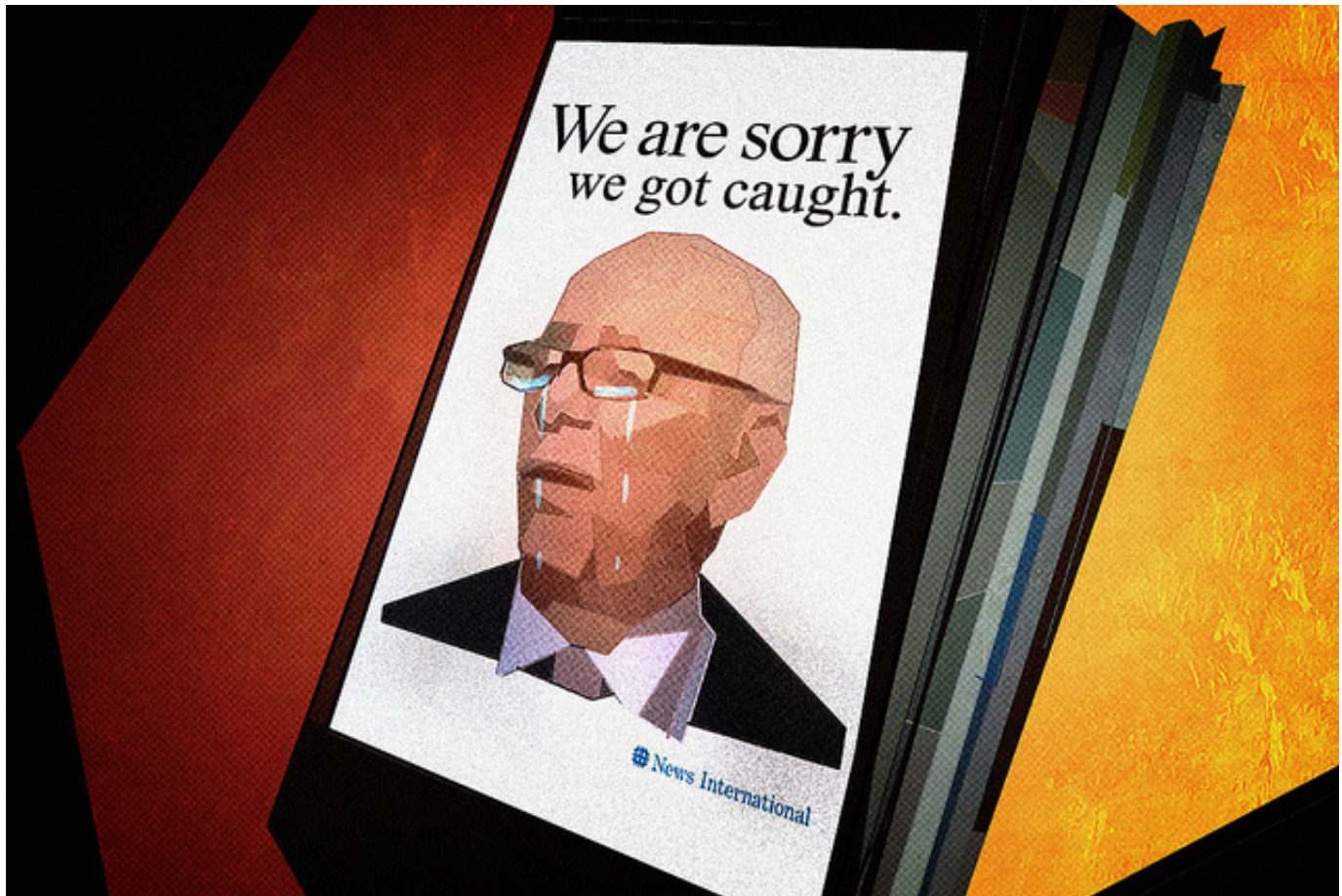


Pressing for press accountability in Britain

Jonathan Heawood on ten reasons why independent self-regulation is good for free speech – and how his new initiative, IMPRESS, proposes to go about it.



