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Media Regulation & Democracy
Demsoc 4

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FOREWORD

Douglas White

The question of how the press in the UK might be regulated in the future is one of the critical public policy issues of 2012, and one that is the subject of significant debate and scrutiny at the Leveson Inquiry.

Devising such a new regulatory system will be no easy task – and finding a solution which wins the approval of citizens, the industry and politicians will not be straightforward. At the Carnegie UK Trust we are concerned that the debate about press regulation has at times threatened to become polarised between those who favour tough new constraints to control press behaviour, and those who argue that any tightening of the system will impinge upon press freedom. In reality there are many different facets to the debate, and we believe that civil society organisations – as vital components of a flourishing democracy – have a valuable role to play in widening its parameters.

To help encourage the process of civil society engagement with the debate we published *Regulation of the Press – Nine Key Questions for Civil Society* in September last year.¹ Following on from this publication, we have supported The Democratic Society to collate a range of different viewpoints, from across civil society, on the key issues involved. The collection of articles presented here represents the

¹ <http://dmsc.me/RemLLa>

output from the work that Demsoc has carried out. We hope that these insightful, well-argued pieces will provide further inspiration and ideas to those citizens and civil society groups still considering their own views on these important issues.

The articles reflect the plurality of views which exist about how some of the challenging questions around press regulation should be addressed. Some of these arguments align with the Carnegie UK Trust's own views on these matters – which are articulated in our recent 'Better Journalism in the Digital Age' report written by Blair Jenkins² – while others do not. It is not important – or indeed necessary – for civil society to reach a consensus on these questions. What is needed is for many different voices to be heard, and for us all to debate the complex issues seriously, properly and fairly, to help identify a way forward.

If this is achieved, then not only will it be a great example of democracy in action, but the result will hopefully be a new press regulatory framework which supports and enhances our democracy. We hope that this piece of work makes a useful contribution towards achieving these important objectives

Douglas White
Senior Policy Officer
Carnegie UK Trust

2 <http://dmsc.me/MV4ySF>

MEDIA REGULATION AND DEMOCRACY

Anthony Zacharzewski and Paul Connolly

Good democracy needs good information. When an article starts like that, you can bet that before long we'll be talking about the right of free speech, and maybe bringing in a quotation from a Founding Father or some other Enlightenment figure, maybe Voltaire saying that he disagrees with what someone says but will defend to the death their right to say it.

That's not where we want to go with this. The information that good democracy needs is only sporadically provided by the media today, and developments of democracy - particularly the drive towards localism - mean that democracy and the media are moving in opposite directions, one centralising, the other fragmenting.

That vision of the press as the forge of ideas and the democratic challenge to power is still strong, even if only as a promised land that today's Jordan-obsessed tabloids can never reach, but political journalism has always been an elite conversation. Nick Robinson's instant analysis of every political interview is elite gossip-mongering, unconnected to the lives of ordinary people. The Kremlinology around the Blair/Brown relationship could easily have been an eighteenth-century coffee-shop conversation about whether the Prussian ambassador had scandalously been seated below the Bishop of Winchester at

the Prince of Wales's dinner.

We are not saying that there should be more policy and less personality in the media - that's often the sort of argument that those interested in policy make. Policy discussion is important, but we know that the commercial requirement and the complexity of modern political arguments don't go together. As policy wonks, we are resigned to heading down to the basement of the RSA to read our "special publications" rather than finding a Sun pull-out on economic productivity.

At the same time, we do not want a world where the Leader of the Opposition puts out demographically-tested statements about his favourite flavour of jam, while postponing any statement on policy until the week before a general election is called.

Instead, media needs to provide for better, more participative democracy, and media regulation needs to support that. What does that mean? The purpose of the project was to gather a range of views on that question, and they are presented here. Our thanks and those of Demsoc go to all the contributors, and to the Carnegie UK Trust, who provided funding for our discussion event in May.

We should add a brief word about what you can find here. Our contributors produced first drafts of these pieces on the Demsoc blog,³ in advance of the discussion event, where we discussed the issues raised. Contributors then had the opportunity to revise their remarks before we edited and collated them here for publication. As with the Carnegie UK Trust, not all these pieces reflect the views of Demsoc, but we think they are all valuable contributions to the debate on media and democracy, and are delighted to be able to publish

3 <http://www.demsoc.org/>

them in this form.

From such different contributions, can we draw any conclusions? We think there are common themes.

The concentration of media power, rather than the nature of the media, is the problem.

Many contributors agreed that the root of the problem with media behaviour is concentrated power - economic power of owners and the messaging power of their outlets - which lacks accountability and allows bad behaviour. One of our discussion contributors said:

“The issue is of concentration of power in the press, such that it can thwart investigation into its activities. Some of the coverage of individuals, particularly those who are not politicians or celebrities, is highly unethical and corrosive to society. There is no public interest defence to much of it, it is there to “prove” the newspaper’s editorial line. These sorts of stories happen far more than they should, and they are corrosive and unethical.”

It is hard to disentangle the concentration of power in large media groups (which can be dealt with under competition law) from the unethical practices that result from that (which are harder to regulate). There is, however, a lack of checks and balances within the media, and that has skewed debate so that the media is unable to provide an effective challenge to power on crucial issues.

The media has multiple blind spots, or perhaps more accurately tunnel vision for a particular set of attitudes and lifestyles - richer, older and more to the political right than the population as a whole, reflecting media buying patterns. It was, for example, hard to hear the

voices challenging neoliberal economics before the current economic crisis. The Icelandic ash cloud story was dominated by stories about the disruption to travel rather than difficulties with transporting organs for transplant.⁴

Bring citizens into the media, and let new forms of media develop

One way of holding media to account, and broadening the coverage they provide could be the use of official or unofficial citizens' panels to make recommendations and comment on coverage. In the mainstream media the only relationship between readers and journalists is a financial one, the only power is to buy or not. Readers' view of what they consider news and what is in 'the public interest' is not heard. And readers of traditional media can't reach other readers to discuss issues with them.

Of course, there are many environments where non-traditional media allows readers to do just that. More primary sources are available to us than ever before. We can go directly to the source, and the role of print media is shifting from direct reporting to finding hard to get information and interpreting or commenting on that information. Is Lord Leveson looking to regulate yesterday's problem? And if we are to have regulation, what is its role around hyperlocal and online media?

Damian Radcliffe ("Hey! Regulator! Leave those hyperlocals alone" on page 33) makes a strong case for regulation to bite on the larger media groups, not the hyperlocals. His pieces echoes another theme of our discussions - whether you can draw a distinction between the "public sphere" element of media (the contribution to public debate), and sports or entertainment coverage.

4 <http://dmsc.me/MV6avQ>

Dave Boyle (“Rectifying the flaw” on page 49) looks at the possible role of cooperatives in distributing media power away from the current set of dominant oligarchs to more accountable and representative owners.

Regulation: redress harm, or uphold truth?

Most contributors seemed to believe that the instruments for controlling press conduct and culture were inadequate and that some new regulatory solution might be required. Kevin Charman-Anderson (“How to clean up the mess” on page 45) considers the relationship of press regulation to its culture, while Suw Charman-Anderson describes the inadequacies of the sanctions to which press misdemeanours are subject (“A press regulator without teeth is no press regulator at all” on page 55).

Contributors differed on where any new regulatory focus should be.

There was for example much discussion over whether the issue of the harms that newspapers can do had become needlessly blurred during the early stages of Leveson with the more rarefied privacy concerns of powerful celebrities.

Then there was the issue of regulation and accuracy. Media makes multiple civic contributions of one form or another, whether a hyperlocal blog arguing against a planning application, or a national newspaper calling for welfare reform. The resulting debates are partisan and the line between fact and comment is blurred. The truth can get lost.

