Unconstitutional. Undemocratic. And Unworkable.

Why it is wrong to regulate freedom of expression by statute.

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20 Reasons why a statute is wrong, and will never work

"It is the birthright of the citizen that the press should be independent … And that is why, if you accept it as I do, the independence of the press is not only a constitutional necessity, it is a constitutional principle"

(Rt Hon Igor Judge, Lord Chief Justice, October 2011).

- There is probably no ideal model of press regulation, but **only** self regulation can guarantee the freedom and independence of the press - which is, in the Lord Chief Justice's words, a "constitutional necessity." Any other form of regulation - statutory control, or "statutory underpinning" which would have the same impact - would undermine that independence.
- Journalism is the exercise of a fundamental human right - freedom of expression. This is its essence - unlike any other profession regulated by law. And that is why it is impossible to compare it with medicine, or accountancy, or indeed the legal profession.
- There has been no statutory involvement by the state in press regulation since 1695 when the Licensing Act was abolished. This reflects the special role of a free press in the functioning of a democracy. The press is there to scrutinise those in positions of power. It could not fulfill that role if those it was scrutinising had authority, however apparently limited, over it. The impact on a free society would be incalculable.
- Government Minister Francis Maude recognized this when he wrote (October 2012): '…the fourth estate - the media - has an almost sacred role in holding governments to account. A free and independent press has always been the keystone of an open society. That's why I'm issuing a call to arms to the media the world over to hold the feet of government officials and ministers like me to the fire.'
- Any statutory system of press regulation would be unworkable without some form of licence. To force publishers into a statutory system against their will would require sanction by the state against newspapers, magazines and websites which refused to comply. This might include the power to stop them publishing - a threat without which a statute would be unworkable. This would be inimical to press freedom.
- Even a "small" statute would be fraught with danger. Once the principle that politicians can set the rules is conceded, it would be open to future governments to increase it in size and scope, possibly even without further legislation. A statute once passed would never be repealed.
- It would be impossible for legislation satisfactorily to define the "industry" in the digital age unless a statute was so sweeping in scope that it would fatally undermine freedom of expression for many outside the newspaper industry. How could a statute cover a weekly paper with a circulation of 5,000, but not a blogger with 100,000 unique users or Private Eye with a circulation of 230,000?
- A statute also holds great dangers for broadcasters. As the BBC's former Director General Mark Thompson has recognised, they are only able to operate under licence, delivering impartial news, because when the political pressure becomes too great they can make their case in a free, unfettered press.
- The coverage of a statutory system might even be less wide than a voluntary one. In the digital age it is easy for publishers - and a number of British newspapers and magazines now have websites with a global audience - to domicile their services abroad to escape state controls, leading to less protection for the public rather than more. This is not a problem in a system that publishers - both print and on-line - enter voluntarily.

- The internet and social media industry is based in America, where there is no press regulation and the First Amendment gives an absolute guarantee of freedom of expression. Many items that a statutory regulator might seek to ban - the Prince Harry pictures for instance - would be freely available to British viewers of American websites.
- The Ryan Giggs saga demonstrated the impossibility of using the law to prevent instant dissemination of stories on Twitter, Facebook and Google by members of the public. Some individuals on Twitter have a bigger audience than many national newspapers. How would a statute regulate them?
- Statutory regulation would be of no benefit to the public. It would be slow and cumbersome, and involve costly lawyers. Self regulatory systems - including the ASA and the PCC (whatever its other weaknesses were) - are free, quick and effective at sorting out disputes. Statutory systems like OFCOM can take more than a year.
- Statutory controls abroad have failed to restrain intrusive journalism. The recent topless pictures of the Duchess of Cambridge were published in France, which has a statutory law of privacy, Denmark, which has statutory press regulation, Italy, which has statutory licensing of journalists, and Ireland, which has a Press Council with statutory underpinning. They were NOT published in Britain, which has voluntary self-regulation.
- No statutory system could ever keep pace with the breakneck speed of development within the industry. It would be out of date before it even reached the statute book. Broadcasters still operate under the 2003 Communications Act which doesn't even reference the internet. Facebook has only been a phenomenon since 2006. Laws can take years to change; self regulation can respond promptly.
- A statutory system would be far more unstable than a self regulatory system because it would be constantly undermined by legal challenge from publishers forced into it against their will.
- Britain establishing a statutory regime would have an alarming impact abroad. Britain's example is followed and magnified throughout the Commonwealth in particular, and the imposition of statutory controls here would be used mercilessly by governments wishing to crack down on free speech.
- The Leveson Inquiry arose as a direct result of criminal acts at one newspaper. Appropriate legal remedies - and severe penalties - already exist for all the criminal allegations that have been made, and are being pursued by the biggest police inquiry in British criminal history.
- There has been no evidence at the Leveson Inquiry - or elsewhere - to justify the imposition of statutory control, a move of huge constitutional significance. A Joint Committee of Parliament has examined much of the same territory and concluded: "We do not recommend statutory backing of the new regulator."
- Establishing a statutory regulator would also require statutory definitions of privacy and the public interest. The same Joint Committee said: "We do not recommend a statutory definition of public interest, as the decision where the public interest lies in a particular case is a matter of judgment, and is best taken by the courts in privacy cases."
- Finally, it would be many years before a statutory or statutorily "underpinned" system could be put into place. Legislation would be costly, hugely controversial and divisive and require lengthy consultation. The entire concept would be open to legal challenge under Article 10 of the ECHR, and may be unlawful. A new system would be unlikely to be delivered before the next Parliament. A new tough, independent self regulatory system could be in place during 2013.

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