For 65 years, newspapers in Britain have run a system grandly known as self-regulation. It is little more than a complaints-handling service. The current body, the Press Complaints Commission (PCC) has – like its predecessors – lost public confidence for failing to hold newspapers accountable to their own standards. At its worst, the PCC not only turned a blind eye to the hacking of phones by Rupert Murdoch’s tabloid journalists, but censured the Guardian for pursuing the story.

In response, the press has been asked to take regulation seriously. This is not just a challenge for newspaper proprietors and politicians. It is also an opportunity for civil society. If we can find a good answer to the question of press regulation we can strengthen freedom of expression for many years to come. The wrong answer will lead the press – and the rest of us – down a blind alley, where state control lurks in the shadows. But the options are not as clear as they seem at first and the way forward may be counter-intuitive.

Free Speech Debate

Thirteen languages. Ten principles. One conversation.

<http://freespeechdebate.com>

Lord Justice Leveson, after a year-long inquiry into the culture, practices and ethics of the press, concluded that there is a middle way between state regulation and self-regulation. He calls it independent self-regulation. This is not (as some have claimed) an oxymoron, but an idea which combines the virtues of self-regulation with a greater degree of independence from proprietorial influence. Unlike the PCC - or the body which many newspapers propose should be its successor, [the Independent Press Standards Organisation \(IPSO\)](#) - this model of regulation would be subject to external scrutiny from an independent body, the 'Recognition Panel', established by a Royal Charter sealed on 30 October 2013. This panel would assess the regulator on a regular basis against 23 criteria, drawn from the Leveson Report. A regulator which meets these criteria would be able to offer its members protection against costs and exemplary damages awards in libel and privacy actions. A regulator which failed to meet the criteria would expose its members to costs and damages. Membership is voluntary, but the consequences of non-membership are clearly significant.

There are risks here, which must be mitigated. However, there are also tremendous opportunities to strengthen freedom of expression for future generations. That's why I and other free speech campaigners have published proposals for a regulator ([The Independent Monitor for the Press: IMPRESS](#)) which would implement Leveson's proposals. We have no interest in silencing the press or stifling public debate – quite the opposite. In fact, I see ten ways in which independent self-regulation can strengthen freedom of expression.

1. Protecting the press from politicians

Many democratic countries have wrestled with the question of press freedom. It is a problem which goes to the heart of an open society, in which the press must be free to hold politicians to account, but politicians also have a responsibility to uphold the full range of human rights, including privacy, and to protect the public from harm. As [Lara Fielden](#) has shown, calls for statutory regulation are often met with a self-regulatory solution: "the decisive trigger to the establishing, or reform, of a Press Council is commonly a proposal for statutory regulation that results in a determined, pragmatic alternative response from the industry." In Britain, however, self-regulation has failed. Each scandal in press standards has led to a new inquiry, and a new commitment to self-regulation, only to be followed by a further scandal, and so on. Each time this happens, the calls for state regulation – with the risk of political control – have grown stronger and more compelling.

Britain now has an opportunity to break out of this debilitating cycle. A regulator which is independent of both press and politicians, albeit underpinned by statutory authority, can speak up with credibility for the public interest in press freedom. It can not only oppose political interference with the regulator (attempts to amend the Royal Charter on Self-Regulation of the Press, for instance) but can also lobby more broadly on behalf of public interest journalism. In this way, independent self-regulation can act as a powerful buffer against political threats to press freedom.

2. Protecting journalists from the press

In many countries, journalists' unions play a role in press regulation. Not in Britain, where the National Union of Journalists (NUJ) walked out of the Press Council (the PCC's precursor) in 1980. The NUJ has long maintained that self-regulation does not offer protection to individual journalists who want to speak out against bullying editors or corporate malpractice. In response to these arguments, Leveson recommended a conscience clause in the contracts of journalists whose publications join the new regulator. This would strengthen the expression rights of individual journalists, who may enter the profession wanting to serve the public good, and then find that, as in the case of former Daily Star reporter [Richard Peppiatt](#), they are required to run consistently inaccurate and unethical stories.

