

Wikileaks and Freedom of Speech: Can self regulation work?

Mark Stephens is right when he says that the current controversy around Wikileaks marks a key moment in the evolution of media responsibility and freedom. Legal matters – starting with the extradition hearing of Julian Assange this week – will move rather quickly even though it is going to take some time to work through the broader implications. Stephens says that the case engages article 10 of the **European Convention** – the right to free speech – but it remains to be seen how and if such a freedom could be invoked in Assange's defence. Ultimately, there will be a question of balancing Assange's speech rights (along with our right to know) and the rights of others such as citizens and soldiers that may have been endangered.

What is new and transformative about Wikileaks is that the organisation is deliberately attempting to operate outside of any national jurisdiction. In this sense, the site is attempting to test the regulability of the internet, among other things (see Jonathon Zittrain's **Wikileaks FAQ**). If Assange's own theorisations are to be believed, the aim ultimately could be to implement a rather literal vision of John Perry Barlow's 1996 **Declaration of the Independence of Cyberspace**, which claimed that the laws of states had no jurisdiction on the internet.

Like newspapers, Wikileaks acts as an intermediary by making a credible promise to protect sources of leaks, and by bringing public interest material to the public. But the organisation does so outside of the legal and ethical frameworks that have traditionally ensured that media do so in a responsible way. Whilst it is by now clear that Wikileaks and its supporters deliberately eschew legal regulation of what they do, it remains to be seen if they are prepared to engage with a broader debate about ethics and self regulation.

Freedom of speech is protected in democratic countries, but it is not an absolute right: it must be balanced with other rights and other people's rights, such as the rights of service personnel whose lives may be endangered by publication. Newspapers and broadcasters, even where they enjoy constitutional free speech protection – act within the legal framework of the country in which their presses and transmitters are situated. It is ultimately the courts, in a dialogue with professional journalists, editors and self regulatory bodies, that do the difficult work of combing through material to balance those competing rights, and determining whether the right to publish is justified.

In Europe, '**The Reynolds defence**' of responsible journalism has been open to those publishing 'in the public interest.' If journalists act responsibly and without malice, Judges have deferred to self regulatory codes and councils – and journalists themselves – to decide what is in the public interest, and whether journalists are acting in accordance with professional ethics. No such established ethical frameworks are established at Wikileaks. It is this, together with the volume and quality of material that is published, which explains the impact and controversy around the latest round of leaks.

Another real game-changer about the current story is the degree of publicity Wikileaks is receiving thanks to the latest leak. As long as this organisation exists, never again will a whistleblower with a genuine desire to publish something have to think twice about where to go. As an organization, Wikileaks genuinely threatens existing structures of state power because it exists outside of national jurisdictions and outside of established balances and institutions.

And the scale and volume of whistleblowing that Wikileaks will now receive will pose their own challenges. If there is a surge in the amount of material leaked to Wikileaks, how will the site be able to cope with the complex ethical issues raised? There are balances to be struck. Wikileaks attempted to negotiate with the US government the release of the cables with their security impact in mind. In part the site turned to their seasoned media partners for help. But if Wikileaks takes such an ethical balancing act seriously, it will inevitably have to develop more formal **ethical**

guidelines – like the D-Notice guidelines in the UK and the **PCC code** on Public Interest – and Wikileaks will also have to be more sensitive to a variety of national contexts even if it has no assets in those jurisdictions.

Assange's lawyer, Mark Stephens, came rather close to claiming that the arrest of Julian Assange appears to be a holding operation on behalf of the US. If this is the case, it is likely to come to light sooner or later, and be highly embarrassing to government and legal authorities in the UK. But US, UK and Swedish authorities are not the only ones likely to emerge sullied from this story. Wikileaks, perhaps more than any other media organisation in history, took the Duke of Wellington's dictum 'publish and be damned' literally. If they don't find a way to engage with the debate about ethics of publication, they will be.

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