

*The Regulation of Media Intrusion of Privacy:  
The Experiences in Taiwan,  
the United Kingdom and the United States*

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**Prepared by**

**Ms Eva LIU  
Mr CHAU Pak-kwan**

**Research and Library Services Division  
Legislative Council Secretariat**

**5th Floor, Citibank Tower, 3 Garden Road, Central, Hong Kong**

**Telephone : (852) 2869 7735**

**Facsimile : (852) 2525 0990**

**Website : <http://legco.gov.hk>**

**E-mail : [library@legco.gov.hk](mailto:library@legco.gov.hk)**

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## EXECUTIVE SUMMARY

1. This research mainly examines the various modes of regulation adopted in three different jurisdictions, namely Taiwan, the United Kingdom and the United States, in relation to media intrusion of privacy. This research examines how these jurisdictions regulate media intrusion of privacy by first looking their overall regulatory frameworks in relation to the print and broadcasting media. Part 1 of this research analyzes the modes of regulation on different forms of media in these jurisdictions, including government agencies involved in the regulation, statutory regulation and self-regulatory bodies. This research deals separately with the regulation of the press industry and that of the broadcasting industry. The research then analyzes how these jurisdictions regulate media intrusion of privacy through legislation and self-regulation within the overall regulatory frameworks. Part 2 of this research examines press self-regulatory bodies in these jurisdictions, including their composition, procedures for handling complaints and effectiveness.
2. Findings of this research show that the three jurisdictions normally subject the print media and the broadcasting media to different modes of regulation. Broadcasting media are regulated in the form of a licensing system and their contents of programmes and schedules are also regulated to a certain extent. Generally speaking, the broadcasting media are subject to stricter regulation than print media. Cases involving intrusion of privacy by the press are resolved through either legal actions initiated by the victims to seek remedies or the self-regulatory mechanism.
3. Although the idea of establishing a statutory press complaints tribunal was floated in the United Kingdom in the early 1990's, it has never been adopted by the Parliament or the Government. As recommended in the Consultation Paper by the Subcommittee on Privacy under the Law Reform Commission of Hong Kong ("the Consultation Paper"), the proposed Press Council for the Protection of Privacy is very similar in nature to a tribunal, which is different from those press councils established by the press on their own initiative in other countries at present.
4. The Consultation Paper repeatedly stressed that the mode of regulation of the broadcasting media could be applicable to the regulation of the print media. Some countries pursue a mode of regulation targeting the broadcasting media by issuing codes governing programme contents, which are then monitored by independent bodies (such as the Broadcasting Standards Commission in the UK). Such mode of regulation targeting the broadcasting media has its special and historical reasons, such as the scarcity of outlets for broadcasting, the profound influence of audio and visual messages carried by broadcasting media on the public and the need to protect minors. Nevertheless, the application of a mode of regulation for the broadcasting media to the press amounts to prior restrictions being imposed by a third party on the freedom of the press regardless of whether the relevant code of practice is strict or otherwise. The three jurisdictions covered in this research have not been found to have applied regulatory mode targeting broadcasting media to regulate the press. Such application represents a significant departure from existing modes of regulation and policies towards the print media.

5. Moreover, the Press Council as proposed in the Consultation Paper will have statutory power to launch investigations and take punitive actions and this will inevitably touch upon Article 27 of the Basic Law, which guarantees, among other things, the freedom of the press. The Consultation Paper did not discuss in detail in this respect.

# **THE REGULATION OF MEDIA INTRUSION OF PRIVACY: THE EXPERIENCES IN TAIWAN, THE UNITED KINGDOM AND THE UNITED STATES**

## **PART 1 - INTRODUCTION**

### **1. Background**

1.1 The Law Reform Commission published in August 1999 the Consultation Paper on the Regulation of Media Intrusion<sup>1</sup> (“the Consultation Paper”) prepared by its Subcommittee on Privacy, which recommended, inter alia, the establishment by law of a body to be known as the Press Council for the Protection of Privacy. This proposal aroused immediate and widespread concern in the press circle and the community.

1.2 The Home Affairs Panel under the Legislative Council is responsible for monitoring the Government’s policies concerning the freedom of the press. The objective of this research is to provide information and analysis on overseas experiences to Members for their consideration of the Consultation Paper.

### **2. Methodology**

2.1 This research mainly examines the various modes of regulation adopted in three different jurisdictions, namely Taiwan, the United Kingdom and the United States, in relation to media intrusion of privacy.

2.2 Chapter 3 of the Consultation Paper discussed press self-regulation in other jurisdictions, including the above three. This research, not only studies self-regulation exercised by the press in these jurisdictions, but also looks into their overall regulatory frameworks in relation to the print and broadcasting media before examining how they regulate media intrusion of privacy.

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<sup>1</sup> Consultation Paper on the Regulation of Media Intrusion (1999) by the Subcommittee on Privacy under the Law Reform Commission of Hong Kong.

2.3 Part 1 of this research first analyzes the modes of regulation on different forms of medium in these jurisdictions, including government agencies involved in the regulation, statutory regulations and self-regulatory bodies. This research deals separately with the regulation of the press media and that of the broadcasting media. Because of the scarcity of outlets for broadcasting, the profound influence of audio and visual messages carried by broadcasting media on the public and the need to protect minors, the broadcasting media are usually subject to a set of regulations different from those targeting the print media<sup>2</sup>. The research then analyzes how these jurisdictions regulate media intrusion of privacy through legal means and self-regulation within the overall regulatory frameworks.

2.4 As the Consultation paper recommended the setting up of the Press Council for the Protection of Privacy, Part 2 of this research examines the various press councils in those three jurisdictions as well as their composition, procedures for handling complaints and effectiveness.

2.5 As this research has been carried out under an extremely tight schedule, therefore, only Taiwan, the United Kingdom and the United States have been selected for studies<sup>3</sup>. The reason for choosing Taiwan is mainly because of the rapid development of its mass media in recent years and the fact that its enjoyment of the freedom of the press has been recognized in the international community.<sup>4</sup> As for the United Kingdom and the United States, they are widely regarded as enjoying a high degree of press freedom. Moreover, the legal system in Hong Kong has a long-standing and close relationship with the common law system in the United Kingdom.

2.6 Information for this research is obtained from the Internet, government reports in various places as well as correspondence with the relevant agencies and organizations in these jurisdictions.

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<sup>2</sup> See Lee S. N. 李少南 (1995) "The Regulation of Radio and Television Broadcasting" in Leung W. Y. (梁偉賢) and Chan M. M. (陳文敏) *New Theory on Broadcasting Legislation* (傳播法新論) Hong Kong: the Commercial Press, pp. 400-27 and Lam C. Y. (林子儀) (1994) "The theoretical foundation and meaning of Freedom of Press (新聞自由的意義及其理論基礎)" in Lam C. Y. *Freedom of Speech and Freedom of Press* (言論自由與新聞自由) Taiwan: Taiwan Yue Tang Publishing Co. (台灣月旦出版社) pp. 62-131 at pp. 118-28.