Leveson also recommended that the regulator should run a whistleblowers' hotline, to give journalists another avenue to speak out anonymously against unethical practices. A regulator controlled by proprietors can give journalists little confidence that their concerns will be heard, whereas an independent self-regulator can protect the expression rights of individual journalists.

3. Protecting freedom of opinion

Newspapers do not only publish facts. They are also important forums for opinion. A regulator with credibility and impartiality can stand up robustly for some aspects of press freedom which critics find distasteful. When the columnist Jan Moir wrote in the Daily Mail that the death of boy band singer Stephen Gately was typical of a homosexual lifestyle, thousands of people were outraged but the PCC came out in support of the paper. That was the right decision.

Moir's views reflected her values, and her freedom to hold and express those views is a fundamental aspect of her right to freedom of expression. Rulings such as these may have contributed to the public's lack of confidence in self-regulation; but in this case, the problem was not the nature of the decision, but the identity of the decision-makers – editors sitting in judgement on their own publications. An independent self-regulator would take, and be seen to take, such decisions on their merits. The public might not always agree with the regulator's conclusions, but they would respect its processes.

4. Protecting our private freedoms

The exposure of mass communications surveillance programmes by the NSA and its British counterpart GCHQ has alerted us to the fact that, in the digital age, privacy and free expression are two sides of the same coin. Last year, the [UN Special Rapporteur on Freedom of Expression](#), Frank La Rue, stated that, "Undue interference with individuals' privacy can both directly and indirectly limit the free development and exchange of ideas." This was reinforced by free expression NGOs from around the world, which came together in the '[International Principles on the Application of Human Rights to Communications Surveillance](#)' to assert that privacy 'is essential to human dignity and it reinforces other rights, such as freedom of expression and information, and freedom of association.'

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Journalists may sometimes be justified in breaching someone's privacy in the public interest. When asked by Lord Justice Leveson, newspaper editors suggested that the public interest was an opaque concept and difficult for laypeople to understand. However, [attitudinal research by the Carnegie Trust](#) suggests the opposite. Members of the public are easily able to distinguish between news stories where privacy has been breached in the public interest and stories without justification: 'Stories about people's sex lives inspired the lowest level of support for publication, while stories about people putting the health and safety of others at risk had the highest ratings.' An independent self-regulator would do well to remember these findings when interpreting the editors' code on privacy. This will protect our private freedoms – the necessary underpinning for our public freedoms.

5. Providing access to justice

The prohibitive cost and uncertainty of English law exerts a chilling effect on investigative journalists and individuals who can't afford to take a case to court. To address this problem, Leveson recommended that, alongside its complaints-handling and investigations functions, an independent self-regulator should also offer an arbitration service. In the [Alternative Libel Project](#), English PEN and Index on Censorship found that forms of Alternative Dispute Resolution (ADR) such as mediation have a success rate in 96% of libel actions. The availability of ADR, at low cost, would remove the chilling effect of a libel or privacy suit. Claimants and defendants would be able to resolve their disputes cheaply and swiftly. This might be bad news for some lawyers, but it would be good news for justice.

6. Raising the threshold for libel

By offering an arbitration service for civil claims alongside a complaints-handling service for breaches of the [Editors' Code](#), an independent self-regulator would be able to raise the threshold for libel and privacy actions. Simple breaches of the code would be directed towards the complaints arm; the arbitrator would only hear cases with evidence of serious harm. Thus, a twin-track regulator would help to clarify the relationship between the civil law, where the bar should be set high for any restrictions on expression, and the Editors' Code, where there is a greater expectation of ethical behaviour. The arbitration service would be private, and the courts would not be obliged to recognise its findings. However, judges are increasingly insistent that parties should seek to resolve their disputes before going to court, so this high threshold would have a de facto impact on the development of English libel law.

