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My interest in regulation of the media began in 1984 when working at the Institute of Practitioners in Advertising. Life then was so straightforward – we didn't talk about "terrestrial" because we only had terrestrial – 4 tv stations including Channel 4 that was so new and exciting. Cable television was considered the future route for broadcasting as the future for TV – I had just been living in New York where cable TV was the norm – then one day a group of media Directors (as they were known then in advertising parlance) and I were persuaded to meet with a group of slightly shifty looking guys in polyester suits, carrying plastic briefcases, representing a new venture called the British Satellite Broadcasting company. We all thought the idea of broadcasting TV by satellite was really far-fetched – and surely wouldn't compete with cable. My how times change! Indeed since those times and looking forward, the only thing that is constant, is change.

Looking first at the title of my lecture this evening – Changing Times and Changing Media Regulation – I am very conscious that I am addressing an audience already versed in the media and the degree to which it is changing. I want to look at some of those changes and

suggest how we must now use opportunities, including the Leveson Inquiry and the current DCMS focus upon the next Communications Bill, to try and shape a regulatory framework that is sufficiently fleet of foot, flexible, whilst credible in terms of delivering for the consumer for, well, optimistically the next decade.

I put it that way because the last Communications Act was, frankly an anachronism before it had even made the statute books – why? – it was 2003 and it didn't even mention the Internet. Meanwhile, across the pond in the US, Mark Zuckerberg was developing Facebook. I well remember some of the somewhat lengthy debates about delivering for the citizen and consumer – so much about psb and media plurality and who should have priority on the SKY EPG – all good stuff but the last Government flatly refused to recognise then what was happening before our eyes in terms of delivery – it was deemed 'too difficult'. Convergence or - to converge - was something rivers do.

Regulation of media content is currently the role of a number of organisations including the PCC, ASA, OFCOM, BBC Trust and ATVOD. Set against that we have convergence. As I was drafting this address I had three screens on the go – my Blackberry, IPAD and laptop. I don't need a TV, radio or a newspaper. I barely need the telephone. I rarely leave a voicemail – why? - because we have moved on – and that is what Leveson and DCMS proposals must recognise. Whilst we

must learn lessons from the way in which media platforms have been misused in the past, we must also try and prepare for further and possibly seismic change.

One question : should regulatory convergence match media convergence; the jury is still out on this, however, I would suggest no for two reasons: 1) because, whilst we may receive different media via one platform, there remains significant difference between content – visual, written and commercial (paid for advertising) together with content which is defined as public service, as opposed to commercial and 2) because, like the Communications Act 2003, primary legislation, i.e. statutory controls, just won't keep pace with technology. In addition, we have to acknowledge that the culture and practices of different media have long been divergent, and there is no set of rules that would easily encompass all of them. Historically, regulation has evolved to suit the moment and the medium: for example, the ASA has a back stop power with OFCOM, but only in relation to broadcast advertising as a result of broadcast advertising devolving to the ASA; the non broadcast role resides, to an extent, with the OFT. In addition, broadcasters have needed licences due to spectrum scarcity and that has meant that statutory controls were inevitable and necessary This model is shifting and the extension of broadband means that the potential for online broadcasting (with no need for licensing) and publication has

increased dramatically. The current bid for cuts at the BBC is surely in part to prepare for the need for a much leaner and cost effective organisation that can withstand the end of the license fee.

The obvious solution to match the pace of change, is self regulation which, whilst currently under attack, is, I would argue the only model that can work. As broadcasters move online and the right to be a publisher is effectively made universal, there is a growing argument that statutory intervention is no longer practicable. In essence, you don't need anyone's permission so how would a license work in an online world!

That said, whilst statutory intervention becomes less practicable for media content, powers to enforce compliance with a system of self regulation must be considered and I will turn to that later.

Before that, and with an emphasis on press regulation, I want to focus upon what the PCC in its current form is meant to do and then consider reform. As students of journalism, you know that already numerous laws apply to the press: libel, contempt of court, copyright etc.