Should the emphasis of new regulation be dealing with harms, dealing with accuracy, or both? How do we uphold accuracy while protecting the right of people to have an opinion? Since the harmfulness

of press coverage may vary in relation to the power of the target, should regulation favour the powerless private citizen or treat celebrities and non-celebrities alike? What mechanisms can protect truth, persons and freedom of expression at the same time?

All contributors felt that the issues of harm and truthfulness were important, but there were differences of emphasis both over what constituted harm and whether regulation could police truthfulness effectively. Paul Connolly (“What should be regulated, and how?” on page 15), for example, suggests that a future regulator should pre-occupy itself with the protection of vulnerable private citizens rather than celebrities. However, he argues that while fidelity to a abstract standards of truthfulness and quality are desirable, they are perhaps not best addressed (or even addressable) through regulation, but are amenable to other remedies, such as ownership limits and market diversification.

Miles Taylor by contrast argues (“Health reporting: the case for change” on page 27) that the facts problem is serious and systemic. He highlights coverage of the MMR vaccine scare as well as a range of issues considered by Ben Goldacre in the *Guardian*⁵ and argues that the problem warrants a regulatory intervention and strong sanctions to get editors to concern themselves with accuracy, nuance and scientific process.

Others contributors, by contrast, were interested to explore how standards could be upheld so as to improve the print media’s contribution to the effective functioning of democracy. One issue was the paradox of impartiality. A desire to present two sides to an argument (even if they are often two flavours of the same side) sometimes unbalances coverage in favour of those with minority views. Paul Krug-

5 <http://dmsc.me/KU5FCd>

man has described this sort of reporting as “opinions differ on the shape of the world”.⁶ The MMR vaccination scare is itself an example where one view was informed by a body of validated research and the other (minority view) was factually wrong, yet received a considerable amount of airtime

Media transparency

Rather than trying to perfect a dying model, we should ask what we want our media to be. We need a national public sphere to prevent opinion and debate from splitting into like-minded echo chambers, but contributors to that public sphere need more accountability for behaviour and the consequences of their actions.

If we could see what the quality of reporting was, and what influences and political positions were acting on newspapers, it could support a culture of healthy scepticism around reporting. The Daily Show in the United States covers news accuracy in an accessible, interesting way. Also in the US, the Cook Index gives electoral districts and individuals rolling partisan averages⁷ - perhaps a similar project could give newspapers a rolling average of truthfulness or bias, either as a public benefit project, or with egregious breaches drawn before a regulator. It is hard to imagine a regulator doing this checking for themselves, but there is possibly scope for it to be done through crowd-sourcing – bringing the public in to hold newspapers to account is a powerful message.

6 <http://dmsc.me/Ret2q8>

7 <http://dmsc.me/MV7IFU>

WHAT SHOULD BE REGULATED, AND HOW?

Paul Connolly

Many people believe the phone hacking scandal and revelations in and around the Leveson Inquiry prove things have gone wrong and that some regulatory remedy is needed. Where they often differ is on whether regulation should be statutory. Those who oppose statutory regulation equate it with invasive political control and worry about the phenomenon of “state-licensed journalists”. Those who support it point to the ineffectiveness and producer capture of voluntary schemes.

This is a simplistic division. Many regulators that are defined in statute and publicly funded are operated independently of government. Voluntary systems can be massively onerous. Statutory regulation does not necessarily require prior licensing of market entry. Many publicly funded regulators do not issue permits to trade in a particular market, but rather have a presumed investigative competence over it.

In the case of a future press regulator, that competence could be devised in an unobtrusive form, with the regulator only investigating complaints and not upholding standards by inspection or other compliance checks. By contrast, some of the levy-funded self-regulation schemes Lord Justice Leveson has been invited to consider have

licensing characteristics. For example, some advocates of voluntary schemes try to overcome the issue of non-participation by suggesting that scheme membership and the payment of an industry levy could be necessary preconditions for obtaining certain accreditations and privileges that are crucial to effective market participation (like access to “the Lobby”). How odd in the 21st Century to hear the virtues of guilds being extolled by certain Meistersinger von Fleetstraße. For that’s in effect what we have here: a guild, just as problematic as state licensing, biased in favour of existing players and business models. Moreover, since it may be possible to operate as a saleable if third-rate newspaper without access to incentives like Lobby accreditation, a voluntary scheme could have unintended consequences for quality and provide no real guarantee that the absenteeism currently undermining the PCC and its voluntary code would be solved.

This is probably academic anyway. As far as one can decode Lord Justice Leveson’s cautious pronouncements, he appears to believe that there is a case for regulation and seems to favour a creature of statute that is not operated by government. An independent regulator in other words. Independent of the press. Independent of ministers. He also appears keen to devise this in such a way that it doesn’t constrain freedom of expression. So let’s take this hinted-at independent body as a starting point and consider what really matters in the press regulation debate.

New regulators work best where they address real contemporary problems, are proportionate and targeted, do not tread on or confuse the remits of other bodies, and do not overreach. Good regulatory design accordingly invites a reductive approach, to determine exactly what the regulator should focus on and to eliminate other matters. Among those things most essential to exclude from regulatory scope are problems which superficially seem to warrant regulatory inter-

vention, but whose policing might have unintended consequences.

So, assuming it is possible to devise a minimally invasive regulator underpinned by statute that is independent of both government and the affected industry – and it definitely is – the important question is whether Leveson is right in his apparent belief that there is a regulatory gap. Are there problems in press behaviour that currently lack effective remedy? Do they warrant regulation? If following these deliberations our answer is “yes, there is a regulatory gap”, then we can define the characteristics and behaviours the new body would require so as to focus narrowly on its regulatory task and not jeopardize freedoms.

This reductive approach is especially relevant in designing a regulator for print media. From one perspective Fleet Street is a dangerous feral beast. From another, it is on its last legs. A targeted regulatory solution could be beneficial in addressing certain feral dangers. An excessively broad one could be a back-handed compliment to a declining power, and risk both overkill and rapid obsolescence. So, to define what a new body might regulate, we should examine the principal contemporary concerns about press conduct, consider which might be remediable already through existing institutional and legal frameworks, define the limits and problems of regulatory interventions, and thus determine what, if anything, a new regulator might do.

So: hacking, corruption, excessive power and political access. None of these should concern a new regulator. Phone hacking is a criminal offence and should be a matter for the criminal justice system, notwithstanding police incompetence hitherto. So are allegations of suborning public officials. And the powerful hold certain newspapers have enjoyed over politicians is plainly a function of market

share. This should be addressed by the imposition of ownership limits, both within print media and across news media in general, including television, enforced by existing competition authorities. Imagine what impact a single digit percentage share limit would have on the power of individual press barons and on the pluralisation of media.

Next: journalistic quality.

I don't like boxing. I hate aggressive dogs. And I don't like tabloid newspapers. But I am wary of advocating regulation against things because I don't like them. Some recent well intentioned attempts to delineate journalistic standards smack of regulating for the press their deviser likes and against the one they don't like. But you can't regulate for taste.

So, partisanship and tendentiousness, however blinkered and unfair, should be entirely off regulatory limits. So, as concepts in their own right, should scurrility, mean spiritedness, vulgarity, saltiness, bad writing, sloppiness, prurience, double standards, inconsistency or stupidity. Without these ingredients, today's tabloid press would be impossible. But some of these elements are also essential for humour, parody, satire, and lively political debate. We should be wary of codes that would make it hard for *Private Eye* to function. Better training for journalists and examination of the strategies media outlets deploy in their use and abuse of discourse in English Language or Citizenship classes in schools would be more effective in tackling these issues of "standards" than the creaky mechanism of regulation.