<sup>3</sup> For information about other countries, see SU Zhen-ping (蘇正平) (1993) "Independence and Self-discipline for the Press - Experiences in Germany, Eastern Europe and Japan (新聞自主及自律 - 德國、東歐及日本的經驗) on *The Study Reports by winners of the 2<sup>nd</sup> Annual Award for Outstanding Studies on Journalism of the ROC* (第二屆中華民國傑出新聞人員研究獎得獎人研習考察報告) Taiwan: the National Press Council of ROC and Urte Sonnenbery (1997) *Organising Media Accountability: Experiences in Europe*, Maastricht: European Journalism Centre, <http://www.ejc.nl/hp/contents.html> and Emmanuel E. Paraschos (1998) *Media Law and Regulation in the European Union: National, Transnational and U. S. Perspectives*, Iowa: Iowa State University Press.

<sup>4</sup> According to a survey on freedom of the press conducted by Freedom House, the level of press freedom in Taiwan is second to that of Japan in Asia. See Freedom House (1999) *The News of the Century: Press Freedom*

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## PART 2 - THE MODE OF REGULATION

### The Regulation of Media Intrusion in Taiwan

#### 3. General Situation

3.1 The media industry in Taiwan has flourished since the lifting of newspaper restrictions<sup>5</sup> (報禁) in 1988 and the subsequent opening up of television channels, with the number of newspapers jumping to 360 in 1998 from a mere 31 back in 1987. In addition, there are more than 100 cable TV systems in operation. Since 1995, the Government in Taiwan has spared no efforts to promote Taiwan as an Asia-Pacific Media Center with the aim of turning Taiwan into a regional production and distribution hub for Chinese language films and TV programmes.

3.2 The development of the mass media in Taiwan has been affected by political, cultural and economic factors. Generally speaking, the mass media in Taiwan have moved from a closed system to a pluralistic and market-oriented one. Of course, the flourishing of the mass media in Taiwan has not been trouble-free. It has also encountered various problems, such as the media's social responsibilities and the abuse of the freedom of the press. In recent years, Taiwan has promulgated a number of laws and regulations on the mass media. Taiwan also has its own media self-regulatory mechanism.

#### 4. Overall Regulatory Framework

##### Government Agencies

4.1 Before 1988, newspaper restrictions<sup>6</sup> were imposed in Taiwan. The legal basis for the restrictions was the *National Mobilization Law* (國家總動員法) and the *Publication Law* (出版法). In 1951, the Executive Yuan (行政院) imposed strict restrictions on the registration of newspapers, magazines and news agencies in accordance with these two laws. As a result, the total number of newspapers in Taiwan had remained at 31 for a long time. During the imposition of newspaper restrictions, the government agencies responsible for the regulation of the mass media included the Government Information Office under the Executive Yuan, the Taiwan Garrison Command under the Ministry of National Defence and the Department of Cultural Affairs of the Kuomintang. The Kuomintang also directly owned a number of newspapers and TV stations. The newspaper restrictions in Taiwan were lifted on 1 January 1988.

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<sup>5</sup> The newspaper restrictions refer to “the restrictions on the application for the registration of a newspaper”, “the restrictions on the size of a newspaper” and “the stipulation that a newspaper must be printed and published in the place where the application for its registration was submitted”.

<sup>6</sup> See Li Zhan (李瞻) (1987) “The problem with the newspaper restrictions in our country and the solution (我國「報禁」問題及其解決之道)”, *the Journalism Studies* (新聞學研究) Vol. 39, pp. 1-27.

4.2 At present, the Government in Taiwan regulates the mass media mainly through the Government Information Office (GIO) under the Executive Yuan. In accordance with the *Organizational Statute of the Government Information Office under the Executive Yuan*, the *Regulations Governing the Structure of the Regulations Committee of the GIO* and the *Regulations Governing the Structure of the Review Committee of Appeals of All Branches of the Executive Yuan*, the GIO is composed of eight departments, five divisions and two committees<sup>7</sup>, including the Department of Domestic Information Services, the Department of International Information Services, the Department of Publication Affairs, the Department of Motion Picture Affairs, the Department of Radio and Television Affairs, the Department of Compilation and Translation, the Department of Audio-Visual Services, Planning and Evaluation Department and so on.

4.3 The GIO under the Executive Yuan has established the Television Broadcasting Evaluation Committee<sup>8</sup> (廣播電視評鑑委員會) to review TV (including TV and cable TV) programmes and advertisements as well as video programmes. Members of the Committee are appointed by the GIO and their appraisals are submitted to the GIO for reference.

### Statutory Regulation

4.4 Taiwan adopts a legal system based on written law in which legislation is a major source of law. The mass media in Taiwan are regulated by the Constitution, laws and orders, which cover a wide range of areas such as national security, libel arising from news reporting, the protection of the right to human dignity, the protection of copyright, the definition of obscene news and the protection of personal data.<sup>9</sup>

### *The Press*

4.5 The *Publication Law* in Taiwan contained provisions which imposed various forms of punishment on those publications which breached the regulations. In the 1958 amendment, a punishment provision was added to empower the regulatory bodies to revoke the registration of a publication. The press as a whole had long regarded the *Publication Law* as something which seriously restricted the freedom of the press. This law was repealed at last by the Legislative Yuan on 12 January this year. There is no special legislation targeting the press in Taiwan except some specific press regulations concerning mainland China, Hong Kong and Macau.

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<sup>7</sup> Others include Division of Information and Protocol, Division of General Affairs, Division of Budget and Accounting, Division of Personnel, Division of Government Ethics, the Regulations Committee, and the Appeals Committee.

<sup>8</sup> Established under the Main Points for the Establishment of the Television Broadcasting Evaluation Committee of GIO under the Executive Yuan.

<sup>9</sup> See Yeung S. K. (翁秀琪) & Choi M. C. (蔡明誠), ed. (1992) *Mass Media Law* (大眾傳播法手冊) Taiwan: Journalism Research Centre of the National Political University (國立政治大學新聞研究所) pp.16-29.

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## Broadcasting

4.6 The existing *Radio and Television Law* (廣播電視法) in Taiwan was promulgated in 1976, which mainly regulated the radio and TV broadcasting industries, including the establishment of radio stations, the regulation of programmes and advertisements, the offer of rewards and guidance and the imposition of penalties. The *Cable Television Law* (有線電視法) was passed in 1993, which was then hailed as the first piece of legislation that was truly representative of public opinion.<sup>10</sup> The *Cable Television Law* was amended and renamed the *Cable Radio and Television Law* (有線廣播電視法) in February 1999 under which a Cable Television Assessment Committee was set up. The Law also covers the regulation of operation, programming and advertising, fees and the protection of relevant legal rights.

4.7 The *Public Television Law* (公共電視法) was promulgated in 1997 in Taiwan and a new public TV station also began broadcasting on 1 July 1998. The *Satellite Broadcasting Law* (衛星廣播電視法) was promulgated in February this year to provide the legal basis for satellite broadcasting signals received via cable and satellite dishes, covering the regulation of operation, programming and advertising, fees and the protection of relevant legal rights.

## Self-regulatory Mechanism<sup>11</sup>

### *The Press Council*

4.8 The National Press Council of the Republic of China was set up in 1974 in Taiwan with the aim of promoting self-discipline of the press and raising journalistic ethics. One of the main functions of the Council is to “conduct investigations or hearings upon receipt of a public complaint regarding any news report, commentary, radio or television programme, advertisement, and to make resolutions on such complaints, or to conduct investigations and hearings on cases reported by members of the public.”<sup>12</sup>

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<sup>10</sup> The Cable Television Review Committee was set up under this law and the appointment of its members is subject to the approval of the Legislative Yuan. See Yau Y. F. (尤英夫) (1994) *The Theory and Practice of the Cable Television Law* (有線電視法的理論與實務) Taipei: Century Legal Magazine House (世紀法商雜誌社) p. 6.

