



From the Director

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I am responding on behalf of the Press Complaints Commission to your open letter of 16th May 2011, titled "A Communications Review for the Digital Age".

You have posed two questions where we believe our experience, and therefore expertise, can be of specific help to you.

Q3. Is regulatory convergence across different platforms desirable and, if so, what are the potential issues to implementation?

Regulation of media content is currently the role of a number of organisations including the PCC, ASA, Ofcom, BBC Trust and ATVOD. The starting point of any consideration of content regulation must be a recognition that the cornucopia of publishing opportunities thrown up by modern media means that it would be difficult for a single, one-size-fits-all regulator to be able to supervise everything in a way that reconciles free expression with other necessary rights. There will always be room for bodies with particular expertise to exercise powers of regulation specific to the needs of each sector. The culture and practices of different media have been long divergent, and there is no set of rules that would easily encompass all of them.

Indeed, it is clear that there are rightly different expectations about the tone and content of different media. Standards relating to impartiality and tastefulness, for example, are legitimate regulatory aims for broadcasters, who still are largely producing content received directly into people's homes through television and radio. It would be unacceptable for newspapers and magazines, which tend to be actively purchased or picked up, to be constrained in a similar way: there is a legitimate cultural expectation that they should remain free to be opinionated and provocative.

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Historically, broadcasters have needed licences due to spectrum scarcity, and that has meant that statutory controls were inevitable and necessary. While this model is shifting, and the extension of broadband means that the potential for online broadcasting (with no need for licensing), there still will remain for the foreseeable future differences between media that require different regulatory practices.

However, the progress of online convergence justifies a possible convergence of philosophy in the terms of regulatory approach. And that is in the direction of self-regulation. As broadcasters move online, and the rise of blogging and social networking means that the right to be a publisher is effectively made universal, statutory intervention becomes less practicable.

This would not mean that the role of the PCC itself would or should change, rather that the principle of self-regulation (for which the PCC offers a robust model) should be encouraged across the different parts of the media. The patchwork of current bodies could become more aligned in terms of their philosophical and structural underpinning: self-regulatory and co-operative, rather than the current blend of approaches (statutory, co- and self-regulatory). Consumers could be provided with a one-stop access point (in the form of a website) to the different self-regulatory bodies relevant to each specific area.

Such an expansion of the self-regulatory principle could then touch upon other parts of the online world where concerns exist about standards and practice, such as social networking sites. There would, then, be a consistency of approach, and thinking, about the whole area of content regulation in the digital age. This would not diminish freedom of expression, or the free circulation of information, as the regulation would be self-imposed and based upon self-restraint not statutory restriction.

The Communications Bill offers the chance to provide clarity in what is undoubtedly an area in considerable flux. Recognition of the virtues of the self-regulatory model (as outlined below) will provide one method of approaching this.

Q13. Where has self- and co-regulation worked successfully and what can be learned from specific approaches?

The Press Complaints Commission has now existed for twenty years, and represents a success story for self-regulation in a fast-moving and active industry.

Media regulation offers a level of control over content additional to that provided by the law. This can serve the following purposes: provision of a supplementary set of rules, reflecting evolving ethical/cultural/technological trends, as well as industry practices; a mechanism for resolving disputes and handling complaints in a fast and free manner; and a mechanism for using this approach to raise standards more broadly.

Self-regulation is a proportionate and effective means of achieving those ends. The PCC handles around 7000 complaints a year, plus thousands of other inquiries and requests for assistance pre-publication. It does so efficiently, completing investigations in under 35 working days and within a total budget of around £2 million. It is also able to act immediately to urgent concerns, which can mean that it can intervene to ensure that

inaccurate or intrusive material is either never published or is removed from newspaper and magazine websites in a matter of hours.

What is worth emphasising is the fact that the self-regulatory mechanism is designed to offer complainants what they want; it is a customer-oriented service. Its success relies on people coming to it, which means that it must have the interests of the public at its heart at all times.

Self-regulation also meets the need to limit state interference in freedom of expression, both real and apparent. The state should, wherever possible, avoid involvement in the free circulation of information. Its starting point should be an intent to defer its authority on to others (there can be no freedom of expression if the state is involved in the regulation of all content), and it must have the confidence to do so. It should be recognised that the self-regulatory model is favoured across Europe, and other democratic nations in the world, in regard to the press. In this respect, Britain is able to demonstrate that it stands with others in guaranteeing appropriate press freedom.

The following are central planks of the self-regulatory system:

1. Flexibility of approach and evolving services

As the process of drawing up the new Communications Bill aptly demonstrates, legislation will always be a slow and unwieldy mechanism to deal with the fast-moving, ever-evolving world of content production. Technological and market changes will always outstrip the pace of the law. It is notable that in 2003, when the last Communications Act was published, there was no real reference to the internet; in 2003, Mark Zuckerberg was in the process of establishing Facebook.

One virtue of self-regulation is that, self-evidently, it is not constrained by statute. So it can respond to changes of culture and expectation. And it can respond quickly.

For example, the remit of the PCC was extended in the mid-nineties to cover newspaper and magazine websites, and further extended in 2007 to include audio-visual material. At the moment, consultation is nearly complete in the area of newspaper and magazine Twitter feeds. In contrast, Ofcom has no current formal role over broadcasters' websites, because none was written into the original legislation. Last year, the PCC established a working group of Commissioners to examine ongoing online issues. This has ensured that the Commission remains vigilant about technological developments and their effect on journalistic ethics.