Indeed, it is questionable whether one can, in certain contexts, such as coverage of debates in the sciences and humanities, regulate for objectivity and truthfulness.

An example of a press abuse which animated discussions at the

Democratic Society roundtable in April 2012 was hostile coverage of the MMR vaccine in sections of the tabloid press. Press reports flew in the face of a body of scientific evidence that judged the vaccine largely safe. We might also have considered the frequency with which broad scientific accord on the existence of man-made climate change is traduced.

Regrettable. And also against the existing voluntary press code, which exhorts journalists to be factual, while allowing them considerable scope in opinion.

However, the inherent problem with the code's provision – and presumably the primary reason why it is flouted – is the very notion of a hard and fast divide between fact and opinion. In the humanities, the pursuit of “truth” is now rarely considered a search for inalienable absolutes, but is instead a complex interplay of perspectives, evidence and judgement. And though the sciences strive towards a higher standard of verification through testing, measurement, evaluation and the subjection of findings to peer review, one does not need detailed acquaintance with Popper to understand science's inherent imprecision and uncertainties, and thus how impermanent its apparent authority can be. When Arthur Eddington championed the General Relativity Theory of an obscure Swiss physicist in the 1910s, his was a lonely voice, facing a two-hundred year old Newtonian consensus that gripped the British scientific establishment.

The danger of regulating for truth is that any resulting “truth commissariat” or National Institute of Factual Excellence would have enormous power. It would rely on sector experts, which would reinforce existing consensus. That would have been very seductive in the face of the blithering idiocies tabloids spewed forth during the MMR coverage. But imagine the difficulties that might also confront

proponents of minority views, who may be seeking, with good intentions, to challenge scientific shibboleths or unmask abuses concealed beneath the veneer of scientific respectability (by pharmaceutical companies, for example). Where a new innovation has been explicitly libelled, its manufacturers have recourse to the courts. (Whether members of a misled public could take a tabloid to court in a class action is another matter. I will touch on collective redress for harms later. But in something like the MMR case, a judge might reasonably ask “Why did you put more faith in [insert tabloid name] than in the Chief Medical Officer?”).

There are ways to protect the public and enhance their exposure to better opinion. I was attracted at our April discussion by the idea of establishing some form of news review journal. This would monitor the accuracy of reporting and the frequency with which newspapers ran rough-shod over the conclusions of better informed opinion sources, such as science. Funded by the quality papers, the journal’s findings could itself become the story from time to time, thereby illuminating the mendacity of certain papers and journalists. But the far more important point here is that the delusional grip on issues such as MMR exerted on public opinion by tabloids is a function of their market share. Break up the press oligopoly and what papers print about MMR, climate change or imminent Martian attack becomes less significant.

Of course, the more noxious behaviours of the tabloids in particular sometimes look like the nasty death throes of a doomed entity. Newspaper sales decline. Just as TV and radio did before, abundant new sources of information erode print media dominance. The future is online, where the curious can find source materials (like the reports of government, charities, think tanks, and multinational bodies) news agency postings, and the vast array of comment, opin-

ion and investigations in the blogosphere.

Newspapers are of course not content with this decline and have developed strategies to halt it. All have embraced the Internet and aim to compensate for decreasing hard copy sales with online advertising revenues. As these revenues depend on maximising traffic, strategies are often artful. One newspaper in particular seems positively to relish hits from hostile readers and so encourages its writers to pursue wilder extremes of self-immolating ludicrousness. But the principal strategy to halt decline, certainly among tabloids, from which many of the abuses uncovered by Leveson derive, is the pursuit of lowest common denominator sensationalism.

Should lurid stories be the target of regulation?

Well, not entirely. Certainly not if we are talking about legal activities that encroach on celebrity privacy. Early on, Leveson proceedings were dominated by celebrity evidence. Submissions about harassment, bribes, data theft and so forth were instructive and should be matters for criminal investigation. Actual libels likewise should be the business of the courts. Less edifying was the concern one or two luminaries showed to protect their personal lives and reputations. It would be wrong in my view for Leveson to elaborate a new privacy principle to be enforced by a regulator. For those who can afford to issue legal proceedings, the balance the courts already have to strike between human rights and public interest seems to me to obviate the need to create a new and potentially dangerous demarcation, benefiting ageing lotharios but possibly having the unintended consequence of hindering latter-day Woodwards and Bernsteins in their pursuit of corruption.

Indeed, the horse has already bolted. Early in our debates, I pondered whether the regulatory protection afforded a figure in public

life might vary according to their own cultivation of the media. Tabloids might show no mercy in exposing the peccadilloes of individuals who exploit interest in their personal lives for gain – by selling their weddings to *Hello!* for example. By contrast, those whose career is by its nature public, but who have otherwise remained private – the late actor Paul Scofield, who rarely gave interviews throughout his distinguished career, is an example – might expect a different treatment. But the Ryan Giggs case shows that even if a luminary wishes to suppress legally obtained information about an affair, for example, the issue is all over Twitter before you can say “hashtag”. Readers may in the end prove the only effective regulators of these matters, interesting themselves in those cases which are of public interest – instances of hypocrisy for example – and shrugging their shoulders at those where the moral dynamics remain, publicity notwithstanding, matters for the private judgements of those affected.

So, if criminal abuses are outside regulatory scope, and the issue of press power should be addressed through emasculating market share, is there any need for a regulator to oversee the final spasms of a dying industry?

Actually, I believe that there is a very real need.

Consider the following fictitious headlines:

- *Eric Pickles is a Fat Bastard Say 62% of Readers*
- *Labour Party Policy Position “Cretinous”*
- *McDonald’s Greed “Bordering on Evil”*

Now consider an unflattering tabloid photo spread obtained by doorstepping Katie Price.

My view is that, as the saying goes, these people and organisations are big and ugly enough to look after themselves. The Pickles headline is unfortunate, but the target is robust, amply upholstered by his standing and power. Political parties must withstand partisanship. However it may pain McDonalds, some people do regard it as evil. And Katie Price's livelihood depends on her symbiosis with the media.

Now for each of the four examples substitute in sequence: the name of an obscure private citizen, a small charity, a corner shop, and a single mother on a council estate.

The power dynamics are utterly changed. We are no longer in the rarefied world of celebrity annoyances. Rather we are reminded of Christopher Jeffries and countless private citizens whose reputations have been besmirched on flimsy suppositions, in pursuit of sensational headlines. As part of their attempt to halt decline, tabloids' outer pages unveil the Beckhams, while their inner pages are full of private individuals presented in grotesque light, sometimes with justification, sometimes to the pointless destruction of lives.

I advised against regulating scurrility, sloppy writing, and bad journalism *per se*. That is because these things can exist without doing significant injury. But harm and the vulnerability of citizens should in my view concern a regulator. Then the quality of the journalism – its public interest defensibility, accuracy etc – becomes material in assessing whether someone has been needlessly hurt.

Vulnerable citizens harmed in this way, traduced short of libel or unable to afford to go to court, currently lack support and advocacy. The new regulator should be theirs.

So there it is. The new regulator should concern itself with the unjust-

tified harm newspapers can do to the vulnerable and the powerless.

To avoid producer capture and the unpredictable dynamics of voluntarism, in my view the body should be statutory, but independent of ministers and administered outside the government machine. As indicated, there are many models for this. But to address the regulatory gap I've identified and nothing else, and to guarantee wider press freedom, the new body must be narrowly focused. It would not licence, would not inspect routinely, would not interest itself in defining business models, and would not elaborate prohibitive rules, such as a "backdoor" privacy law. It would instead enjoy presumed competence over the print media market, towards which it would be primarily reactive, investigating complaints.

