Varieties of Statutory Regulation

With lines being drawn for and against "statutory regulation" in advance of the Leveson Report, LSE Alum Clara Iglesias clarifies what "statutory" means.

With some still defending a self-regulatory model for the press, potential regimes based on statute are commonly conflated with direct government regulation of newspapers, or even state censorship. In fact, most alternatives to self-regulation have been labeled as "statutory regulation", without much concern for the variety of models and their diverse implications for media freedom.

Amidst these debates, it is worth clarifying what "statutory regulation" means. The term "statutory" refers to any regulation that is implemented by law. It is commonly confused as a synonym for "state regulation", which would be the performance of regulatory activities directly by government bodies. It is important to highlight that statutory regulation does not mean government control. Statutes can establish different models of regulation, to be led by different agents. In some cases, the use of statute can ensure transparency and accountability of controls, which is why the crucial ECHR test of whether restrictions on freedom of expression can be justified is that they a must be 'prescribed by law' as well as 'necessary in a democratic society'.

There are various possibilities of combining state with self-regulation. In theory, most of these arrangements can be classified as co-regulatory systems, that exist when an industry self-regulatory association has some oversight and/or ratification by government. For instance, a statute can design structure, powers and accountability systems for an independent regulatory body, as happens in Denmark. The Danish Press Council, a body whose members are appointed by government, is responsible for processing complaints against the press, with powers that include fining those titles that do not abide by the rules. Interestingly, Denmark ranked seventeen places above the UK, at number 11 in the world Press Freedom Index in 2011.

Through a less intrusive approach, an act of Parliament could also force the industry to form a self-regulatory entity, and at the same time, pre-establish key institutions, in order to increase accountability and responsiveness. Aspects such as what sectors should be represented in the entity and the ethical criteria, or public interest justifications to be observed by its members can be established in law through for example obligations on newspapers above a certain size to participate. On the other hand, judgment and enforcement related powers could be assigned to the industry's representatives, avoiding political influence over these procedures.

The state's participation in the regulatory regime can also happen through financial incentives. For instance, government could grant news media that participate on the self-regulatory body and accept basic ethical guidelines privileges like VAT exemptions, or even support regulation by bearing the financial contribution due to self regulatory bodies or the NUJ.

Each of these different 'roles for statute' would have different – and impacts for freedom of the media. The pseudo debate about 'pro' or anti statute *per-se* is thus not particularly useful.

November 28th, 2012 | Guest Blog, Press Regulation | 0 Comments