7. Rebuilding trust in professional journalism

The principle of a free press is useless if there are no journalists. In 1980, the twelve bestselling national daily papers in Britain had a [combined circulation](#) of 15.6m. By 2013 that figure had fallen to 8.5m. The British Social Attitudes survey shows that trust in newspapers has fallen at a similarly dramatic rate. In 1983, 53% of people in Britain [thought that the press was well run](#). Now, only 27%

of people have that confidence. The decline in circulation accelerated after 2009, when revelations of phone hacking by the News of the World gained huge public attention. Circulation fell by 214,000 on average in each of the last 33 years. After 2009 this rate of decline almost tripled, as 620,000 fewer copies circulated each year – the equivalent of a national newspaper closing each year. The latest British Social Attitudes survey shows that trust in newspapers collapsed in the same period from 39% in 2009 to 27% in 2013.

People are still reading newspapers, in print and online, but they are also turning to an array of other sources of information and opinion. Harvard's Nieman Lab has published [research on the value of trust](#) in this hyper-competitive market which concludes that, trust, not information, is the scarce resource in today's world: 'Trust is something that is hard to earn and easy to lose. And it is a core element of journalism; few other professions are so dependent on trust.' If professional journalists want to hold onto their readers' attention – and their wallets – they urgently need to rebuild trust in their product. Independent self-regulation provides the external accountability that can restore trust.

8. Driving innovation

The newspaper industry has been knocked sideways by the digital revolution. Whilst some newspapers are now emerging, redefined, from the wreckage (witness the Daily Mail's huge online following, not for news but for celebrity gossip) others are struggling to keep their heads above the ocean of free online content. The industry has been slow to develop new business models, and reluctant to define its values in anything other than the windiest rhetorical terms ('300 years of press freedom' does not communicate much about the actual social impact of a news provider).

Independent self-regulation is a powerful form of corporate social responsibility which – as sectors from pharmaceuticals to mining have realised – is not just there to placate NGOs. Companies like Unilever have shown that corporate social responsibility is also good for business. The Unilever Sustainable Living Plan shows how the company aims to double in size whilst halving its environmental footprint. This ambition is communicated to consumers through Unilever's ethical positioning and the company's annual [sustainability reports](#), which, in turn, challenge the business to innovate in its production and distribution chains. By employing new tools to measure its social impact, through independent self-regulation, the newspaper industry can also create incentives for innovation, which will help journalism to survive and thrive in the communications environment of the future.

9. Enhancing the public sphere

The global public sphere is more accessible now than at any point in history. Anyone with access to the internet can publish directly to the world via websites, apps and social media platforms. However, as critics of cyber-utopianism such as [Evgeny Morozov](#) have observed, digital technology does not in itself enhance the public sphere. Professional journalists still have a crucial

role to play, sieving the sea of data and opinion for reliable facts and relevant analysis.

Public discourse will always benefit from timely information which gives the public the ability to form well-grounded judgements and enhances other rights such as freedom of association and assembly. An independent self-regulator which complies with the Royal Charter will be able to give its subscribers a kitemark of quality, which will help readers distinguish their professional journalism from other important – but amateur – voices.

10. Giving a voice to civil society

Over the course of a year, Lord Justice Leveson heard evidence from free speech activists, feminist groups, LGBTI campaigners and anti-racist organisations. Leveson did not please all of these people. He did not recommend that Page 3 of The Sun (which shows a topless young woman every day) should be banned, or that the Editors' Code should be amended to prohibit all forms of discrimination. However, he gave civil society organisations a platform and stimulated a national debate about their concerns. He recommended that, in future, the Editors' Code should be the subject of annual public consultation. At IMPRESS, we propose to use independent self-regulation as a permanent forum for this dialogue between news providers and civil society groups, which will amplify the voices of some of the most marginal people in Britain.

In conclusion, press regulation inevitably poses a great challenge for civil society – but also a great opportunity. A regulator which works for the press and the public can enhance democracy. This, surely, is good news for journalists who believe that, in the words of the Universal Declaration of Human Rights, we all have the right to 'seek, receive and impart information and ideas'. News providers are of course free to reject this new framework. But if they want to be taken seriously, and they want their journalism to be trusted, they should seriously consider external accountability. They can self-regulate themselves into irrelevance. Or they can reap the benefits of independent self-regulation. It's not really such a hard choice, is it?

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