This model resembles a particular body of quasi-regulators: the Ombudsmen. Established by statute, these organisations are not subject to political control. Indeed, the Local Government Ombudsman regularly finds against politicians and administrations of all political shades. Ombudsmen do not inspect. Instead they respond to complaints from customers, service users and tax payers.

A publicly funded Press Ombudsman could develop and promulgate a narrow but important principle: that the press has a responsibility not to destroy the lives of private citizens in the pursuit of profit on the basis of mere supposition, innuendo, and with wanton disregard for a meaningful public interest. It would then receive complaints.

Established by statute, the Press Ombudsman would obviously be non-departmental (ie not overseen by a specific minister) and be subject to guaranteed long-term funding. Its senior officials could be Crown appointments, but not selected by the Prime Minister, chosen instead by an independent recruitment panel drawn from a range of stakeholders, including the public. And the Ombudsman could

avoid becoming a rich celebrity's privacy shield by concerning itself with the comparative "vulnerability" of claimants. From time to time this would of course include the dependents or associates of celebrities, who, as the case of Charlotte Church's mother shows, can be pointlessly and nastily victimised and occasionally even celebrities themselves. But by having regard to a person's circumstances and means, and to whether the person's standing and power justify coverage – Eric Pickles rotundity as a matter of partisan abuse or satire, as opposed to equivalent headlines about a benefits claimant with elephantiasis – would lead the Ombudsman to focus principally on the powerless. Moreover, the powerless could make collective complaints. No individuals were named but lots were smeared by *The Sun* in its Hillsborough coverage. In the event of identical coverage in the future, an individual, perhaps a relative of a victim, or a group representing those who felt hurt by the coverage, could make representations. The same could apply in response to unjustified coverage of asylum seekers, LGBT people, and other collective groupings, with perhaps rather less time accorded politicians, corporations, bankers and others who have power and existing modes of redress.

And the penalties the Ombudsman might impose? Restorative justice might work for some cases. Being required to print full front page apologies to individuals could cause editors to interest themselves in the factuality of their coverage. But the public will want real teeth. So the Ombudsman should be able to impose fines, some very steep, perhaps to be paid in whole or part to the injured parties.

A "no change" conclusion on press regulation appears politically unrealistic for Leveson. To mitigate the harm this once and still powerful (if waning) industry can cause, a regulatory solution of the sort outlined here could help. Doing too much by contrast might restrict desirable press freedoms, create unenforceable prohibitions, and, as

the print media continues to decline, risk irrelevance. Regulators support cultural change when they are narrowly bounded, but powerful within their range. Such regulators regulate for today's problem, not yesterday's, and they recognise that they may be irrelevant tomorrow. A Press Ombudsman would be mostly silent. But it would carry a big stick. I think this is a remedy which, when coupled with more vigilant use of competition measures, is likely to have more immediate impact than imposing onerous and prescriptive restrictions, statutory or otherwise, on an industry whose glory days are behind it.

HEALTH REPORTING: THE CASE FOR CHANGE

Miles Taylor

I am going to write about the representation of healthcare and the science that underpins it in the media, the potentially dangerous effects this can have, and highlight some of the key discussion points around regulation. There are a number of passionate journalists who are very quick to pick up on particular misleading health stories – with amateur and professional ‘skeptics’ leading the way – much better than I could, so I will stick to the systemic issues, borrowing illustrative examples. What I hope to do is demonstrate that there is a case for change to the regulation of health reporting.

As I see it, health reporting suffers from a number of key problems. Stories tend to be simplified and sensationalised, advertorials are used unchallenged and reporting is vulnerable to political agenda. At the heart of healthcare reporting there are a set of crucial, perhaps irresolvable, central conflicts which I will try to draw out.

Mainstream media outlets have minimal direct motivation to report healthcare science stories well. The primary motivation for a media organisation is to drive revenue, and healthcare reporting is a tool by which to do that. Whatever the chosen market, this tends toward creating an internal culture that values output over quality and ac-

curacy, often to a particular template. This actively prevents even the best intentioned journalists being more thorough than the minimum required to meet the standard for their organisation.

The reality of the science that informs and underpins healthcare, and the sort of story that best sells papers, drives clicks or otherwise gets the public attention, are wildly different.

On one hand, medical science progresses by small steps, with each new result acting as just another data point in an array that should be considered as a whole. Single facts, experiments or case studies that radically alter the way we view healthcare are rare at best. The key advances in any science are complex, and there is a necessary technical language built around any given area.

On the other hand, magazines write stories weekly, newspapers create new headlines every day, and websites can't stand still for an hour. This leads to a tendency to inflate the claims of healthcare stories in the search for something new to grab attention, to distinguish the information in this particular story from the general background understanding. Additionally, the language and concepts must be simplified to fit the audience.

However, we often see the essence of a story damaged in this simplification process. Nuance is lost around the causality of relationships, the confidence in conclusions and the distinction between relative and absolute risks. One example of both oversimplification and sensationalism, explained by Ben Goldacre, is the use of red wine to prevent breast cancer. Red wine contains resveratrol, a chemical that could indirectly reduce damage to DNA, and therefore cancers. But this is an isolated reaction between two chemicals in a lab, ignoring the complexities of the human body and the wine. The other ingredients in red wine, particularly alcohol, cause cancer. The evidence

Ben cites suggest that red wine is known to cause cancer, yet because of oversimplification, people are encouraged to drink it as a cancer preventative. It is worth noting that while Ben was writing in 2008, a quick search shows equivalent 'red wine prevents cancer' stories still run regularly, and I am not aware of a dramatic change in the evidence base.

Due largely to the sort of output pressures described above, there is also a tendency for journalists and media sources to accept stories at face value. A well written press release by an organisation with an interest in promoting a particular idea will very quickly do the rounds at all the major news outlets, not just unchallenged, but largely unchanged. This process of converting a press release into a story without challenge relieves the pressure on a journalist, as they have effectively outsourced their job. It also means that the public is subjected to advertorial masquerading as editorial, no journalistic investigation applied to the representation the company would like you to see.

Particularly in the special case of publicly funded media, although not exclusively, there is the additional problem of false balance, whereby all views are given equal time and space to be expressed. This is done in the name of fairness, although it presents a false picture, as if the homeopath and the GP view on treatment of particular conditions are of equal value. It feels to me like this is changing, following the recent *BBC Trust – Review of impartiality and accuracy of the BBCs coverage of science* recommendations,⁸ although I would need to see a further study to see how well this has been enacted.

Finally, there is the potential for an agenda to intrude. Here there is a risk that editorial positions can be imposed on what is ostensibly science reporting in such a way as to mislead. A moral position can

8 <http://dmsc.me/ReQXGo>

lead to particular views on, for example, birth control, and so affect the reporting of sexual health stories. A prior view on the effectiveness and appropriateness of the free market, for example, can lead to misrepresentation of healthcare outcomes under different healthcare delivery systems.

These factors, and more, mean that the healthcare reporting we see in mainstream media is regularly inaccurate. We hope that the inaccuracies are trivial and understandable, in that a process is simplified without loss of meaning. More commonly, there is exaggeration and sensationalism such that the media representation is potentially dangerous. Much has been written on the persistent misleading reporting in the Wakefield and MMR case, largely uncovered by Brian Deer, and there have been outbreaks of measles in recent years, likely as a result. There is also an ongoing controversy around the clinic of Dr. Burzynski in the USA, where unevidenced claims were supported in the national press, prompting charitable donations for children to be sent at great expense to America for treatment that has not been shown to work.

