

# The messy reality of law, privacy and media freedom

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2011-5-10

It's an interesting time for journalism law experts. Here here's my quick take on today's significant three decisions/issues:



Max Mosley

Max Mosley is an intelligent and determined critic of media abuses. [I thought he was right to sue the News of the World](#), but I was worried that one bad case might encourage wider limits on the media's right to expose aspects of people's private lives where there is a public interest. So I thought he was wrong to seek blanket prior publication notification. I agree with [Ray Corrigan's analysis](#) that the court got it right and that such a legal principle would go too far in restraining media freedom.

Likewise, I sympathise with the [Press Complaints Commission's judgement](#) that the Telegraph were wrong to go on a 'fishing expedition' of MPs who they suspected had different private political views to the ones they expressed publicly. That is the case for all politicians. It is in the nature of collective responsibility and party membership. Casual secret filming in the hope that something will turn up is not really investigative journalism. The PCC judgement is based on quite a fine-tuned analysis of the journalistic process rather than a general prohibition:



Vince Cable

*'While the Commission acknowledged there was a broad public interest in the subject matter, it felt that the newspaper had reached the wrong decision in deciding to pursue subterfuge on this occasion. The Commission made clear that the level of subterfuge was "high" and that "secretly recording a public servant pursuing legitimate public business was without question a serious matter". The Commission felt that the newspaper had focused "what amounted to disproportionately intrusive attention on a number of MPs (who had been selected purely on the basis of their ministerial position)". It was not convinced*

*by the "general" nature of the prima facie claims that led to the decision to employ subterfuge, and felt that ministers were being asked "to comment on a series of policy issues with the evident intent of establishing on which subject they might say something newsworthy".'*

But it could be argued that Vince Cable's views were so at odds with his own responsibility as a minister that it justified the intrusion and the deception. With hindsight. Of course, there is no direct punishment for the Telegraph, although the PCC is going to look at toughening up its guidelines. So I suspect that other newsrooms will be prepared to gamble again in the future that pushing the ethical boundaries will uncover items of genuine public interest. This is not a satisfactory result if you are Vince Cable, but I think that it might be the right way to deal with this issue. Fire a warning shot over newspaper editor's bows, but do not restrict the right of journalists in principle.

And here we see how the messy reality of journalism and it's relationship with the powerful starts to intrude upon legal niceties. Yes we now have super laws to prevent publication of private matters. But the SuperInjunctions are, in effect, being rendered useless by the Internet. If a blogger had got hold of the Mosley photographs or taped Vince Cable being rude about Murdoch then there would little in the way of legal sanction.

This is not an argument for removing all restraint. Mainstream media's credibility must rest upon the fact that it

accepts responsibilities as well as claiming rights. But do not expect any clarity of this anytime soon. Firstly, the technology is still evolving and spreading. Twitter is now as effective a medium as a tabloid paper in spreading news. As Jemima Khan discovered it is no more reliable than the red-tops but at least you can answer back immediately. Secondly, the examples that involve either sex or politics will always be subjective and will have to be taken on a case by case basis. Theoretically, nowhere is off-limits, but everything can be.



Jemima Khan

This is mixed news for journalists. It's probably good news for social media networks. And it's certainly great news for lawyers.

If you want the case details and more expert analysis follow the links via the excellent Judith Townend on Twitter as [@meejalaw](#) and have a look at the fantastic [media policy and law blog run by Andy Scott](#) at LSE.

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