The Editors' Code of Practice (the Code independently enforced by the PCC) is itself an evolving document, which is audited every year. Recent changes have included: preventing the publication of excessive detail in the reporting of suicide, following representations from charities like the Samaritans; further protection from discrimination for the transgender community; and reference to inquiry agents, in light of the phone hacking scandal. The Code is widely recognised as an effective and proportionate set of rules, and attracts few complaints about its scope.

The PCC itself has also been readily able to evolve into more than just a complaints body. We have, in recent years, established a bespoke service to prevent media harassment. We operate a 24-hour emergency pager, run by senior staff, and can communicate across the



industry requests from members of the public to be left alone. This has an almost 100% success rate. Ofcom has been granted no pre-broadcast powers by statute, and so the PCC runs this service for broadcasters also. In further contrast to OFCOM, the PCC has amended its procedures to ensure that it proactively contacts people at the centre of media attention, to offer its services and ensure that they can be protected if necessary.

As a self-regulatory body, the PCC has to be – and is – committed to an ongoing programme of improvement and evolution, a process by which it further establishes itself by getting better at performing its functions. In 2010, the PCC agreed to implement over 70 recommendations made by an independent Governance Review. In 2011, it is actively looking at how other structural changes can be made to make it more effective.

2. *Industry commitment to funding*

In polling for the PCC, nine out of ten people thought it right that newspapers and magazines should fund their regulatory body. There is a considerable ongoing cost to self-regulation, and there has to be commitment across the industry to provide financial support to the organisation, and be willing to extend this as circumstances dictate.

3. *Buy-in*

The system of press self-regulation has always had near universal buy-in from publishers. And the reach of the PCC extends informally already further than newspapers and magazines, to news and picture agencies and (in the area of harassment prevention) broadcasters. Across the full range of the publishing industry, the PCC is able to work with editors and legal departments to deal with pre-publication concerns regarding privacy and harassment.

What “buy-in” means in practical terms is a willingness to co-operate with the PCC in the resolution of complaints, and in its pre-publication work. This remains strong across the board, and means that all of the powers of the PCC are effective, because they are accepted. Statutory interference can breed confrontation and circumvention, which does not benefit the consumer. The industry’s commitment to work within the self-regulatory regime is paramount.

The benefit of this can be seen in the recent controversy over injunctions. Here, the mechanism of top-down restraint by judges has come under severe strain, because of problems of enforceability on the internet. Restriction will always breed attempts at circumvention; when you try to squeeze hold of a piece of information, there is a danger that it will slip between your fingers. In this case, information protected by injunctions has simply been forced out onto blogs and Twitter accounts.

Contrast the work of the PCC, which requires editors voluntarily to restrain from publishing certain information. Even if material already appears online elsewhere, newspapers and magazines can be asked not to repeat it.

4. *Incentives*

Industry has to see the benefits of self-regulation, which may be characterised as follows:

- The marketability of standards. Public adherence to a set of standards is an important mechanism for fostering trust and credibility. Any form of content production needs to have people willing to consume the product. Active self-regulation is a means of visibly displaying a desire for high standards.
- The ethical imperative. Support for a self-regulatory system is a means of bolstering the reputation of a content provider.
- Preservation of appropriate freedoms. A great impulse towards self-regulation is the need to ensure that statutory intervention does not become necessary. Industries have a vested interest in ensuring that the system of self-regulation is working well, to obviate the need for government to take a more active regulatory role.

5. *Operational independence*

Although self-regulation requires – and benefits from – industry involvement, it must be able to show to consumers that it works independently of industry interests. The PCC has a majority of public members, openly recruited (outnumbering editors by ten to seven). The public majority is the highest of any similar press council in Europe. The PCC also has an independent Chairman, and is staffed by non-journalists.

Polling showed that the majority of people supported the composition of the PCC, with the idea of a public majority (and industry minority) being supported by four times as many people as other options.

6. *Customer Satisfaction*

The service offered by a self-regulatory body has to be of high quality to justify the existence of the system.

Anonymised polling of complainants consistently shows a high level of satisfaction with the PCC. In 2010, research showed that 78% of respondents said the time it took to deal with their complaints was 'about right' and 73% said their complaint had been dealt with thoroughly or very thoroughly. Even those whose complaints were found by the Commission not to raise a breach of the Editors' Code of Practice were more likely than not to feel that their case had been handled satisfactorily or very satisfactorily.

7. *Public Support*

There needs to be public confidence in a self-regulatory body. This can be measured in the number of people who use the service (which has more than doubled in the case of the PCC over five years), and by polling and other public engagement.




Recent polling confirms that the PCC achieves high public awareness (at nearly 80%), and considerable public confidence in its performance (79% either positive or neutral in this area).

In a digital age, regulatory questions about content will always be complex. In the view of the PCC, government-encouraged self-regulation is the most proportionate, practical and effective answer currently available.

I look forward to discussing this with you and your colleagues in more detail as the consultation proceeds. We would be happy to have you visit the PCC to see the work we do first-hand, and there is an open invitation to you and your officials to come in whenever convenient.

With kind regards

Yours ever


Stephen Abell