It is important to note that these sorts of reporting problems are found in all mainstream media channels I am acquainted with. There is a tendency to mock the ongoing 'ontological oncological' project of the *Daily Mail*, to divide every item into something that causes cancer, cures cancer, or both. The *Daily Mail* is indeed a regular for poor health science reporting, but is by no means alone – above Ben Goldacre is talking about an article in the *Daily Telegraph*, and the *Observer* was involved in the Burzynski controversy. Basically every media outlet was guilty of dangerous misinformation during the MMR crisis. Every mainstream media outlet suffers these problems to a degree.

We have identified some of the main concerns in health reporting, and it is clear that each of these can lead to harm to the public. However, little has been done to rectify these inaccurate stories, and those dangerous reports go largely unchecked. The PCC as it has been is an inappropriate body to take on this role for a number of reasons that become clear when we think of what a regulator should look like.

The key discussion should be around which of these interests we should expect a regulatory system to serve, and how we would expect those to be served. The interests of the public are in having media coverage that is accurate, accessible, complete and relevant. It is through this sort of coverage that people decide to make the best evidence based lifestyle and healthcare decisions.

Given these aims I think a few of the key considerations for the formation of a regulatory body should be:

- ✦ Degree of empowerment to impose sanctions that decrease likelihood of inappropriate activity, including financial penalties
- ✦ Degree of empowerment to impose sanctions that rectify damage – corrections and clarifications in at least as obvious a manner as the original misleading information
- ✦ Independence from the media sector to reduce conflict of interests
- ✦ Transparency in and public accountability for decision making
- ✦ Magnitude and impact of misrepresentation required for action
- ✦ Simplicity of and mechanism for reporting (perhaps a browser plugin that reports abuses like Fishbarrel does to the ASA)

I don't pretend to have the answers to the above, but with due consideration, I think a body could be designed that is considerably more effective at protecting the public from harm and promoting quality healthcare science reporting than the current PCC. If this isn't done, people will continue to be harmed by poor health reporting

HEY! REGULATOR! LEAVE THOSE HYPERLOCALS ALONE

Damian Radcliffe

Hyperlocal media - news or content pertaining to a town, village, single postcode or other small, geographically defined community - is not a new sector. But a fusion of technology, social media platforms and gaps in traditional media provision, have all combined to create the perfect conditions for this sector to bloom.

As a result, hyperlocal media has grown substantially in the UK and other countries in recent years, with concerned citizens, new entrants and established media operators all taking advantage of this perfect storm to create and distribute locally relevant content. And despite very real challenges in making hyperlocal pay, we are only likely to see the sector grow, especially as smartphone technology continues to make it easier to create, distribute and consume locally relevant content.

Currently, the hyperlocal media sector is still relatively small. But as it grows, the issue of regulation is likely to rise up the policy agenda. Whether it is likely to be caught up in the slightly larger considerations of the Leveson Inquiry remains to be seen, but I believe there is a strong case for arguing against the statutory regulation of online hyperlocal media. In fact, I would go further and argue that not only should it be avoided, but that it would also be impossible to enforce.

As someone who spent just under five years working for the UK regulator, and who now works for a different regulatory body in a very different part of the world, that might seem a strange thing to say. So below I will explore five reasons why the sector should be unregulated, and why I think attempts at such regulation would ultimately prove unsuccessful.

Part One: the case against regulation

In my view there are five key areas which need to be explored when examining the case for regulation of this nascent sector. They are: the open internet philosophy; the inapplicability of historic rules of regulation; practicalities of enforcement; the role of Citizen/Community Journalism; and innovation.

Taking each of these in turn:

1. The Open Internet Philosophy

This is a subject which has been written about far more extensively than we have space to explore here. However it is, a useful – if rudimentary - starting point. If you believe in the open internet, then the web should be a predominantly unregulated space. Clearly there are exceptions, such as the need to protect the exploitation of minors, but most of these concerns are not applicable to hyperlocal websites. Provided that the law of the land is not being broken, then hyperlocal websites should generally be left alone, free to self-manage, without recourse to a wider regulatory power.

2. The historic rules of regulation do not apply

In a broadcast world, regulation was used to create a framework for

licensees. In return for abiding by the rules, which included signing up to a code of conduct and agreeing terms of trade (e.g. what type of service you are, or specific obligations such as the amount of local news you produce), then license holders got access to a precious commodity: spectrum, and with it the right to broadcast direct to people in their homes.

This two-way contract has been a key tool in making broadcast regulation work, but it is not a framework which logically transfers to the online space. Online space is virtually limitless, the challenges faced by hyperlocal practitioners – such as discoverability, scale and financial sustainability – are only recent considerations for traditional media players in a multi-channel, online, world.

Without the obvious means for a similar sort of two-way contract between the regulator and the service provider, we have to reconsider how and why we might regulate in the Internet age.

3. The (im)practicalities of enforcement

Anyone can set up a hyperlocal website or channel using tools like Facebook, WordPress or Twitter. These tools are often free, and fairly easy to use, with the result that you can set up your website in minutes. And it also means that if your website gets into trouble, you can dismantle and remove traces of it pretty quickly too. This means that not only is it impossible to comprehensively capture what hyperlocal sites exist, it will be equally impossible to monitor them effectively.

In contrast launching a newspaper, TV or radio station has often required specific licenses, equipment and training, as well as clear monitoring requirements. Broadcasters, for example, have a legal requirement to keep a record of what they have transmitted, whilst newspaper owners see their physical product in the public's hands.

This makes it rather hard to hide any potential crimes and misdemeanors.

4. Concerned Citizens and Community Journalism

Whilst commercial hyperlocal outlets and networks do exist, the majority of hyperlocal content in the UK is produced by citizens, often for free, or certainly very small sums of money. This in itself is no bad thing, indeed I have previously suggested⁹ that the best sites stem from local need, by people steeped in their communities. In many cases, but not always, this manifests itself in the form of active citizens investigating and reporting on what matters to them.

Looking at the US hyperlocal scene, the Federal Communications Commission in their extensive report “The Information Needs of Communities: The changing media landscape in a broadband age” noted:

“Even in the fattest-and-happiest days of traditional media, they could not regularly provide news on such a granular level. Professional media have been joined by a wide range of local blogs, email lists, websites and the proliferation of local groups on national websites like Facebook or Yahoo!

For the most part, hyperlocally oriented websites and blogs do not operate as profitable businesses, but they do not need to. This is journalism as voluntarism—a thousand points of news.”¹⁰

This sentiment is equally applicable to the UK and any other county with a growing hyperlocal scene. The voluntarism described by the FCC should be encouraged and nurtured, not stifled. Attempts at

9 <http://dmsc.me/ReS8Wa>

10 <http://dmsc.me/ReShc7> at page 16

regulation of this sector are only likely to reduce transparency and accountability, not increase it, by discouraging citizen related activity.

Few community journalists would be able to afford any inevitable regulatory fees, and the very presence of such fees would undoubtedly deter some citizens setting up their own hyperlocal sites.

It is also likely that few concerned citizens would not even know that their Facebook Group, or blog fell under any regulatory regime. Used to using open, social, internet platforms without restriction to comment on issues of interest to them, why would their local website be regulated when posts on local food or their holidays are not?

Determining what citizen content fell in – or out – of any regulatory regime would be a very difficult call.

5. Innovation

Lastly, there is the issue of innovation. Regulators always like to talk a lot about their role in encouraging innovation, creativity and new business models. Perhaps the extent of this is overplayed, but regulators can certainly play a role in ensuring that barriers to innovation are kept to a minimum. With the online hyperlocal sector still in its infancy there is a very real risk that innovation would be stymied by unnecessary regulation.

Part Two: the case for regulation

When I wrote the original blog article which formed the basis of this

contribution," I also spent considerable time considering the reasons for regulation. Then, as now, I struggled somewhat – both in terms of the mechanisms for enforcement, as well as the potential benefits.