<sup>11</sup> Apart from self-regulatory bodies, Taiwan also has other forms of organizations and mechanism to regulate the media, such as the Consumers' Foundation, 'Eyewitness', the official publication of the Journalists Association of Taiwan, 媽媽監督媒體文教基金會, the Taiwan Media Watch and so on.

<sup>12</sup> Article 8 of the Constitution of the National Press Council of the Republic of China.

### *Code of Ethics*

4.9 In 1950, the Taipei Press Guild ( 台北市報業公會 ) was established, which adopted the Code of Ethics for Chinese Journalists modeled on the Code of Ethics for American Journalists issued by the Missouri School of Journalism.

4.10 In 1963, the Press Council of Taipei was set up and the "Code of Ethics for the Republic of China Press", "the Code of Ethics for the Republic of China Television" and "the Code of Ethics for the Republic of China Radio Broadcasting" were subsequently approved. These three codes of ethics have been adopted by the National Press Council of the Republic of China in Taiwan as the criteria for its deliberation of complaints against the media.

4.11 In 1995, the Association of Taiwanese Journalists ( 台灣新聞記者協會 ) was formed and the Code of Ethics (新聞倫理公約) (see appendix 1) was issued the following year, which is quite straightforward with about 400 words.

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## 5. Regulation of Media Intrusion

### Statutory Regulation

5.1 Although Taiwan has yet to promulgate laws specially for the protection of privacy, there are various laws which contain provisions for the protection of privacy. Among them are the Constitution, the *Civil Code* (民法), the *Penal Code* (刑法), the *Criminal Litigation Law* (刑事訴訟法), the *Law Governing the Disposition of Juvenile Cases* (少年事件處理法), the *Security Disciplinary Enforcement Law* (保安處分執行法), the *Prison Administration Law* (監獄行政法), the *Medical Law* (醫療法), the *Postal Law* (郵政法), the *Radio and Television Law*, the *Cable Radio and Television Law*, the *Satellite Broadcasting Law*, the *Law for the Prevention of Sexual Offence* (性侵害犯罪防治法)<sup>13</sup>. The following discussion will be focused on the more important ones:

5.2 Among the provisions concerning privacy in the Constitution of Taiwan are Article 10 which guarantees the freedom of residence and of change of residence, Article 12 which guarantees the freedom of privacy of correspondence, Article 22 which guarantees the basic human rights, and Article 23 which imposes certain restrictions on basic human rights.

5.3 Privacy is generally regarded as part of the right to human dignity (人格權). There are specific provisions in the *Civil Code* of Taiwan which deal with the protection of the right to human dignity. Article 18 states: "If the right to human dignity is infringed upon, the court shall be asked to remove the infringement; if such a right is in danger of being infringed, actions shall be taken to prevent the infringement." Article 19 of the *Civil Code* protects the right to a name and states: "If the right to a name is infringed upon, the court shall be asked to remove the infringement and award damages to the party whose right has been infringed upon." The *Civil Code* also stipulates that offenders who infringe upon other people's rights, harm other people's lives, damage other people's reputations and infringe upon other people's freedom, shall be held liable for paying damages.

5.4 The *Penal Code* in Taiwan has specific provisions for the protection of the privacy of correspondence (Article 315) and the freedom to choose residence (Articles 306 and 307), as well as the prevention of professionals (e.g. doctors, lawyers and accountants and so on) from disclosing other people's secretive behaviours which have become known to them by virtue of their professions (Article 316).

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<sup>13</sup> For details, refer to Yau Y. F. (尤英夫) (1992) *The Press Law- Vol. II* (新聞法論- 下冊), Taipei: Century Legal Magazine House (世紀法商雜誌社) pp. 1-94, and Law M. F. (羅文輝) "The Right of Privacy (私隱權)" in Yeung S. K. (翁秀琪) & Choi M. C. (蔡明誠), ed. (1992) *Mass Media Law* (大眾傳播法手冊) Taiwan: Journalism Research Centre of the National Political University (國立政治大學新聞研究所) pp. 53-80.

5.5 There are similar provisions in the three laws governing television broadcasting, namely the *Radio and Television Law*, the *Cable Radio and Television Law* and the *Satellite Broadcasting Law*, in order to ensure that the third party has the right to request the correction of the contents of programmes and the right to present a defence. Such provisions can be found in Articles 61 and 62 of the *Cable Radio and Television Law* and Articles 30 and 31 of the *Satellite Broadcasting Law*.

5.6 Article 61 of the *Cable Radio and Television Law* states that “If the party concerned considers a programme or advertisement broadcast on a cable television system untrue, a request for correction shall be made within 15 days of the broadcasting, the operator shall make the correction within 15 days of the receipt of the request in the programme or advertisement to be broadcast in approximately the same time slot. If the operator of the system is of the view that the programme or advertisement is correct, he shall give a written reply detailing his arguments to the party which has made the request for correction.” Article 62 states: “Should commentary broadcast on a cable television system concern certain individuals or institutions, organizations, resulting in their interests being compromised, a request by the subject of the commentary to be given the chance to present a defence cannot be rejected by the operator of the cable television system.”

5.7 Similar provisions can be found in Articles 23 and 24 of the *Radio Television Law*. Moreover, Article 23 stipulates that a radio station, its controller and staff concerned are subject to civil or criminal liability should other people’s interests suffer substantive damages as a result of false reporting by the radio station.

5.8 The mass media often need to collect basic information from their subscribers for the provision of service. Taiwan promulgated the *Protection of Computer-Processed Personal Data Law* (電腦處理個人資料保護法) in 1995 and subsequently adopted the *Measures for the Regulation of Computer-Processed Personal Data by the Mass Media* (大眾傳媒業電腦處理個人資料管理辦法) in 1996 under this law, which stipulates that the mass media must apply for registration and obtain licence for processing personal data, collecting, using or transmitting them through international network<sup>14</sup>.

5.9 To protect victims of sexual offences, Article 10 of the *Law for the Prevention of Sexual Offences* stipulates: “Publicity materials, publications, television broadcasting, network or other forms of media shall not report or record the name of a victim of sexual offence or other information sufficient to identify the victim unless agreed by the victim himself or the disclosure of such information is essential to the detection of the crime.”

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<sup>14</sup> See Government Information Office of the Executive Yuan ed., *Compendium of laws relating to computer-processed personal data* (大眾傳播業電腦處理個人資料相關法令彙編)

### Self-regulation

5.10 Article 7 of the Code of Ethics issued by the Association of Taiwanese Journalists states: “A journalist shall respect the privacy of the subject of the news unless public interest is involved; even if public interest is involved, the journalist shall avoid disturbing a subject of the news who is stricken with grief.”

5.11 The National Press Council of the Republic of China in Taiwan takes the “Code of Ethics of Chinese Journalists,” the “Code of Ethics for the Republic of China Press,” the “Code of Ethics for the Republic of China Radio Broadcasting,” and the “Code of Ethics for the Republic of China Television” as the basis for its deliberations and resolutions on cases submitted to it. English translations of these codes are provided by the Council which are at Appendixes II, III and IV .