The PCC was not set up as a general regulator of all press behaviour – to police laws as well as take complaints under the Code of Practice. It was primarily meant to deal with issues, both ethical and practical, that the law cannot capture. It therefore exists to complement the

law, not compete with it. The PCC is at heart a complaints resolution and adjudication process which currently meets the needs of the overwhelming majority of people who have a grievance against a newspaper or magazine.

Its remit is essentially to develop and raise standards by ruling on strict criteria of inaccuracy, intrusion and harassment by establishing case law and the acceptable boundaries of practice. We are a tiny organisation, comprising 16 people, for whom commitment to providing a public service, on a 24 hour basis, is exemplary. We work with numerous outside agencies and organisations – the police, coroners, health authorities and many charities including the Samaritans and Age Concern.

It is important here to emphasise that the PCC is only part of the self regulatory system; it is funded by a body comprising members of the press and their trade bodies and the Code of Practice is written by editors, with recommendations from the PCC. The PCC implements the Code. In effect, it is the Industry who make the rules that bind Journalists and Editors and the PCC who implement them; you wouldn't think so when you see so many instances of the Industry attacking its regulator; a bit like politicians passing laws and then complaining about them.

And whilst we provide an incredibly dedicated and bespoke service to the public, within weeks of arriving at the PCC, I realised that the

PCC needed to change and so began by focusing upon our internal practices and procedures. I set up an independent review of our Governance and Structures which was to be an important stepping stone for further reform. The Review Panel made 74 recommendations for change and the PCC has instituted almost all of them. We have never been complacent on my watch; far from it, however, we have been restricted by the press to exploring and reforming areas which are entirely within our remit, our part of the overall system. I have wanted to accelerate change, however, proposals for reform carry with them funding implications; resource is woefully inadequate and a fundamental problem for the PCC. Contrast its budget of 1.9 million to regulate the whole of the press and the magazine industry with the ASA 8.9 million and OFCOM have reduced their budget to 117 million.

Lack of resource has never impeded our determination to serve the public. Strength must often be measured by the invisible. A lot of the effective work performed by the PCC in recent years is below the surface – what we call our pre publication work. It is reflected in the articles that do not appear, the journalists that do not turn up on someone's door step and the stories that are not pursued. Many people contact us to use our anti-harassment mechanism whereby messages called desist notices sent to Editors to call off their photographers and journalists are passed on. It has a near 100%

success rate. We send out 100s of these desist notices every year; in essence they pre-empt hurt and harm that an article or picture might cause.

What I have just described – pre publication, could not be captured effectively by statute - not least because each and every case is bespoke and dealt with on its merits and usually with great speed – we can get journalists off door steps within 30 minutes of a beleaguered individual contacting the PCC – there's no need for warrants or untimely process; a quick call from us to the police and a desist notice which also goes to the broadcast media, will do - something the law cannot do. A recent example was the Cumbrian shootings last year whereby the PCC was directly in touch with the police and other local agencies, offering to help with regard to the media, even before the shooting had ceased.

Something else that separates the work of a self regulatory system from the law is that it is free to the complainant – the press pay. So no lengthy and expensive court battles whereby the offending details of the article or picture are recounted and re published.

It is flexible, able to respond to changes to our cultural and ethical mores such that, for example, what was acceptable 5 years ago but is not acceptable now – for example, some aspects of discrimination - can be changed with relative ease without the need for primary legislation. Contrast that with an intervention by Parliament which

can - and almost always does - take years, simply by amending the Editors Code of Practice and by developing a body of precedents, which are regularly referred to in the High Court. In this sense, it is much more akin to our Common law, coupled with the law of Equity.

Then, most significantly in terms of media regulation, self regulatory systems can adapt to respond to changes in Technology.

I have already suggested that convergence should not mean more statutory oversight – it can't if experience is of any worth - UK broadcast websites which have global reach and enormous influence, have no regulatory oversight. In contrast, the PCC has now been regulating press websites since 1996 and more recently blogs of journalists in their professional capacity. In essence, I repeat, the law will never keep up with technology. Nor does it have global reach.