For the former, I considered the option of income thresholds – that sites above a certain income would need to be regulated – and in turn whether sites might opt in to be regulated by the PCC or some other body. Finally, I also wondered if there was merit in the industry coming together and devising its own system of self-regulation.

The latter provoked some discussion, and I am grateful in particular to William Perrin, Philip John, Judith Townend¹² and Mike Rawlins for their thoughts and contributions.

Of these, I think the three strongest arguments for regulation are around protection, credibility and parity for hyperlocal publishers.

All of these are desirable outcomes, but I am yet to be convinced that they way to achieve them is through regulation or indeed self-regulation. Rather, they require attitudinal changes and shifts more than anything else from big media, the NUJ and in some cases media consumers.

Again, taking each of these areas in turn:

1. *Legal standing and support*

Potentially the biggest benefit of regulation for the sector is that it may make it easier to unlock union and legal support. At present most hyperlocal writers are unrecognised by the NUJ and – in contrast to their traditional media peers - they do not enjoy the backing

¹¹ <http://dmsc.me/MVjgct>

¹² <http://dmsc.me/ReSM5O>

of a large legal department.

Legal support is an area the hyperlocal sector would benefit from. The day will come when a hyperlocal practitioner loses their home due to a legal dispute stemming from content on their site. Sadly, it may take such an incident for this issue to be given the consideration it deserves.

We need to find a means to redress this, as the level of legal support for the citizen journalist/reporter is often minimal, if indeed there is any at all.

To counteract this, in the US, J-Lab and the Knight Foundation ran a Legal Risk Blog¹³ for American citizen journalists, bloggers and social network users. Different media laws mean that its usefulness as a tool for UK practitioners is limited, although the site is not without value.

One way this could work in the UK would be to encourage big media groups - perhaps through a regulatory lever - to provide a certain amount of pro-bono legal support to hyperlocal outlets.

Alternatively they may have to pay a small levy to a central legal fund, which could either ensure 24/7 legal support for hyperlocal practitioners, or support a financial pool to draw on when the litigation starts. Such an idea is not without risk of abuse, but if we are to encourage better relationships between community media outlets players and traditional media, providing meaningful support between the sectors in this way would be one way of doing it.

2. *Credibility*

¹³ <http://dmsc.me/ReT6S1>

Rightly or wrongly, there can be misconceptions amongst consumers and traditional media alike about the content and accuracy of hyperlocal content. Being part of a regulatory regime may help to change that, but I am skeptical. Many regulated bodies – across media, finance and other industries – are severely lacking in credibility at present. As are their regulators.

Moreover, Ofcom research shows that many media consumers are already confused and ill-informed about regulation and funding.¹⁴ So being part of a regulatory regime will not necessarily change public perceptions. Or indeed those held by old media.

More effective measures could simply be cosmetic. Lichfield Blog for example renamed itself Lichfield Live, because it became “hard to escape the fact that having ‘blog’ in our name was causing problems with how we were perceived”.¹⁵

Some of the Lichfield team have also posited the idea of self-regulation, with hyperlocal players signing up to an agreed “Code of Conduct”, in part to boost credibility. I can see the merit of such a code, and such an approach could be especially useful for new sites in giving them best practice and a set of standards to aspire to, but I am not sure that it will make much of a difference in the credibility stakes.

That does not mean however that hyperlocals should not do it, and there would be a merit to having agreed and shared text on issues such as fairness and complaint handling, but the benefits of this approach are, in my view, of more benefit for practitioners, than big media partners and audiences.

¹⁴ <http://dmsc.me/ReTff2>

¹⁵ <http://dmsc.me/ReTn7w>

Instead, I would argue that activities such as public visibility – reporting from, or organizing local events – or making your content available offline as well as online,¹⁶ may be much more effective at boosting credibility and changing perceptions than being part of any new regulatory body.

3. *Creating a level playing field*

The underlying consideration here is how to establish a more level playing field, particularly in terms of legal protection and credibility. For some commentators, the only way to do this is by bringing hyperlocal media into any post-Leveson regulatory regime.

That may be so, but I think this argument is fallacious and that these objectives can be achieved through other non-regulatory means. Examples of credible, respected hyperlocal websites abound.¹⁷ As, increasingly, do examples of creative partnerships between this sector and traditional media.¹⁸

Regulation also risks having accidental consequences, from stifling innovation and driving small scale hyperlocal practitioners out of business, through to creating a two tier hyperlocal sector, with some outlets being regulated (perhaps due to their size, scale and or platform) whilst others are not (e.g. those on Facebook).

Far from creating a level playing field therefore, such a scenario risks widening gaps, not reducing them.

¹⁶ <http://dmsc.me/MVjFLU>

¹⁷ See: <http://kingscrossenvironment.com/>, <http://parwich.org/>, <http://pitsnpots.co.uk/>, <http://www.london-sei.co.uk> and <http://ventnorblog.com/> as just some examples.

¹⁸ <http://dmsc.me/MVjIar> and <http://dmsc.me/MVjOPt>

Concluding Thoughts

I argued earlier that a number of factors - the open internet philosophy; the inapplicability of historic rules of regulation; practicalities of enforcement; the role of Citizen/Community Journalism; and innovation – were all good reasons, both individually and collectively, against statutory regulation.

Similarly, I remain unconvinced at the viability of self-regulation, or that it is the means to deliver outcomes such as enhanced protection or credibility.

In my experience most hyperlocal outlets take questions of balance and accuracy very seriously and where they have an editorial agenda it is usually pretty clear.

Just because you are unregulated, does not mean that your standards are any lower. Nor will being regulated suddenly mean that the public will view you content differently, that relationships with traditional media will transform overnight, or that late night telephone calls from aggrieved Press Officers will cease.

Instead, we need to recognize that hyperlocal publishers are an increasingly important part of our media ecosystem. They can, and do, on occasion provide great content for other media outlets – acting as a local wire service. Hyperlocal outlets can also be a great way for traditional media to find new voices and talent, whilst for audiences they can help plug gaps in content provision – or provide a new level of ultralocal reporting.

Nurturing and supporting the industry should be the aim of policy makers. And it does not need regulation to make this happen. Key challenges such as finding ways to develop partnerships, or unlocking

legal training and support for hyperlocal publishers, can all happen without the need for regulatory intervention or frameworks. Let's see if we can make it happen.

HOW TO CLEAN UP THE MESS

Kevin Charman-Anderson

The main and most pressing question in the wake of the massive corruption scandal in the British press is how to clean up the mess.

Will it be sufficient to address the problems in British press culture by simply making sure that those who broke the law are brought to book? Is new regulation required? If so, should the regulation simply be a stronger form of voluntary regulation or is some form of statutory regulation required? Would either jail time or regulation alone bring about the needed cultural change?

Finally, after years of delay and repeated denials, allegations of phone hacking, email and computer hacking and bribery are being taken seriously and investigated.

Beyond investigation into wrongdoing, it is also clear that journalists need help understanding what is and isn't legal in the UK. Whilst libel law is well understood by most journalists, there seems to be little knowledge of other relevant legislation.

For example, with respect to the alleged computer and email hacking, journalists and even legal staff seem to have been clueless about the Computer Misuse Act, citing a public interest defence that doesn't exist. Even more shocking, testimony given to the Leveson Inquiry shows that some journalists believed that rather flimsy public inter-

est considerations placed them above the law.

As computer and internet research becomes more important to journalistic investigations, it's critical that journalists understand which uses of technology are illegal, although how anyone would think breaking into someone's email account is legal is beyond me.

But will additional legal training for journalists be enough to change the culture of corruption that clearly exists at some publications?

And let's be honest, this goes far beyond News International. Operation Motorman showed the use of private investigators to gather information to be so wide-spread that hardly any publication is left blameless.