5.12 Provisions concerning the protection of privacy in the “Code of Ethics for the Republic of China Press,” include:

- II (3): News reporters covering victims at a hospital or at an accident site shall observe the regulations of the hospital or obtain the permission of the persons involved. Reporters shall not interrupt treatment or emergency measures, and photographs shall not be taken against the wishes of the hospital or the persons involved.
- III (3): Unless it effects the public interest, no news shall be reported that invades person’s privacy.
- III (4): Unless first investigated and proved true and connected with the public interest, no news shall be reported that charges, exposes or condemns a person or an organization of any wrongdoing. When such news is reported it shall be based on the principles of balance and accuracy.
- III (6): If a news report has stained a person’s reputation, the newspaper shall provide space in the same location for the aggrieved party to defend itself or to present its case.
- IV (4): Names, addresses or any other information enough to identify a juvenile suspect or delinquent shall not be published.
- IV (5): Rapes shall not be reported unless they represent a danger to public safety or involve an aggravated crime. Names, addresses or any other information enough to identify the victim shall not be kept from the public.
- V (4): No commentary on a person’s private life shall be made if it has nothing to do with the public interest.
- VII (4): No pictures of a person’s private life shall be published without the permission of the person involved.

5.13 Provisions concerning the protection of privacy in the “Code of Ethics for the Republic of China Radio Broadcasting,” include:

- II (2): News gathering and reporting shall be undertaken without damaging private interests when these are not connected with the public interest.

5.14 Provisions concerning the protection of privacy in the “Code of Ethics for the Republic of China Television,” include:

- II (4): Shooting of news programme footage shall be undertaken without damaging private interests when these are not connected with the public interest.
- II (5): News reports on victims at a hospital or at the scene of an accident shall be made according to the regulations of the hospital or with the permission of the victim. The gathering of such news shall not impede treatment or emergency measures. Television footage shall not be shot against the wishes of the hospital or the persons involved.
- II (6): Reports on crimes, suicides, and obscenity cases shall be carefully handled. The details or methods involved in such cases shall not be presented, either verbally or with still or moving pictures.
- II (7): Images of corpses shall be avoided.
- II (10): Names, descriptions, addresses or any other information enough to identify a juvenile suspect or delinquent shall not be presented on television.
- II (11): Corrections shall be made on errors in news reports and commentaries. If the error has damaged a person’s reputation, time shall be provided in approximately the same time period for the aggrieved party to present a defence or explanation.

5.15 The three Codes of Ethics adopted by the National Press Council of the Republic of China in Taiwan have set a very high standard in respect of the protection of privacy. It is by no means easy for the media as a whole to fully comply with them. Part 3 of this research paper will analyze the structure of the press council, the mechanism for the lodging and handling of complaints, and cases handled by the press council.

## **The Regulation of Media Intrusion in the United Kingdom**

### **6. General Situation**

6.1 The newspapers in the United Kingdom (“UK”) can be classified into two major categories<sup>15</sup>. The first one being the popular newspapers catering to the tastes of the general public, with the Sun, the Mirror, Daily Mail being the main representatives. The second category is the serious newspapers, which include the Times, the Independent, the Guardian and the Financial Times.

6.2 There are at present five major terrestrial analogue television channels broadcasting across the UK. These comprise two channels run by the British Broadcasting Corporation (“BBC”) and three commercial channels. Apart from terrestrial channels, there are also cable and digital channels operating in the UK. In 1998, the number of cable television licence holders totaled 130.

6.3 The BBC also provides radio services. It has five nation-wide channels and about 40 local radio stations. Besides, about 200 commercial radio stations are also in operation, providing local and national services.

### **7. Overall Regulatory Framework**

#### Government/Public Bodies

7.1 In July 1997, the Department of National Heritage was renamed Department for Culture, Media & Sports which is responsible for overall government policy towards broadcasting.

7.2 A Royal Charter and an agreement govern the constitution, finances and obligations of the BBC. The Corporation’s Board of Governors is appointed by the Queen on the advice of the government. The Governors appoint the Director-General who will be the Corporation’s chief executive officer. Since the BBC enjoys a certain degree of autonomy, it can be regarded as a self-regulatory body engaged in public broadcasting services.

7.3 The Independent Television Commission (“ITC”) is mainly responsible for licensing and regulating commercial, satellite and cable television services. The ITC regulates the various television services through the imposition of licence conditions, codes and guidelines. These codes cover programme content, advertising, sponsorship and technical standards.

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<sup>15</sup> Popular newspapers are generally known as tabloids while serious papers are known as broadsheets

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7.4 In April 1974, the United Kingdom set up the Broadcasting Standards Commission (“BSC”), a statutory body for standards and fairness in broadcasting. It is the only organization within the regulatory framework of UK broadcasting which covers all television and radio stations, including BBC and commercial broadcasters providing cable, satellite and digital services. BSC is mainly responsible for producing codes of practice relating to standards and fairness, considering and adjudicating on complaints and conducting research in this respect.

7.5 The licensing and regulatory of radio stations in the United Kingdom are within the remit of the Radio Authority whose main tasks are to plan frequencies, appoint licencees and regulate programming and advertising.

### Statutory Regulation

#### *The Press*

7.6 At present, there is no state control and censorship of the newspapers. Newspapers are subject to the law with regard to defamation, contempt of court and official secrets in the same way as any other citizen. Most legal proceedings against the press are related to libel. There is no law specifically to govern the contents of the newspapers in the United Kingdom. Regulation in this respect is achieved through codes of practice drawn up by the press industry itself.

7.7 In the UK, advertising in newspapers like advertising in other non-broadcasting media, is regulated by the Advertising Standards Authority (“ASA”) which is also responsible for investigating into complaint cases.

#### *Broadcasting Industry*

##### *British Broadcasting Corporation*

7.8 In 1996, a new Royal Charter came into effect, enabling the BBC to continue its operation until 2006. The Agreement between the BBC and the Secretary of State for Culture, Media and Sports formally establishes the BBC’s editorial independence in all matters of programme content. The new Agreement enhances the BBC’s Board of Governors to maintain programme standards and BBC’s accountability to the public.

7.9 It was stipulated in the Charter and the Agreement that the BBC should draw up a code giving guidance to secure that all programmes treat controversial subjects with due accuracy and impartiality. The Producers’ Guidelines of the BBC is very comprehensive.<sup>16</sup> The Guidelines covers impartiality, privacy and the gathering of information, handling of crime news, the reporting of political events and traumatic events.

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<sup>16</sup> <http://www.bbc.co.uk/info/editorial/prodgl/contents./htm>

### *Commercial Broadcasting*

7.10 The *Broadcasting Act 1990* provided a legal framework for the provision and regulation of independent television and radio services. The Independent Television Commission, Broadcasting Complaints Commission and Broadcasting Standards Council were established under this Act. With the development of digital technology, the transmission of information has been greatly accelerated and diversified. The UK enacted a new *Broadcasting Act in 1996* which amended and complemented the *Broadcasting Act 1990*. The *Broadcasting Act 1996* established a regulatory framework for the development of digital terrestrial broadcasting and liberalized the media ownership restrictions established in 1990. The *Broadcasting Act 1996* also established the Broadcasting Standards Commission by merging the Broadcasting Complaints Commission and the Broadcasting Standards Council.

