the websites of news organizations. Only few councils restrict themselves to the printed press namely those in Austria, Germany, Ireland, Sweden, Slovakia and the UK.

**Table 3: Scope of Ethics Bodies for Journalism**

Only printed press	All Media (printed press, broadcasting, online)
AT, DE, IE, SE, SK, UK	BE/CF, BE/VG, BG, CH, CY, DK, EE, ES, ES/CAT, FI, IS, LT, LU, MT, NL, NO, PL, SI

In most countries online versions of print and broadcast media that are within a self-regulatory system are also subject to that ethical code, but also in several places online-only news media are also invited to participate in the self-regulatory system. This invitation is especially attractive where there are incentives such as legal assistance or mediation services that online news media can benefit from.

**It is overwhelmingly the common practice for self-regulatory bodies to be responsible for more than just the printed press.**



In most European countries, the state is not involved in press self-regulation. Yet alternative solutions exist as well. Press councils are partially funded by tax money in Austria, the Flemish Community of Belgium, Finland and Germany with no further involvement of the state. It is actually co-regulation that exists in the French Community of Belgium, Denmark, Ireland, Lithuania and Luxemburg. In these cases, the press industry was mandated by law to regulate itself, the press council was created by law, or the press council was recognized by government in exchange for fulfilling certain conditions. Co-regulatory arrangements may also involve public funding.

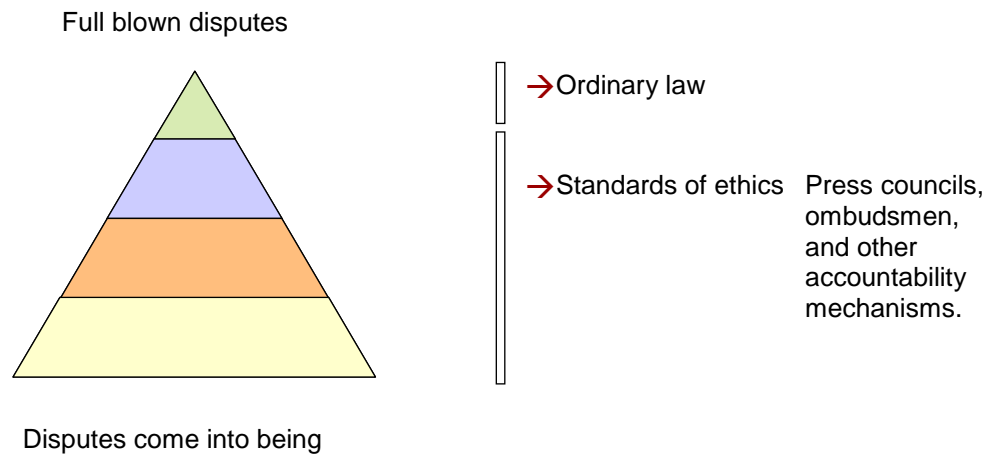
**Table 4:** Levels of State Involvement in Self-Regulatory Bodies

Co-Regulation	Self-Regulation but partial Public Funding	Self-Regulation
BE/CF, DK, IE, LT, LU	AT, BE/VG, DE, FI	BG, CH, CY, EE, ES, ES/CAT, IS, MT, NL, NO, PL, SE, SK, SI, UK

Therefore are various ways for the state to be involved in the self-regulatory regime. Having self-regulation mandated by law can overcome problems of large media groups withdrawing from the system. At the same time having partial funding can provide a balance to funding only coming from media owners, which can impact independence.

If state involvement is also taken to include regulation by the general law for example in relation to privacy and defamation, the law applies in some form to newspapers and other media. In all cases some kind of self-regulation coexists with legal protection. Where successful, this establishes tighter ethical standards and closer monitoring and enforcement. It also offers efficiencies: larger numbers of less serious complaints, that would not meet a legal standard, and which may not receive fully funded legal representation, can be dealt with through a faster and cheaper mediation and redress system (See figure 1). Where this works properly, there should be clear incentives to join the self-regulatory system.

**Figure 1: The Pyramid of Press Self- Regulation**



Different options for state involvement are definitely worth considering. These can take the form of funding for self or co-regulatory bodies, incentives for participants, and in terms of the way general law interacts with self-regulatory systems.

**There can be a role for the state in self-regulation of the press.**

## ***2. The Make Up of Press Councils***

One of the most persistent criticisms of media self-regulation is that self-regulatory organisations have too little autonomy from the companies subject to their codes. In this respect, the role and security of tenure of the board is crucial. As shown above most self-regulatory bodies have within their structure councils responsible for dealing with violations of the press code. The **number of council members and their terms of office** differ widely across countries. As mentioned above, the organizations with the highest number of council members also installed smaller complaints commissions (labelled “C” in the table) to which they delegate the handling of complaints.

