

CITIZENS PARTY

Response to the Legal Reform Commission Consultation Paper on the Regulation of Media Intrusion

Summary

Citizens Party opposes the establishment of a Statutory Press Council vested with power to impose penalties. Press monitoring should be left to the profession itself and the public at large, and not by a government appointed body. We encourage the media profession to set up a self-regulating body. With adequate funding, such a body could serve as a media ombudsman, help victims to seek redress through legal proceedings as well as voice out unethical reporting.

Introduction

In August 1999, the Law Reform Commission of Hong Kong (LRC) published two consultation papers on 1) "the Regulation of Media Intrusion" and 2) "Civil Liability for Invasion of Privacy" for consultation. The LRC recommended the setting-up of a Statutory Press Council (SPC), which would have jurisdiction over local newspapers and magazines registered under the Newspapers Ordinance (Cap 268).

Problems with Statutory Press Council

There will be many problems with the proposed SPC. According to the Consultation Paper, members would be appointed by the "Independent Appointments Commission", which would in turn be appointed by an independent person invited by the Chief Executive. Such a three-step appointment process attempts to create a semblance of independence to distance the SPC from the Government but its public credibility would remain questionable.

The SPC, as proposed, could impose substantial fines in cases of privacy intrusion: \$500,000 for the first offence and \$1,000,000 for a second and subsequent offence. It is unclear whether such a SPC is in the best position to exercise such powers. In general, publishing facts should not be an offence. As to whether the revelation of those facts might be an unreasonable intrusion into someone's privacy, the decision to publish or not is often subjective and could vary among practitioners. With the threat of huge potential fines, the SPC may well not help media professionals to strike the right balance between the public's right to know and privacy of persons concerned.

The Consultation Paper describes what might be intrusive behavior in collection information and news reporting. What is proper journalistic conduct in a particular set of circumstances would depend on a journalist's professional judgment. While methods such as surreptitious recording in public places, and doorstepping are not condoned, there may well be a place for them in investigatory journalism.

There is also a discrepancy between the two Consultation Papers. Although the proposals in the *Civil Liability* Consultation Paper acknowledge that disclosure of private facts already in the public domain would not constitute invasion in privacy, the *Media Intrusion* consultation continues to present arguments in favor of the protection from unwanted publicity. In paragraph 1.29, it quotes that it is not always the case that knowing the truth is better than living under a misconception. In paragraph 5.30, it says that: "Some would argue ... giving publicity to private facts in public records may also give rise to privacy concerns even though

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the records are accessible to the public.” That paper suggests restraint is necessary if the harm that results from such disclosure outweighs the public benefit.

Citizens Party’s Counter Proposals

Citizens Party recognizes the need to both uphold freedom of the press and promote more responsible journalism. As discussed above, we feel the proposed SPC is the wrong approach. There are better options.

(a) Code of conduct

The media industry needs to work together to formulate a code of ethics for news practitioners. Publishers should then incorporate the code into their company policies and employment contracts. The code serves as a commitment from the industry to the general public that it would exercise its freedom in a responsible manner including respecting individual privacy. Such a code would promote professionalism and responsible journalism and would not interfere with the autonomy of individual companies and journalists.

(b) Reform existing law

Reforming the laws of libel, slander and malicious falsehood could help to deter media irresponsibility. As litigation is expensive, few ordinary people with grievances can afford to fight a well-funded media organization. Reforming the relevant laws could help to redress the current imbalance. We suggest that the LRC study what can be done.

(c) Self-regulating body

Media insiders claim that it would be hard for the newspapers to form a self-regulatory body because the newspapers with the highest circulation were unlikely to join even though most of the remaining newspapers appear to be willing. Even so, we believe it would be a useful start for the others to form such a body. Action by example could help the public to understand media ethics better.

(d) Special media “Foundation”

The self-regulatory body could also consider setting-up a special media “Foundation” to help genuine victims seek legal redress where their privacy had been invaded, and to protect the freedom of expression of the public (such as commentators) to criticize bad media practices without fear of having to face expensive litigation on their own. Funding could come from the supporting organization as well as from donations, and possibly even receive some public funding to start it off. Our premise is that if newspapers knew that victims may get funding to fight a genuine case, they could well be inspired to exercise greater caution in their reporting.

(d) Professional voice against irresponsible journalism

The self-regulatory body could also take complaints from the public and those who suffered from irresponsible reporting. This could help to raise the general standard of professionalism without resorting to a government-appointed body.

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