7.11 The *Broadcasting Act 1996* stipulated that it is the duty of the ITC to formulate and implement the Code which serves to uphold fairness and impartiality to regulate programmes portraying violence, seeking donations and to other matters which the ITC considers requiring regulation. The codes are applicable to all licencees of terrestrial, cable and satellite services. The ITC will follow-up on the compliance of the codes and investigate into complaint cases. Under the statutory requirements, the ITC has the power to take punitive actions (include the levy of fines). Published in December 1998, the codes currently in force are very comprehensive. They cover the regulation of tastes of programmes, portrayal of violence, infringement of privacy and political events<sup>17</sup>.

7.12 Under the *Broadcasting Act 1996*, the BSC also has the duty to draw up a code for the avoidance of unjust or unfair treatment in programmes and unwarranted infringement of privacy or in connection with the obtaining of material included in such programmes. The latest Code of Guidance<sup>18</sup> currently in force was published in June 1998. The *Broadcasting Act* stipulates that each broadcasting or regulatory body should reflect the general effect of the BSC' code in drawing up their own<sup>19</sup>.

### *Media Ownership*

7.13 As with all UK industries, the media are governed by general competition law. The merging and transfer of ownership are governed by the *Fair Trading Act* and the *Competition Act*. The monopolization of media will pose a threat to the freedom of speech. If competition in the media market is too keen and media only aim at making a profit, such phenomenon will adversely affect ethical standards of media.

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<sup>17</sup> <http://www.itc.org.uk/>

<sup>18</sup> <http://www.bsc.orr.uk/codes/codefra.htm>

<sup>19</sup> Section 107(2) and Section 108(2) Of the Broadcasting Act 1996

7.14 The UK enacted laws in 1990 to provide for special requirements for ownership of broadcasting media. The UK Government took the view that the ownership should be widely spread and undue concentration of cross-media ownership should be avoided. A government review of ownership regulation was conducted in 1995 and followed by some amendments of legislation. Under the *Broadcasting Act 1996*, the restrictions on cross-media or single media ownership were relaxed.

### Self-regulatory Mechanism

7.15 The press self-regulatory mechanism in the UK was developed after World War II. In 1946, the UK Parliament passed a resolution to set up a royal commission which was responsible for investigating the operation and ownership of the UK press industry at that time. The Commission proposed to set up a press council comprising lay members who were not representing the press. In July 1953, the UK press industry set up the General Council of the Press. It was reported that the handling of grievances by the General Council of the Press helped to enhance the accuracy and objectivity of news reporting<sup>20</sup>.

7.16 Since some Members of the Parliament were concerned about the monopolistic tendency of press ownership, the UK Government set up a second royal commission in 1961 to look into the production and ownership of the press industry. Some of the recommendations put forward were related to the authority and composition of the General Council of the Press. As a result, the General Council of the Press was replaced by the Press Council in July 1963. The Press Council consisted of 25 members and five of them were lay members. The Press Council was also active in handling complaint cases.

7.17 The Younger Report<sup>21</sup> which examined the issue of privacy was published in 1972. It opposed to a legislation for the protection of privacy but proposed to improve the self-regulatory mechanism of the Press Council by, for example, appointing more lay members into the Council through an independent appointments commission. In late 1980's, many incidents of media intrusion aroused deep concern in the UK community.

7.18 The UK Government published the Calcutt Report on Privacy and Related Matters<sup>22</sup> in 1990. The Report argued that the Press Council was ineffective as an adjudicating body and there should be a new body to be seen as authoritative, independent and impartial. Therefore, the Report suggested that the Press Council be replaced by a Press Complaints Commission. The Report also suggested that a statutory tribunal with statutory powers and a statutory code of practice should be set up if the press industry failed to set up and support a complaints commission. The Report held the view that a tribunal had the advantages that its procedures would be simple and efficient and it would be accessible to those of limited means.

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<sup>20</sup> See Li Zhan (李瞻) (1982) *The Press Ethics (新聞道德)* Taipei: Three People Bookstore (三民書局) p. 82.

<sup>21</sup> *Report of the Committee on Privacy*, London: HMSO, Cmnd5012,1972

<sup>22</sup> *Report of the Committee on Privacy and Related Matters*, London: HMSO, Cmnd1102,1990

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7.19 In 1991, the press industry set up a Press Complaints Commission ("PCC"). In 1992, as promised by the UK Government that a review would be carried out 18 months after the setting up of the Press Complaints Commission, the UK Government invited Sir David Calcutt QC to conduct an assessment of the effectiveness of press self-regulation. The Calcutt Review Report queried the independence of the commission members and the code of practice. In the end, the Review recommended the setting up of a statutory press complaints tribunal which had the power to inquire, to adjudicate, to award compensation and etc<sup>23</sup>.

7.20 In October 1992, the National Heritage Committee under the UK Parliament decided to look into the problem of media intrusion and published a report in March 1993<sup>24</sup>. The Report held the view that there was an indication that the press industry retained some flexibility in developing the concept of voluntary regulation by supporting a majority of lay members on the PCC. The Report maintained that " a balance is needed between the right of free speech and the right to privacy. ....The Committee does not believe that this balance can or should be achieved by legislation which imprisons the press in and cage of legal restraint...." (Para. 8 of the Report) The Report finally opposed the establishment of a statutory press complaints tribunal but proposed to appoint a press complaint ombudsman with statutory power instead. The Report took the view that the press industry should continue to adopt a self-regulatory approach. On the other hand, the Report suggested to the PCC the following improvement measures:

- Requiring editors and journalists to observe the code of practice when signing the employment contracts;
- Accepting complaints lodged by the third party;
- Increasing the power of the Commission so that it can levy fines and claim for compensation;
- Setting up a telephone hot line.

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<sup>23</sup> David Calcutt (1993) *Review of Press Self-Regulation*, London: HMSO, Cm2135.

<sup>24</sup> National Heritage Committee, Fourth Report (1993) *Privacy and Media Intrusion*, Vol.1, London: HMSO, 294-1. The Law Reform Commission's Consultation Report did not mention this important report in Chapter 3 which discussed press self-regulation in the UK.

7.21 In response to the report published by the National Heritage Committee and the Calcutt Review Report, the UK Government published in 1995 the White Paper on Privacy and Media Intrusion<sup>25</sup>. The UK government did not consider that a persuasive case had been made out for statutory regulation of the press and regarded self-regulation as the most practical way forward. In the White Paper, the Government rejected the idea of setting up a statutory press complaints tribunal or press complaints ombudsman. The White Paper recommended the following improvements to PCC:

- the introduction of a lay element into membership of the Code Committee ;
- the introduction of a hotline;
- the adoption of performance targets, publication of fuller adjudication summaries and greater use of oral hearings;
- the setting up by the industry of a compensation fund;
- the introduction of in number of amendments to the code , in particular to place greater weight on the protection of individual privacy.

7.22 There is no similar type self-regulatory body for the broadcasting media in the UK.

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<sup>25</sup> *The Government's Response to the House of Commons National Select Committee - Privacy and Media Intrusion*, London; HMSO, Cm 2918, 1995.

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## **8. Regulation on Media Intrusion**

### Statutory Regulation

8.1 The common law does not recognise a general right of privacy. Individual privacy can only be protected through recognised torts, reasons for instituting litigation are usually trespass to land, private nuisance, defamation and breach of contract. For many years, there have been suggestions in the UK calling for the enactment of laws to protect privacy.