**Table 5:** Number of Council Members and Length of Terms in Self-Regulatory Bodies

		Number of Council Members				
		3-4	5-9	10-14	15-20	>20
Term of Office	1 year	-	IS	-	-	-
	2 years	-	DE (C), LU (C), MT, NO, SE (C)	BG, CY, EE, PL	SE, UK	DE, LU
	3 years	-	AT (C)	AT, FI, IE	LT	-
	4 years	BE/CF (C), BE/VG (C), DK (C), ES (C), ES/CAT (C)	CH (C), DK, NL (C), SI	-	BE/CF, BE/VG, ES, ES/CAT	CH, NL
	> 4 years	-	SK	-	-	-

While the number of council members obviously varies widely, the actual number of members dealing with a specific complaint is similar due to the existence of special complaints commissions in most countries with big councils.

**Considerations of efficiency and cost-effectiveness suggest that the organ dealing with complaints should be kept rather small.**

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Regarding the **composition** of these councils, tripartite councils with representatives of journalists (including editors and editors-in-chief), media owners and independent or public members as well as bipartite councils made up of journalists and independent members are the most common models. Bipartite councils with media owners and journalists as in Germany, or councils made up of only members of the public or journalists as in Slovakia and Slovenia are the exception.

**Table 6:** The Composition of Press Councils

Unipartite Councils		Bipartite Councils		Tripartite Councils
Public	Journalists	Journalists & Public	Journalists & Owners	Journalists, Owners & Public
SK	SI	AT, CH, DK, EE, ES, ES/CAT, NL, NO, SE, UK	DE, LU (plenum)	BE/CF, BE/VG, BG, CY, FI, IE, IS, LT, LU (complaints commission)

The prevailing practice is for councils to include journalists and members of the public, and several also include owners. In some cases, such as in the UK until now this has meant only the inclusion of editors-in-chief. In other countries the make-up is more representative of the profession and journalists from various levels are included. In Luxemburg, where the main council consists of only journalists and owners, the public is included in the smaller commission for handling complaints.

**This means that the public and the journalistic profession form the core of press council composition.**

Members of councils are in most cases **appointed** by the body in which the founding organizations are represented (e.g. a Board or an Assembly of Trustees) or delegated by the founding organizations directly. In some countries, the procedure for appointing industry representatives and independent members differs. The chairman of the main council is either appointed among the members of the council itself or by the board.

**Table 7:** The Appointment of Press Council Members

	Body of Trustees	Delegation by Founding Organizations	State	Council itself (co-optation)	Special commissions
<b>All members</b>	AT, BE/CF, BE/VG, CH, ES, ES/CAT, MT, NL, NO, PL	DE, EE, LT, SI, SK	DK, LU	-	IE, UK
<b>Industry representatives</b>	FI	BG, CY, IS, SE	-	-	BG
<b>Independent members</b>	CY	BG	-	BG, FI	SE
<b>Chairman</b>	AT, CH, CY, ES/CAT, FI, MT, NL, NO, SE	-	DK	BE/CF, BE/VG, BG, DE, EE, ES, LT, LU, PL, SI, SK	IE, UK

Only in Denmark and Luxemburg is the state involved in the appointment of members of the councils.

**This means that prevailing practice is that control over the appointment of members rests with the founders, which as was pointed out above are usually not just owners, but also journalists associations and possibly also editors associations.**

### 3. Procedures for Dealing with Code Violations

The procedure for dealing with code violations and complaints looks very similar in most countries. However, differences exist when it comes to whether or not press councils are able to **take up cases on their own initiative**, accept **third-party complaints**, and play the role of **mediator** between opposing parties. Even though two thirds of press councils have a mandate to start their own investigations without a complaint, they use this possibility only rarely. In half of the analysed cases third-party complaints are allowed, yet sometimes only if the person concerned by news coverage gives his or her consent. Half of the press councils do act as mediators and fall back on adjudication only if no amicable agreement can be reached.

**Table 8:** Different Approaches to Complaints among Press Councils

	AT	BE/CF	BE/VG	BG	CH	CY	DE	DK	ES	ES/CAT	FI	IE	LT	LU	MT	NL	NO	PL	SE	SI	SK	UK
Council takes up cases on its own initiative	•	•	•	?	•	•	•	•	-	•	•	-	-	-	-	•	•	•	•	•	•	•
Third-Party complaints accepted	-	•	-	-	•	•	•	-	-	•	•	•	•	?	-	-	•	?	•	•	?	-
Council acts as mediator	•	•	•	•	-	•	•	-	-	-	-	•	-	-	•	•	-	?	•	-	-	•

While the use of mediation or adjudication in complaints cases may be a simple choice of how to handle complaints, the ability of press councils to take up cases on their own initiative is key in determining how pro-active and interventionist the self-regulatory body can be. Furthermore, if mediation plays too central a role in the functioning of the organisation, it may be the case that the system will provide too few incentives for behaviour change on the part of journalists. Having the power to take up cases on its own may also

give the institution the power to act on systemic issues or collective failures of the press in addition to the individual cases of violations of the code of ethics.