More recently, the PCC has considered Twitter and the question of whether messages sent on twitter are capable of being regarded as private and thereby outside the bounds of what can be published by the press – it is so important that the reader should feel they can trust what they see and read – the regulation has to be credible if it is to be trusted.

There is so much that is positive about an online world. The extreme example is, of course, the Arab Spring. It gives people and Nations

the confidence to take steps that hitherto may have felt or been just too difficult. It is an extraordinary tool in the commercial world and most importantly in a media world - - it empowers journalists to extend their reach and up their game. It is liberating.

There is of course an intrinsic link between online media and social media. Social networks which have both a commercial and personal value – sites which can be easily accessed by the media, for good or ill.

Arguably, the online world gives people the chance actually better to define what they wish to be or remain private e.g. via privacy settings on Facebook. You could also argue that people have adopted a public persona quite consciously, using social media; they have developed a culture of information exchange such that privacy will lapse as a social norm. Personally, I find this very worrying – privacy is hugely valuable and almost more so online given the commercial hunger for information about you and me – we are commercial commodities – it is the information about us, our likes, our dislikes, which makes Amazon, Love Film - and other similar sites, so commercially attractive.

Why is this so important ? – because whilst there is so much that is positive, there is a price – that is trust in what we read and see and protection for what as individuals, belongs to us.

Some argue in favour of allowing the online world to effectively police itself – if something is bad, people will eventually, stop going there. But is that acceptable? A free for all, would eventually lead to a decline in standards which surely we do not want. As students of journalism, you are particularly vulnerable; the future of journalism doesn't quite hang in the balance, but almost. Whilst maintaining freedom of expression, I suggest you will want to do so in an environment that respects your profession and the work you do. You should welcome reform that can achieve that balance.

In this regard, I want to highlight one example, an issue which illustrates why I believe we want to aspire to a defined and respected set of standards in an online world. I refer to a negative, sometimes aggressive aspect of people using the newspaper blogs to publish incredibly vicious, abusive and often entirely inaccurate information. Currently newspapers are loathed to edit this information as, once they edit it they become, they say, legally responsible for it. I know that women journalists have been particularly susceptible to incredibly unpleasant blogs following articles they have written. This is an issue that must be tackled. Again, the current, judicial spotlight is an opportunity that shouldn't be missed.

Taking this further should we decide now, Who is a journalist? – How does one become a journalists – well easy – just call yourself one and

get writing and blogging! Create your own website; you are instantly global – amazing.

So how do you instil in such a person, now a journalist, some professional standards? Should all who call themselves journalists, without necessarily holding any accreditation, continue to enjoy an exceptional privilege: that is, protection of sources? If we non-journalists tried that as a defence to naming the source of information we may have received and acted upon, in a court of law, we could be imprisoned for contempt and rightly so. Again, as a journalist you will want to protect this right; but how ?

The speed of information can distort, destroy personal lives and commercial enterprise at the press of a button. Powers such as we have at the PCC to insist upon take down of the offending article or picture, apologise, publish corrections – all within a matter of days or at most weeks - must be encouraged on a global scale. Note I say encouraged – you can't make those beyond your jurisdiction do anything – and within your jurisdiction, you can't make individuals who may hold themselves out as journalists but are not employed or retained by organisations recognisable in law comply – it's called persuasion versus compulsion.

What is more amazing, some editors are suggesting that sites like the Daily Beast and the Huffington Post should comply with a reformed system of regulation in this country. How do these editors propose

we go about this? Are they ready to turn up on the Huffington Posts' - or Tina Brown's doorstep, in Washington or New York and demand that they, as publishers, comply with a British system? And then maybe also ask them if they fancy helping to help pay for it?! I can imagine the short reply!

The answer has to be international collaboration – we already have strong alliances with press councils, and these could be extended, together with governmental support at national level to develop, not a one size fits all, but systems which have strong synergy, in terms of standards and ethics in journalism. Sanctions and rules of compliance may differ (as they already do among different press councils), however regulatory frameworks which are capable of constantly adapting to embrace technological advances would be feasible. Strong alliances across nations as opposed to trying to impose international rules and strictures which can be easily ignored must be the way forward.