### *Human Rights Act 1998*

8.2 In 1998, the UK enacted the *Human Rights Act 1998* incorporating the *European Human Rights Convention* as part of the UK law. The Act, which will come into force in October 2000, acknowledges the protection of privacy and freedom of expression, which are Articles 8 and 10 of the Convention.

### *The European Human Rights Convention*

#### ARTICLE 8 : RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### ARTICLE 10: FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

8.3 When the Human Rights Bill was introduced into the UK Parliament for scrutiny, there were many discussions about the implications of the Bill for the press industry<sup>26</sup>. Relevant questions included: whether the PCC was to be considered a public authority under the Bill, and therefore subject to proceedings in the courts if, for example, it failed to uphold a convention right to privacy or freedom of expression. Should courts in the UK adjudicate on lawsuits against the press under the Human Rights Act in the future, the PCC's work in the promotion of self-regulation would be seriously affected.

8.4 In view of this, the UK Government amended the Bill. The *Human Rights Act 1998* contains a clause specifically for the protect of the freedom of expression. (Article 12). There are also provisions which ask the court to take into account public interest or existing relevant privacy codes when handling journalistic material in legal proceedings.

#### *Protection from Harassment Act 1997*

8.5 The Act may provide protection from the more intrusive behavior of journalists or photographers. It creates two offences: putting the victim in fear of violence and causing harassment or distress. The Act also enables victims to seek the civil remedies of injunction and damages.

#### *Broadcasting Act 1996*

8.6 There is specific statutory protection against invasions of privacy by the broadcasting media in the UK. Under Part V of the *Broadcasting Act 1996*, the BSC has the statutory responsibility to draw up a code relating to avoidance of unwarranted infringement of privacy in or in connection with the obtaining of material included in programmes. The BSC has also the duty to consider and adjudicate on complaints about unwarranted infringement of privacy. The sanction available to be BSC is the power to direct a broadcaster to publish a summary of the complaint and the BSC's findings on the complaint.

8.7 The Code on Fairness and Privacy issued by the BSC came into effect in June 1998 and the part dealing with the protection of privacy was comprehensive, which covered the use of hidden microphone and camera, doorstepping and obtaining interviews from those suffering a personal tragedy or under stress (the principal part of the Code is in Appendix V). Under Section 107 of the *Broadcasting Act 1996*, other broadcasting media or regulatory body (including the BBC) should have to reflect the BSC's code in drawing up their own.

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<sup>26</sup> See House of Commons Library (1998) *The Human Rights Bill : Privacy & the Press*, Research Paper 98/25

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### Self-regulation

8.8 As mentioned before, the UK does not have special mechanism for censoring the contents of the Press. Complaints in relation to intrusion of privacy by the press mainly handled by the PCC under a code of practice drawn up by the industry. In recent years, the controversy about the regulation of the press has been centred on the infringement of privacy by the press.

8.9 In 1997, in view of the accident which happened to Princess Diana, coupled with strong views in support of the regulation of press intrusion of privacy, the Press Complaints Committee decided to ask for a review the Code of Practice. The new Code of Practice (see Appendix VI) was approved in November 1997 and the sections relevant to privacy and public interest are extracted as follows:

3. Privacy
  - (i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence. A publication will be expected to justify intrusions into any individual's private life without consent.
  - (ii) The use of long lens photography to take pictures of people in private places without their consent is unacceptable. Note - Private places are public or private property where there is a reasonable expectation of privacy.

#### The public interest

There may be exceptions to clause 3 where they can be demonstrated to be in the public interest.

1. The public interest includes: (i) detecting or exposing crime or a serious misdemeanour; (ii) protecting public health and safety; and (iii) preventing the public from being misled by some statement or action of an individual or organisation.
2. In any case where the public interest is invoked, the PCC will require a full explanation by the editor demonstrating how the public interest was served.
3. In cases involving children, editors must demonstrate an exceptional public interest to over-ride the normally paramount interests of the child.

8.10 Other clauses in the Code such as clause 4 (harassment), clause 6 (children), clause 7 (children in sex cases), clause 8 (listening devices), clause (hospital), clause 10 (innocent relatives and friends) and clause 12 (victims of sexual assault) are also related to privacy.

## **The Regulation of Media Intrusion in the United States**

### **9. General Situation**

9.1 The United States ("US") has a flourishing newspaper industry. In 1998, the number of daily newspapers, including morning and evening newspapers, totaled 1489 and 39 of them had a circulation of more than 250 000 copies. The top five daily newspapers by circulation are the Wall Street Journal, USA Today, Los Angeles Times, the New York Times and the Washington Post.

9.2 As of August 1999, the numbers of radio and television stations licensed by the Federal Communications Commission ("FCC") totalled 12 000 and 1 600 respectively<sup>27</sup>.

### **10. Overall Regulatory Framework**

10.1 The First Amendment to the US Constitution stipulates that "Congress shall make no law ... abridging the freedom of speech, or of the press...". As a result, there is no specific regulatory framework on the press in the US. The principal target for media regulation is the broadcasting industry.

#### Independent Bodies

##### *The Federal Communications Commission*

10.2 The FCC is an independent US government agency, directly responsible to Congress. The FCC is mainly charged with regulating interstate and international communications by radio, television, satellite and cable. The FCC has five Commissioners appointed by the President and confirmed by the Senate. It is responsible for issuing licences, supervising frequency assignments. There are a number of bureaux under FCC for the execution of its duties, with the Mass Media Bureau responsible for all matters relating to the regulation of radio and television stations.

##### *The Federal Trade Commission*

10.3 The Federal Trade Commission is mainly responsible for protecting consumers against deceptive advertising and enforcing anti-trust laws. Therefore, it is a regulatory body in relation to the mass media.

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<sup>27</sup> <http://www.fcc.gov/mmb/asd/totals/bt990831.html>

### Statutory Regulation

10.4 Beginning from the sixteenth century, the English Authorities imposed strict restrictions on the publication industry through licensing, taxation and the invocation of seditious libel. After its foundation, the US had tried very hard to do away with pre-publication censorship, resulting in the First Amendment. This Amendment provides the legal basis for the regulation of the mass media in the US.

10.5 In view of the important role played by the news media in modern society, the legal profession in the United States has come up with the fourth estate theory.<sup>28</sup> The theory held that freedom of the press is another power in addition to the three official powers, which can be used to check on the Government and prevent it from abusing its power. The primary purpose of the constitutional guarantee of a free press is to maintain the independence of the press and prevent it from being controlled by the Government.

### *The Newspaper Industry*

10.6 In theory, press organizations are no different from other companies when it comes to general regulations such as taxes, antitrust law, labour law or civil rights law. In the United States, the publication of newspapers does not require registration with the US Government, nor is there any requirement for pre-publication censorship.

10.7 Under the Newspaper Preservation Act, when a community is served by two newspapers and one of them is in danger of going out of business, they may combine business operations under a joint operating agreement, a combination which would otherwise be illegal.