The top of the league table by not only a significant margin, but a significant multiple, are the *Daily Mail* and *Mail on Sunday*, and yet we are told that all of those requests are legal and above board. Whether all of these requests are legal is for the police and the legal system to decide, not for the press to assert. Further investigation is necessary; the public deserves to know exactly how far the rot has spread and justice must be seen to be done in those cases where the law was broken.

Given that these dubious behaviours were so widespread, it is doubtful whether legal training alone could fully address the problem. While some of the practices were clearly illegal, other practices were legal but deeply unethical, not just in my opinion but also by general professional journalism guidelines such as those of the National Union of Journalists or the Society of Professional Journalists in the US.

So how could press regulation take on such a deep cultural issue?

The Press Complaints Commission system of voluntary regulation is obviously discredited, and simply changing the name and a few faces won't rehabilitate its image. Resistance to statutory regulation is high both inside and outside the press, with Jeremy Hunt advising against any new form of press regulation that would be a "back door imposition of broadcast-style statutory regulation".

It's difficult to find any advocate of statutory regulation from within the press, but their vociferous push-back against statutory regulation should be met with some scepticism.

As someone who has worked both for the BBC and for the *Guardian*, it's always struck me as a hypocritical in the extreme that the British press, chiefly the tabloids, delight in taking the BBC to the whipping shed over scandals both real and imagined, holding the BBC to standards that they would never dream of holding themselves.

The argument against statutory regulation made by the British press is that it would undermine press independence, is a step closer to government censorship, and would 'send the wrong message' to oppressive regimes where the press is not free. But having worked for the BBC, I know that is possible to do world class journalism under the rigorous editorial standards that broadcasters have been working with for years.

The BBC has a rigorous two-step procedure for reviewing and allowing procedures such as surreptitious filming, reviewing the request before filming begins and content before it is broadcast.

Even with these editorial checks, the BBC has still been able to break major stories in the public interest, including uncovering abuse last year at a residential home that treated people with learning disabilities and autism. More recently, Panorama used secret filming dur-

ing an investigation into alleged facilitation of pay TV hacking by a News Corporation subsidiary.

The truth is that independent, high-quality investigations can still be done under statutory regulation.

Revelations of press corruption continue to be made, and for anyone outside of the tabloid press, it is clear that the culture of the British press needs to change.

I would argue that the press need to a period of close scrutiny by an independent body with real enforcement and powers of sanction. Allegations of illegal activity should quickly be turned over the police instead of ineptly investigated up by a toothless self-regulatory body. If the press can't get its act together, then it should face statutory regulation. The press and its owners must be motivated to root out corrupt and illegal behaviour, otherwise, we will have missed a golden opportunity to end the serious corruption and illegality in the British press.

RECTIFYING THE FLAW

Dave Boyle

In his famous *mea culpa*, Alan Greenspan told the US Congress that there was a flaw at the heart of his vision of capitalism, which was that he hadn't expected shareholders of companies to be unable to ensure their own interests were protected; in his world, such self-interest would serve to provide the wider interest in true neo-liberal fashion.

One can quibble with how long it took Greenspan to alight on his flaw, but at least he was able to spot a problem. Not so the debate on media regulation in the UK, which continues to imagine that despite the manifest failings revealed by 'hackgate', and the intense discussion of what will change in the future as a result, only privately controlled media will be in the business of providing public interest journalism.

Of course, private ownership is a fact of the media landscape, and has been for generations. It's as if our media landscape is seen to have enough diversity in it already, because it has the BBC and the *Guardian*, and in any case, both of those were in place by the 1930s, so clearly our days of creating alternatives are behind us.

But to posit the continuation of this private ownership in the future in the face of the economic and social challenges faced by modern

media organisations seems to be as tendentious an assumption as it is unimaginative.

Thinking about alternatives opens out some very interesting possibilities, not least in terms of transforming the way the media are funded (I write much more about this in the report I've just written for Co-operatives UK)¹⁹ but it also has a big impact on the regulation debate.

To regulate the media is to provide a means of holding it to account; indeed, a key feature of 'hackgate' is the lack of accountability at any stage in the journalism process.

At best, we can say the privately-owned media corporation has proven unable to hold its managers, editors and writers to account and has failed to prevent a 'win at all costs' mentality, incubating a culture of anything goes to get the scoop. But what if – far from being a failure of the system – such behaviour is an inevitable conclusion of a system in which ethics and good journalism are provided as by-products of a system based on securing shareholder value?

This isn't to say that owners and shareholders have instructed their editors to lower ethical standard in pursuit of stories but that they don't need to, as that's what the system pressurizes them to do. This isn't about circulation wars, since shareholders are interested in maximum profit, not necessarily maximum sales. If you can cut costs faster than circulation falls, value is still created for shareholders.

It's a self-defeating strategy from the perspective of a robust, sustainable and resourced media, but that's not actually in the DNA of these companies. It was once part of the *raison d'être* of journalism

¹⁹ <http://dmsc.me/ReVg4c>

but the heart of Nick Davies' concept of churnalism²⁰ is about how that has been driven out, down or to the side by the relentless focus on margins.

As a result, those with an interest in a better media, one which supports civic society, have had to seek mechanisms external to media enterprises to bring this about, namely regulation. So one of the key notions underpinning regulation is of bringing a public interest to bear on a private provider of a public good.

Regulation then is an attempt to deal with the consequences of the flaw, but we now have an unparalleled opportunity to rectify it at the source.

Co-operative media have a virtue of being accountable and democratic, responsive to the needs of their members, be they the employees, the consumers or a mixture of the two. Both have been offered take it or leave it choices by the owners and managers of our media; if they leave it, things don't improve, with circulation declines seemingly prompting even greater breaches in the dash for scoops, increasing the pressure on reporters to conform or get the push.

That's not how it works at the *West Highland Free Press*²¹ where the staff bought the paper from the founding owners in 2009. The alternative was a buyout by one of the major groups of local news media, who would doubtless soon have cut staff numbers, their security, their salaries and their independence. Based on bitter experience in other communities, the likelihood is they would also have cut the local coverage and slowly withdrawn the physical presence from the area. The paper, losing goodwill and readers in equal measure, might

²⁰<http://dmsc.me/LQWcZz>

²¹ <http://dmsc.me/ReVnN2>

have limped on, before closing. The owners would have blamed the challenging economics of distributing over a wide rural area in the age of the Internet rather than their own short-sighted focus on the bottom line.

Thankfully, the journalists at the *West Highland Free Press* have preserved their numbers, their readers and their goodwill. They put out a quality publication, on time, every week, and in so doing, encourage a productive culture of competitiveness with others in the media ecosystem. The BBC's presence is stronger and keener knowing that it has a rival for good stories, and public bodies know that with such an ecosystem, maladministration is far likelier to be commented on. Accountability for the paper to the interested journalists spins off to a wider public.

Open, accountable and accessible media offers a chance to break apart the monoculture of standard wisdom that passes for news values. Earlier in my career, I had the job of trying to get journalists interested in news from a small campaign group; the journalists often agreed that these were important stories but doubted that their superiors would feel the same. Those more senior people had a set of news values about what was and wasn't legitimate subject matter that they would say was based on what readers really wanted, as opposed to what high-brow types would wish their readers were interested in.

With co-operative and accountable ownership, second-guessing the public can give way to hearing their actual voices, not through click-throughs and comments but through considered advocacy and engagement with all stages of the production process.

How do we get there? The advantage is the media's economic weakness, with everyone pretty much agreed that to survive, existing media must undergo significant change. So the first hurdle for change

– which the status quo resists – is lower than it has been for generations. Add in the fact that ability of the status quo to fight alternatives through their entrenched position is similarly weaker, and it's clear that this is a moment to seize. The future is open to new models which can be responsive, accountable and sustainable.