All websites that comply with a system could carry an internationally recognised kite mark to give the reader and viewer the confidence that it is a trusted site, as opposed to a free for all; that would, I am convinced, encourage more publishers to opt in to the system as it would attract more unique visitors. So whilst Huffington Post and the Daily beast may not come within our jurisdiction, they may comply with a US system similar to our own.

This is a big ask, however, I genuinely think to try and manage the media by compulsion, by the intervention of nation states, is doomed to failure.

To illustrate the point, I well recall a meeting with the Indian High Commissioner about three years ago when he talked about India's growing recognition of the need to respect international intellectual property rights. He was quite candid in explaining that when an emerging democracy, hungry for a commercial presence in the world, is developing its economy and sees a viable route to competing in international markets by producing similar goods to others or literally copying others, it is easy to see why the law of intellectual property seems like an annoying impediment to progress. However, as a Nation becomes more innovative, more skilled and, importantly more creative, such that its goods which it has created become susceptible to passing off/copy by others, then the importance of intellectual property rights becomes clear and ultimately respected. It is surely the same for the published word – creative content has a value and we need to recognise that value in any future media regulation.

This all sounds very difficult to replicate with online media, cumbersome, fanciful – well few years ago I would probably have agreed; just as 10 years ago I would have said you cannot start a revolution by using a telephone. Tunisia and the events that shook

the Middle East changed all that. It needs much further thought, however, I suggest we should get on and think fast.

There is an additional issue here of enormous importance and that is the issue of protecting sensitive information – information that may impede or diminish the security of nation states – may lead to cyber terrorism – and will be couched in a way that the media are not necessarily equipped to recognise whether or not the publishing of that information may put lives at risk, destroy diplomatic relations and/or give succour to terrorists. This is an area where I believe we need to show more vigilance – and seriously consider how do editors across the media check the truth of that information. How do editors know it is alright to print? We must not forget the D Notice Committee who, in large part, serve this purpose exceedingly well and who work with the PCC and others very much behind the scene to consider when it is alright to print – in the public interest and when it is not. It is, however, hugely important to allow those who are privy to sensitive information, to direct the media when it is right to be constrained, circumspect or, on occasion, silent.

The public interest test has been much discussed in recent months. Again, as a lawyer, I cannot see how you can legislate for this. At the PCC, during Commission meetings, we sometimes spend a long time deciding whether or not, in all the circumstances of each particular case, something should be published in the public interest. We do

this having had the facts for almost a week to think about in advance of the meeting. This must be better than placing that burden upon one judge; more akin to a jury with 17 people bringing their own life experiences to the table.

On a related point, I do want to emphasise one point here and that is a notion that public interest is akin to Public good. It is not. What is good for us is NOT the same as Public Interest.

I have concentrated thus far upon how you regulate media content which is global; I think it also important to briefly consider some key elements of the system beyond the content itself and again I shall concentrate upon the press:

Firstly, compliance.

Compliance with the Editors' Code is voluntary. This must change. I believe absolutely that there must be universality of compliance within a jurisdiction, otherwise the system lacks credibility and does not serve the public. Why should the public have trust in a system when they can turn to the PCC for redress against the Mail or Mirror but not the Express or the Star because a publisher doesn't want to pay into the System? The key point here is that if you don't pay into the system you have effectively opted out and need not comply with the Editors' Code.

Whilst in most respects the system for regulating advertising is similar to the PCC system, whether you pay or not as an advertiser compliance with the ASA code is mandatory. Payment of the ASA levy is voluntary and certainly when I was on the Boards of both ASBOF and BASBOF which oversee the funding of the ASA, about 85% of all advertisers, however large or small, paid the levy.

In addition, if a publisher is “in” the system but doesn’t like an adjudication, he is at liberty to opt out of the system altogether. This is not sustainable, either in principle or in practice. The Solution? : there should be some form of back stop power, vested in another body and, given that body needs sufficient powers to demand compliance, it will, regrettably have to be one regulated by the state. This need not nor should it in any way compromise freedom of expression or lead to some form of licensing; it is just to ensure that compliance with the system is universal and no-one can just choose to opt out.