### *The Broadcasting Media*

10.8 Unlike the print media, the broadcasting media in the US has not been able to enjoy the same widespread protection offered by the First Amendment ever since its advent. Application to the Government for license is required to operate radio and television stations in the US. Today, such differential treatment of the print and broadcasting media are still in existence. The US Supreme Court once pointed out that "...of all forms of communication, it is broadcasting that has received the most limited First Amendment Protection."<sup>29</sup>

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<sup>28</sup> See Potter Stewart, "Or of the Press" reprinted in Eric Barendt, ed., (1993) *Media Law*, Aldershot: Dartmouth, pp. 631-7.

<sup>29</sup> FCC v Pacific Foundation, 438 U. S. 726 (1978).

10.9 The US created the FCC under the *Communications Act of 1934*. Organizations which plan to provide broadcasting services are required by law to apply for a license from the FCC. When determining whether to issue a license, the FCC has to determine if granting it would serve the public interest. The FCC will also consider the applicant's citizenship and conduct as well as the diversity of ownership, financial conditions, technical requirements and program arrangements. Ethnic minorities and women will receive preferential treatment.

10.10 Although the *Communications Act* prohibited the FCC from censoring broadcast matter, the FCC can still influence the contents of the programs over some aspects. These include (1) political broadcasting, (2) programs portraying indecency and violence (3) lotteries and lucky draws (4) allocation of prime time slots; and (5) arrangement of children programs.

10.11 The *Telecommunications Act of 1996* has made drastic amendments to the *Communication Act 1934*. The new Act is mainly to relax the restrictions on media ownership and license for television and radio stations. It also encourages competition among the media and tightens the control over television program portraying violence.

10.12 In 1984, the US Congress enacted the *Cable Communications Policy Act*, which provides for the regulation of cable television. It also sets clearly the regulatory jurisdictions of the FCC, state governments and local governments. In 1992, the US Congress passed the *Cable Television Consumer Protection and Competition Act* which regulates the fees of cable television. Those regulations were later abolished by the *Telecommunications Act 1996*. The types of regulation for the general broadcasting are applicable to cable television programs as well.

### Self-regulatory Mechanism

#### *News Councils*

10.13 Towards the end of the 1940's, the Social Responsibility Theory<sup>30</sup> (i.e. the press industry has a social responsibility) emerged in the US. By the end of the 1960's, news councils in some local areas were set up through sponsorship of private funds.

10.14 The National News Council ("NNC") was not established until 1973 and its establishment was due to the successful example set by the Press Council in the UK. At the initial stage, the NNC was mainly responsible for handling complaints lodged by the general public and organizations with regard to the media. The complaints were however targeted at national newspapers and electronic media only. The NNC also entertains complaints by the press against infringements of their liberties.

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<sup>30</sup> In *The Responsibility of the Mass Media*, Wibur Schramm pointed out that there are 4 theories about mass media (1) Totalitarianism (2) Liberalism (3) Communism (4) Social Responsibility Theory. See Chan K. H. (程交行) translated (1992) *The Responsibility of the Mass Media* (大眾傳媒的責任) Taipei: Taipei Floating Publishing Co. (台北遠流出版公司).

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10.15 The NNC ceased operation after 11 years of work<sup>31</sup>. A study pointed out that the reasons for its failure included the shortage of finances, narrow scope of regulation, lack of good leadership, lack of public support and etc<sup>32</sup>.

10.16 The study argued that the NNC did not receive adequate support from certain important national newspapers and broadcasting institutions at the initial stage of its operation. The publisher of the New York Times went as far as telling the staff members that the NNC could undermine the freedom of the press. At the beginning, the NNC limited the scope of its work handling complaints against some national newspapers and electronic media with good reputation instead of targeting the conduct of undesirable media organizations, thereby failing to establish itself in the community and secure support from the public.

10.17 The Minnesota News Council<sup>33</sup> is the news council which has the longest history of operation in the US. Founded in 1970, the Council was formerly known as the Minnesota Press Council. A more detailed analysis about the press council will be made in Part 3 of this research report.

#### *Ombudsman*

10.18 Another rather popular self-regulatory mechanism in the US is the appointment of press ombudsman by individual media organizations. In the 1960's, public resentment towards the media was growing. In 1967, the Washington Post became the first newspaper in the US to appoint an news ombudsman. Very few media organizations in the US have appointed their ombudsmen. There are only 30 odd full-time press ombudsmen<sup>34</sup> in the USA. The work of a news ombudsman normally includes the improvement of the quality of news reporting, acting as the bridge between the media and users as well as handling complaints against the media.

#### *Code of Ethics*

10.19 Almost all types of media in the US have drawn up their own codes of ethics and codes of practice. The more important ones include the Associated Press Managing Editors Code of Ethics, Society of Professional Journalists Code of Ethics, American Society of Newspaper Editors Statement of Principles, Code of Ethics of Radio-Television News Directors Association and Code of Ethics of National Press Photographers Association.

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<sup>31</sup> See the National News Council, *In the Public Interest Vol. I, II, III* for information about the NCC's work.

<sup>32</sup> See Patrick Brogan (1985) *Spiked: The Short Life and Death of the National News Council*, New York: Priority Press Publication

<sup>33</sup> For a comparison of the NCC and the Minnesota News Council, see Richard P. Cunningham (1994) "Why Did One News Council Fail & the Other Succeed" (<http://www5.inti.net/non/cunning3.html>)

<sup>34</sup> See Arthur C. Nauman (1994) "News Ombudsmanship: Its History and Rationale" (<http://www5.inti.net/ono/nauman2.html>)

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## 11. Regulation of Media Intrusion

### Statutory Regulation

11.1 The privacy laws of the US today can be traced to an article entitled “The Right of Privacy,” written by Louis Brandies and Samuel Warren in 1890. That article proposed that the court should recognize a right of privacy and people should be able to bring lawsuits against the press which intruded upon their privacy.

11.2 Different states have different definitions and scopes for privacy. Some states recognize privacy on the basis of the common law while others protect privacy through legislation<sup>35</sup>. In 1903, New York became the first state to recognize privacy by statute<sup>36</sup>.

11.3 In 1960, a law professor called William L. Proseer classified privacy into four torts which include: ( 1 ) Appropriation of Names and Picture ( 2 ) Placing an individual in a false light ( 3 ) Public disclose of embarrassing private facts ( 4 ) Intrusion upon physical seclusion. Many states have recognized these four types of torts but there are also quite a number of states which are not sure whether all the torts should be recognized.

**Table 1 - Classification of Privacy Torts**

	<b>Type of Interest Invaded</b>	<b>Nature of Defendant’s Invasion</b>
Appropriation	Right to control commercial use of personal information	Simply without consent
False Light	Right to be represented accurately before public	Highly offensive
Private Facts	Right to keep private information private	Highly offensive
Intrusion	Right to private, secluded moment	Highly offensive

Source : John D. Zelezny (1997 ) *Communication Law*, 2<sup>nd</sup> ed., U.S.: Wadsworth Publishing Company, p. 180.

<sup>35</sup> The Libel Defence Resource Centre, ed. (1999) *LDRC 50-State Survey 1999-2000, Media Privacy & Related Law*, N.Y.: Libel Defense Resource Centre.

<sup>36</sup> For information about privacy laws in other states in the US, refer to National Heritage Committee, Fourth Report (1993) *Privacy and Media Intrusion*, Vol.1, London: HMSO, 294-1, Annex I.