**Granting press councils the power to initiate cases is not only common practice, but may be an important part of ensuring the self-regulatory system “has teeth”.**

Finally, much of the power of the self-regulatory system lies in the possible sanctions that can be used in cases of violations of the code of ethics. Looking across Europe it is striking that only half of press councils can demand the publication of their reprimands by the news organization determined to have committed a violation. In many countries, councils are restricted to a public statement or even non-public measures. Only in Sweden the press council can fine news organizations in addition to the publication of a reprimand.

**Table 9:** Sanctioning Options for Press **Councils**

	AT	BE/CF	BE/VG	BG	CH	CY	DE	DK	EE	ES	FI	IE	LT	MT	NL	NO	SE	SI	SK	UK
Fine	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	•	-	-	-
Publication of reprimand by news organization	•	•	-	•	-	•	•	•	-	-	•	•	•	-	-	•	•	-	•	•
Public Statement by council	-	-	•	-	•	-	-	-	-	•	-	-	-	•	•	-	-	•	-	•
Non-public sanction	•	-	-	-	-	-	•	-	•	-	-	-	-	•	-	-	-	-	-	-

Therefore, the most common practice is a kind of “name and shame” sanction, which in half of the countries must also be publicized by the offending media. Forcing violators to also publish the decisions against them adds weight to this type of sanctions as it ensures that the issue appears before the same audience. The Swedish case is the notable outlier.

**Generally the combination of the obligation to publish and a press council that can initiate cases is the “strongest” model commonly in use in Europe.**

## Conclusions

Any new self-regulatory body should **continue the work the PCC** has been doing when it comes to mediation and dealing with complaints. Yet this overview of press self-regulation in Europe shows some other common practices that can serve as inspiration for reforming the model in the UK. The following are **recommendations** to be considered by those designing the PCC's replacement:

- 1) *A new journalism council should be jointly formed by media owners and the National Union of Journalists.*

Reforming the PCC offers the possibility to remedy the central structural defect of the PCC, namely that it is an organization installed by newspaper proprietors without involvement of journalists. A new council should be **formed by both sides** together, and could also involve other organisations such as consumer groups or others representing the public.

- 2) *A new journalism council should regulate all news media.*

**All news media** should be subject to a basic code of ethics that is enforced by the new journalism council. Both websites of traditional news organizations and – if they wish to be covered – new websites that offer journalistic content should be dealt with. Making available new public interest defences available to in defamation and privacy cases may establish incentives for a broad range of news media to join such a system<sup>5</sup>. As ethics and the law are not the same, broadcasters that are subject to statutory regulation should be included as well.

- 3) *There can be a role for the state in self-regulation and co-regulation is also possible without state capture.*<sup>6</sup>

Any new system of press self-regulation must respect press freedom. Yet there are various possibilities to combine statutory regulation and self-regulation. First, the state can offer **incentives** for joining the new journalism councils by granting only news media that participate and accept basic ethical guidelines privileges like VAT exemptions and/or a better position in legal proceedings provided that they observe the council's pre-publication advice. Second, the government and parliament can force the industry to form a self-regulator and **set minimum criteria** a new journalism council must meet to be recognized in statute. Third, the state can use tax money to **help fund** the

new journalism council, for example by bearing the contribution of NUJ. Sufficient resources are a precondition for fulfilling the organization's objectives. Such state involvement can help to strengthen the independence of the new journalism council vis a vis the industry.

- 4) *A combination of an ombudsman and a journalism council might be useful.*

A **two-tier system** in which complaints are first dealt with by an ombudsman who's decisions can then be appealed to the press council might help in raising the acceptance of press self-regulation within the industry. In Sweden and Ireland this model has been implemented successfully.

- 5) *Ordinary journalists and lay members should be members of the body deciding upon complaints.*

Both **tripartite councils** and **bipartite councils** composed of journalists and independent members seem to work reasonably well. Regarding journalist members, it is necessary to include ordinary journalists and not just senior editors and editor-in-chiefs who might be too close to management. Moreover, a **majority of lay members** seems to be reasonable to clearly demonstrate the council's independence. None of the industry members (journalists or owners) should hold an office in their respective industry associations.

