

Democracy relies on freedom of speech but it's vital to know your libel law if you are going to blog online

This Article first appeared in the Western Mail on 22nd March 2013

The new system of press regulation goes beyond printed titles, and could have serious implications for websites and social networking sites. Legal expert Hugh Hitchcock explores what impact the changes will have on freedom of speech online.

David Cameron has insisted the cross-party deal reached earlier this week on a royal charter on press regulation defends the principle of a free press. But what will it mean for freedom of speech online?

The Prime Minister, who was granted an emergency Commons debate on the proposed new system in response to Lord Justice Leveson's report on press standards, said the new regulator would not be set up by legislation - an approach he claimed was "fundamentally wrong in principle".

But he acknowledged that legislation was necessary to establish a system of exemplary damages for newspapers that did not sign up to the regulator.

The new system goes behind printed media however, with all publishers of news, comment and "gossip" being encouraged to join the regulatory system. This means that blog and news websites are equally as affected as printed titles, with bloggers potentially facing high fines if they don't sign up to the new regulator.

Under the charter, the definition of "relevant" bloggers or websites includes any that generate news material where there is an editorial structure giving someone control over publication.

Kirsty Hughes, the chief executive of Index on Censorship, which campaigns for press freedom, said it was a "sad day" for British democracy.

"This will undoubtedly have a chilling effect on everyday people's web use," she said. She says she feared thousands of websites could fall under the definition of a "relevant publisher" in clause 29.

She pointed out that exemplary damages and costs imposed by a court to penalise those who remain outside the regulator could run to hundreds of thousands of pounds, enough to close down smaller publishers.

The exemplary damages clause was recommended in the Leveson report but has been opposed by some newspapers, which have been given legal advice that it could be contrary to the European Convention on Human Rights, which enshrines the principle of free speech.

Under sustained questioning in the commons on Monday night the culture secretary Maria Miller said publishers “would have to meet the three tests of whether the publication is publishing news-related material in the course of a business, whether their material is written by a range of authors – this would exclude a one-man band or a single blogger – and whether that material is subject to editorial control”.

She said the new rules were designed to protect "small-scale bloggers" and to "ensure that the publishers of special interest, hobby and trade titles are not caught in the regime".

However, sites that rely on a network of bloggers with a clear editorial structure, such as the Huffington Post, would be covered under the new rules.

Crucially, blog sites would not be at risk of exemplary damages for comments posted by readers.

While there has been an outcry over the proposals from those concerned about freedom of speech online, there is a danger here that we could miss the wood for the trees.

Bloggers already face big fines for libel, as we saw recently in the case of a Carmarthenshire blogger who lost a libel case against the Chief Executive of her local council after he counter-sued.

Jacqui Thompson launched her action after a letter responding to criticism of Carmarthenshire council, following an incident where she was ejected from a meeting for filming. But the High Court dismissed her claim.

Lawyers representing the blogger had claimed her case was one of "state versus citizen". But Mr James's legal team argued that Mrs Thompson had carried out a "wholly improper" campaign in her online blog.

Giving his written ruling, Mr Justice Tugendhat said: "I have found that Mrs Thompson was engaged in an unlawful campaign of harassment, defamation and intimidation targeted against Mr James and other council officers."

Ms Thompson claimed that the ruling potentially opens the floodgates for similar actions, and that it has dire consequences for those who publicly scrutinise and criticise various types of institutions.

What this case makes clear is that those who make unfounded claims or defame others online already face the risk of being punished under existing legislation.

I have every confidence that the eventual regulatory body will be able to differentiate between a site such as The Huffington Post and small, independent bloggers. Even Leveson admitted in his final report that trying to regulate the latter would be a step too far.

But that doesn't mean that bloggers can get away with making unfounded

claims or defaming other individuals online.

Anything you write on the Internet that might cause someone's reputation to be harmed could potentially be libellous. It doesn't matter if the statement is on your Facebook page, in a review of a new product, or it's a blog post about a celebrity news story.

While many Internet users believe that they are free to say and do as they like while on the Internet, this is untrue; the same defamation laws and regulations stand for online defamation as they do in any form of media.

The message for bloggers is to stay vigilant, to be careful to know what constitutes libel or defamation and to stay on the right side of that line.

What will be interesting to see is whether these proposals will create a more level playing field whereby those that struggle to access legal remedies will have a right of recourse.

Crucially, the proposed changes by no means herald the death of the citizen journalist, as has been claimed by some. It's hugely important that across all media outlets, we continue to hold those in authority to account. The implications for democracy if this ceases to be the case are too awful to contemplate.

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