In addition, adherence to the Editors’ Code should be a condition of employment and expressed in all journalists and editors’ contracts.

Which brings me neatly to the issue of sanctions – what others will say, sanctions that bite! Of course there must be credible sanctions; I wish some critics of the PCC could hear editors when the PCC have adjudicated against them; it is not music to the ears, believe me, they hurt.

Some say editors don't hurt enough and fines should be imposed. Two things: I am concerned that the imposition of fines may move the system from one that is collaborative to one that is adversarial. It will inevitably lead to an increase of costs to the complainant (remember the granting of legal aid is being significantly cut) and thereby diminish access to justice.

Also, much of the work of the PCC focuses upon resolution between the newspaper or magazine and the complainant with the PCC Complaints Officer acting as the go between. If there is a threat of a fine from the outset, I suggest that communication and collaboration will not happen. Let's look at the reality. Who pays the fines against the BBC – the license fee payer - you and I do – not the perpetrator of the wrongdoing. It is similar across the public sector – 100s of millions last year in the NHS alone and the tax payer pays, not the doctor or nurse or administrator who made the mistake. Quick fix ideas and talking tough, which of course politicians particularly love to do, is not always effective.

That said, as I have said in my written submission to the Leveson Inquiry, I think we cannot rule out the imposition of a fine where, for example, there is continued, gross infringement of the Code.

In addition to compliance and sanctions, trust in a system depends upon a credible remit. I have already said that the PCC remit exists to complement the law. Some are now calling for the PCC to have

investigative powers – powers which may have, for example, exposed wrong doing including phone hacking. I think those advocates of investigative powers must be careful what they wish for.

Firstly, what do they mean by investigative powers? The PCC has been blamed for failing to in the words of one editor “regulate the baronies” and the Prime Minister referred to the PCC system failing with regard to phone hacking. If the PCC were to have the powers necessary to investigate criminal acts, or acts which require that a regulator can demand compliance, it will have to be a creature of the state. You cannot confer powers of enforcement, search, subpoena etc. upon a system free of the state. That really is fanciful.

What you can do is create a system that places sufficient pressure upon individuals to do certain things: the right thing.

So far, I have talked about what the PCC does currently to redress wrongdoing, and what more could and should be done to recognise we are now in a converged world of communications. That is only a part of the challenge that faces the news industry, its relationship with Parliament, the Courts and the people.

There is another aspect which is critical for the future. What is very clear in my mind is the need for a change in the culture and practice within news organisations and I do not limit this to the tabloids or

News International. I will make one qualification here - I do not have in mind, from personal experience, either the regional or local press or the magazine industry.

This is something that you cannot legislate for, just as you cannot legislate to prevent people breaking either the civil or the criminal law. It has to come from within and in this regard I have all the media in mind, broadcast and non broadcast.

Firstly, and something which I set out to achieve for the press earlier this year – we need to develop consistent, industry wide protocols for the gathering by journalists and editors for news gathering and the dissemination of personal information.

Secondly, there should, as a matter of course, be a credible independent whistle-blowing system in place, within all media organisations, so that any beleaguered journalist can have free access, without fear, to a second opinion as to his rights in law.

Thirdly, I strongly believe that corporate governance within media organisations should be extended to ensure that senior executives, at Board level, are responsible for the ethical practices of journalists and editors and their compliance with the system of self regulation.

In conclusion, I borrow that great line; it's not what you say, it's what people want to hear. Over the past couple of years, the PCC has worked tirelessly to make its voice heard, to explain the work that

we do in support of a free, but responsible press. It hasn't been easy, particularly as we seek to regulate the most powerful messenger of all. That is why I welcome the Leveson Inquiry; it is a chance, not only to put the record of the PCC straight, but also to build trust in the media that occupies such a dominant role in our lives. Professionalism should be the order of the day, which means you, as journalists are free to educate, entertain and inform and we, the public, are able to trust in what you write and say.

Thank you for listening

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