Public policy can assist in several ways. We can extend the definition of an asset in the Localism Act from physical – buildings, land etc – to services of value to a community, and in so doing we enable communities to bid to take their media into their own hands. Providing finance to communities to do so through tax reliefs to encourage co-operative investment would speed the rate of change. (As the situation with Scottish land demonstrates, the power to buy land is negligible without the capital to achieve it). Similar to what the US Community Reinvestment Act did for banks, existing owners could be compelled to offer facilities and titles to the public in an area before they could be closed (or merged) to cash in.

Even if policy falls short of encouraging the creation of co-operatives, it can help create more co-operative behaviours. Key amongst them is a regulatory regime that brings a measure of accountability to the public beyond the ineffective signal of consumption.

Reader panels within newspapers could break open the cosy, self-reinforcing groupthink of seasoned media professionals, with powers to hold executives to account on a day-to-day basis. They could receive complaints from readers and pursue them with the resources of the company, taking the function of readers' editor to a new level. They could be represented within the Board, and have similar powers as an internal audit committee might.

Reader peer review has never been easier in an era of wikis and crowd sourcing, with media outlets compelled to submit their reporting

to scrutiny to a wider public, with their feedback reported prominently; salacious and frankly untrue exclusives would be less seen as uniformly positive if accompanied by a story saying '90% of readers thought we made up a lot of stuff last month'.

The beauty of these ideas is that instead of making the public interest itself a subject of contestation – we know it exists, is a good thing, but aren't at all agreed on what it is - it makes a space inside every media outlet for a public to bring their interest to bear.

The obvious rejoinder to this is that such notions are impractical. Getting from here to there is certainly challenging, to say the least but impractical has one up on impossible. That's the reality of hoping that private ownership can be relied on to provide the public good as a by-product of chasing shareholder value or private influence. Equally impossible is the notion that whilst the threat of sanction might stop them acting like a private Stasi, it won't bring about the kind of media democracy we will need in the next 30 years.

Co-operation is often described as not-for-profit, which soon looks like 'never makes a surplus', a problem far too common in the current media. This is a mis-categorisation; co-operatives are about more-than-profit. They must make a profit or else they die, but they must also do more than that or they're pointless.

There's an honesty to co-operative ownership of media that evades a problem of many other touted solutions, namely that the state or charities or foundations should step in to provide people with a media they need, regardless of whether or not it's what they want.

A media co-op would fail if it produces something which not enough people want. And if not enough people want a decent media, then that is a greater problem than anything Leveson is uncovering.

A PRESS REGULATOR WITHOUT TEETH IS NO PRESS REGULATOR AT ALL

Suw Charman-Anderson

One of the paradoxes that must be addressed if future press regulation is to be effective is that any regulator needs to have the ability to impose sanctions. But any voluntary regulator able to impose strong sanctions will not attract willing members and especially not those news organisations most in need of regulation. We've already seen how proprietors such as Richard Desmond of Express Newspapers can simply decide not to take part if they don't like the look of a voluntary regulator.

We have also already seen how sections of the media have come to see themselves as not only unbound by the PCC's Code of Conduct, but above the law. It goes without saying that journalists and news organisations which break the law should be investigated by the police, although public trust in this process has been shattered by revelations from the Leveson Inquiry. Regardless, illegal acts are the purview of the authorities, not a regulator.

Yet that leaves a huge swathes of behaviours that are legal but unethical to must be addressed: Invasions of privacy, whether they target celebrities or members of the public who simply have the misfortune to become objects of press interest. Untruths, lies and misrepresenta-

tions. Factual inaccuracies. Obtaining information through deceit. Doorstepping. Intimidation.

These range from the minor to the major, but none should be ignored for even what seems like a minor infraction, such as a factual inaccuracy, can have severe consequences. In the case of vaccination reporting, for example, misrepresentation of the facts has led to parents deciding not to vaccinate their children, which has resulted in outbreaks of measles, a disease that can have very serious consequences including death.

So when we come to sanctions, it's clear that we need the full range, from apologies, corrections and retractions all the way up to punitive fines. But we also need to make sure that the sanctions have the desired effect, that they change behaviour. Fining a newspaper, for example, may punish that newspaper but it may not have a direct impact on the journalist whose shoddy work crossed the line and who may still feel free to transgress. This is especially problematic when news organisations calculate that fines are simply a cost of doing business and that the revenue they get from the results of misbehaviour is worth the censure.

Imposing sanctions directly on journalists, however, comes with its own issues. Accreditation of individual journalists is problematic in a free and open press, particularly as the definition of 'journalist' expands to include citizen journalists, bloggers and subject experts. The threat of revocation of accreditation as a sanction is unworkable, but it would be difficult to fine individual journalists without accreditation.

Sanction design also has to take into account the sorry fact that some journalists are working in a toxic environment where they have a choice of either treading unethical lines, or getting fired. And in

the current employment climate for journalists, both in terms of the massive job losses across the industry and the culture of bullying prevalent in so many newsrooms, it is unsurprising that some journalists find themselves powerless to protest when they are asked to do unethical things.

With this in mind, there needs to be a significant increase in protection for whistleblowers in the media and complaints from journalists about their employers need to be taken seriously. News organisations that abuse their staff must be brought to book, particularly because it is the most vulnerable who take the blame for failures at a managerial or proprietorial level.

Escalation is another key issue. Cases should not be dealt with individually, but as part of a wider view of the news organisation involved. The idea that each infraction is unrelated to previous infractions is naïve, and organisations that constantly transgress should find that sanctions increase in severity as the transgressions tot up. Looking at how news organisations behave by tracking misbehaviour gives a sense of context and helps to identify systemic problems.

One key way to change behaviour would be to create a public database of every complaint, who stands accused, whether it was upheld, what sanctions were applied — for example, whether an apology was required or fine imposed — and what the outcome of that was. Any such database should list both the news organisation and journalist involved, the nature of the allegation, and details of managers involved. It should include everything from error correction upwards. And not only should it provide easily digestible statistics showing the public how each publication performs, it should also have an API to allow media ethics campaigners to use the data.

Fines, of course, have an important place in any schedule of sanctions,

but for them to be effective they need to be able to be imposed on any organisation that transgresses, regardless of whether they want to be part of a voluntary regulator or not. Obviously, a voluntary organisation that threatened to levy fines big enough to truly punish a news organisation would also find it difficult to recruit members, especially if it was serious about tackling the unethical behaviours endemic in the media. That means some form of statutory regulator with the power to impose sanctions on any news organisation and the ability to take the requisite legal action against those that choose to ignore the regulations.

We have, as a society, tried self-regulation and it has comprehensively failed. If we care about how the public perceives the media then we must look seriously at statutory regulation. Statutory regulation of the press doesn't mean government interference and censorship by default — we already have statutory regulation of the broadcast industry and yet the BBC is held up as one of the most reputable news sources in the world. Statutory regulation has not damaged its reputation nor resulted in censorship.

Not only is it possible, it is desirable to have a regulator capable of going head-to-head with the very worst sections of the media. It is abundantly clear that a voluntary organisation simply doesn't have the capacity to clean up media behaviour. Our only choice is a statutory body with fangs, because a regulator with no bite is no regulator at all.

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ABOUT THE DEMOCRATIC SOCIETY

The Democratic Society is a non-partisan membership organisation supporting participation, democracy and new models of networked governance. It works to create better, more democratic conversations between citizens and the state, and promotes informed and deliberative democracy.

You can follow Demsoc's work at <http://www.demsoc.org>, on Twitter as @demsoc and on Facebook (<http://www.facebook.com/demsoc>)

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