- 6) *A new journalism council should be proactive and more outspoken.*

Not only should a new journalism council deal with **third-party complaints** but it should also **take up cases on its own initiative** even if no one complains after a severe violation of the code of ethics. At the same time, the new self-regulator should find ways to avoid goal conflicts between mediation and a public discussion about the wrong-doings of the media. Mediation, while in the interest of complainants, often takes place in the shadows. Yet public and industry-wide **debates about ethics in journalism are necessary** to shape a responsible culture within news organizations. Moreover, news organizations should be **mandated to publish reprimands by contract** and the possibility for fines should be explored.

Reforming press self-regulation will not remedy all the excesses of the British newspaper industry. Changes must be implemented alongside a range of





other interventions to improve media pluralism and limit concentration of media ownership. Aside from creating a new journalism council responsible for all news media that is broadly supported, open, powerful and backed by statutory action, it is also necessary to discuss ethics and self-regulation in the training of journalists. The conditions within news organizations are of utmost importance to guarantee a free but responsible press.

A working press council can help in promoting journalism ethics and contribute to a healthy journalistic culture. The current crisis offers the opportunity to form a new journalism council, to strengthen it vis-a-vis the industry and to give it the powers and competencies it needs to be successful. In the past, as the PCC openly admits, the commission and the **industry acted only upon demands that were backed by government** and under the threat of state intervention. Thus, it is important that the Leveson Inquiry sets out a radical case for reform along these lines and government credibly backs the reforms suggested and does not let the industry get away with minimal adjustments.

*The current crisis offers the opportunity to form a new press council, to strengthen it vis-a-vis the industry and to give it the powers and competencies it needs to be successful*



## Notes

<sup>1</sup> This sentence was changed/added to the original version published in June 2012 to clarify that there is a spectrum ranging from self-regulation with no state involvement at all to co-regulation in which there is also a sanctioning or decision-making role for the state (ex. Ofcom on competition rules), and that it is possible to have state support for industry-lead self-regulatory systems. These changes were made in response to questions regarding this point posed by Lord Justice Leveson during oral evidence given in relation to this policy brief.

<sup>2</sup> Report of the Committee on Privacy and Related Matters 1990 (Calcutt Report)

<sup>3</sup> Select Committee for Culture, Media and Sport of the House of Commons: Report Self-Regulation of the Press 2007

(<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmcomeds/375/375.pdf>)

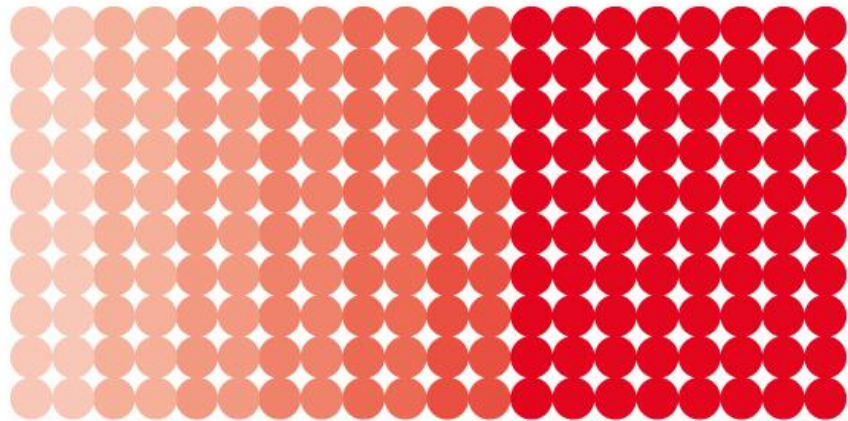
<sup>4</sup> This brief draws upon for its findings two research projects. The data in the tables was also written up in: Puppis, Manuel (2009): Organisationen der Medienselbstregulierung. Europäische Presseräte im Vergleich. Cologne, Halem. The figure is from Tambini, Damian, Leonardi, Danilo and Marsden, Chris (2008): Codifying Cyberspace: Communications Self-Regulation in the Age of Internet Convergence. London, Routledge

<sup>5</sup> Proposals for this were made by the [Co-ordinating Committee for Media Reform](#) and by [Hugh Tomlinson](#).

<http://www.mediareform.org.uk/wordpress/wp-content/uploads/2012/06/Leveson-Module-4-evidence1.docx>

<http://inform.wordpress.com/2011/10/04/media-regulation-a-radical-new-proposal-part-3-a-media-regulation-tribunal-hugh-tomlinson-qc/>

<sup>6</sup> see note 1.



## LSE *media policy project*



- About** The LSE Media Policy Project aims to establish a deliberative relationship between policy makers, civil society actors, media professionals and relevant media research. We want policy makers to have timely access to the best policy-relevant research and better access to the views of civil society. We also hope to engage the policy community with research on the policy making process itself.
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