11.4 Furthermore, there are also laws to regulate the gathering of news and the collection of information. The Electronic Communication Privacy Act of 1986 prohibits the bugging of any conversation made over cable or terrestrial devices when people are in their privacy. The FCC also has a specific rule on recording of telephone conversation for the purpose of broadcast.

#### Self-regulation

11.5 Among the codes of ethics drawn up in the USA, some have included provisions to protect privacy. However, most of the codes are merely statements in principle. For example, it is stated in the Code of ethics of the Society of Professional Journalists that journalists should "Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify into anyone's privacy."

## A Comparison of the Mode of Regulation of Mass Media and the Regulation of Media Intrusion of Privacy

### 12. A Comparison of the Mode of Regulation of Mass Media

12.1 A comparison of the modes of regulation of mass media in the three selected jurisdictions is given in the following table.

**Table 2 - A Comparison of the Mode of Regulation of Mass Media**

Jurisdiction	Media	Major Legislation*		Major Self-regulatory Bodies		
		Contents	Legislation	Institution	Code of Ethics	Contents
Taiwan	Press	- censorship - quota - sales registration	Press Regulations concerning mainland China, Hong Kong and Macau	The National Press Council of the ROC	Code of Ethics for Chinese Journalists, Code of Ethics for the ROC Press, Code of Ethics for the ROC Television, Code of Ethics for the ROC Broadcasting	Newsgathering, Commentaries, Reader's Opinions, Photos, Advertisements, Programmes Orientation
	Broad-casting	- licensing - management of operation - management of programmes and advertisements - protection of rights	The Public Television Law, The Radio and Television Law, The Cable and Television Law, The Satellite Broadcasting Law			
UK	Press	press ownership cross-media ownership	The Fair Trading Act  The Broadcasting Act 1996	Press Complaints Commission	Code of Practice	Accuracy, Opportunity to reply, Privacy, Protection of Children, Bugging, Discrimination, Confidential sources, Conflict of Interests
	Broad-casting	- licensing - programme management - programme codes - media ownership	The Broadcasting Act 1996  The BBC's Royal Charter and Agreement			
US	Press	Ownership	The Newspaper Preservation Act	The Minnesota News Council  News Ombudsman in some media organizations		
	Broad-casting	- licensing - management of market	The Communication Act 1934  The Cable Communication Policy Act  The Telecommunication Act 1996			

\* Only includes legislation specifically targeting the mass media, excludes those with regard to national security, defamation, obscenity, contempt of court and official secrets.

### **13. A Comparison of Regulation of Media Intrusion**

13.1 A comparison of the regulation of media intrusion in these three selected jurisdictions is given in the following table.

**Table 3 - A Comparison of Regulation of Media Intrusion of Privacy**

Jurisdiction	Legal Protection		Self-regulation*	
	Contents	Basis	Main Contents	Basis
Taiwan	The freedom of residence and of change of residence, the freedom of privacy of correspondence, the right to human dignity (including the right to a name, reputation), the prevention of professionals from disclosing other people's secretive behaviours which have become known to them by virtue of their professions, and the protection of the identity of victim of sexual offence	the Constitution, the Civil Code, the Penal Code, the Criminal Litigation Law, the Law Governing the Disposition of Juvenile Cases, the Security Disciplinary Enforcement Law, the Prison Administration Law, the Medical Law, the Postal Law and the Prevention of Sexual Offence.	No person's privacy shall be violated unless it is justified by overriding public interest; news reporters covering victims at a hospital or at an accident site shall observe the regulations of the hospital; the identities of a juvenile suspect or delinquent and victims of sexual assaults shall not be reported; no pictures of a person's private life shall be published without permission unless it is justified by overriding public interest; reports on crimes, suicides and obscenity cases shall be handled carefully, the details or methods involved shall not be presented; images of corpses shall be avoided; the aggrieved party shall be given the chance to defend itself or to present its case.	「 Code of Ethics for the Republic of China Press 」 「 Code of Ethics for the Republic of China Radio Broadcasting 」 「 Code of Ethics for the Republic of China Television 」
	Third party has the right to request correction of broadcasting programme contents and the right to defend itself Civil and criminal liability arising from false reporting	The Radio and Television Law The Cable Television Law The Satellite Broadcasting Law		
UK	- trespass to land, private nuisance, defamation and breach of contract	Torts recognised in courts	Everyone is entitled to respect for his or her private and family life, home, health and correspondence.  The use of long lens photography to take pictures of people in private places without their consent is unacceptable  Protection of privacy from harassment, for children, for children in sex cases, innocent relatives and for victims of sexual assault.	Code of Practice of the Press Complaints Commission
	- Everyone has the right to respect for his private and family life, his home and his correspondence.	The Human Rights Act 1998		
	- protection from harassment	Protection from Harassment Act 1997		
	- avoidance of unwarranted infringement of privacy in or in connection with the obtaining of material included in programmes - complaints are considered and adjudicated by the Broadcasting Standards Commission	Broadcasting Act 1996		

Jurisdiction	Legal Protection		Self-regulation*	
	Contents	Basis	Main Contents	Basis
US	Appropriation False Light Private Facts Intrusion	Privacy torts	Merely statements in principle	Code of ethics of various professional groups
	Bugging	Electronic Communication Privacy Act of 1986		

\* matters relating to investigation and adjudication are in Table 4.

## **PART 3 - SELF-REGULATORY BODIES**

### **The National Press Council of the Republic of China in Taiwan**

#### **14. Historical Background**

14.1 The Government in Taiwan amended the Publication Law (出版法) for the fifth time in 1958 by incorporating “the revocation of registration” into part of the administrative sanctions, which was opposed by the press. Moreover, various measures adopted by the Government in Taiwan to restrict press freedom also angered the international community. The Press Council of Taipei (台北市報業新聞評議委員會) was set up in 1963 which was later responsible for drafting various codes of ethics. In 1974, the Press Council of Taipei was reorganized to become the National Press Council of the Republic of China (中華民國新聞評議會) which is now composed of the following eight news associations in Taiwan:

1. The News Editors Association of the Republic of China (中華民國新聞編輯人協會);
2. The News Agencies Association of the Republic of China (中華民國新聞通訊事業協會);
3. The National Association of Broadcasters, the Republic of China (中華民國廣播電視協會);
4. The Republic of China Television Association (中華民國電視學會);
5. Taiwan Province Association (台灣省報紙事業協會);
6. Taipei Press Guild (台北市報業公會);
7. Kaohsiung City Press Association (高雄市報紙業事業協會); and
8. Taipei Journalists Association (台北市新聞記者公會).

#### **15. Functions**

15.1 The main functions of the National Press Council are<sup>37</sup>:

1. To accept complaints about news reports, commentaries, radio and TV programmes and advertisements, and to carry out investigations and hearings before arriving at a decision; and.
2. To deliberate on cases involving any news report, commentary, programme and advertisement, and to conduct investigations and pass resolutions.
3. To conduct studies and symposiums for the elevation of journalistic ethical standards.

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<sup>37</sup> Chapter III of the Constitution of the National Press Council of the Republic of China

## **16. Composition**

16.1 The Council is composed of 11 members who are veteran journalists, journalism scholars and legal experts invited by its member associations with a tenure of three years. Its Chairman is elected from among its members. Council members cannot be engaged in government administration or journalistic work.

## **17. Funding**

17.1 The funding of the Council is shared among its member associations.

## **18. The Mechanism for Handling Complaints**

18.1 The Council has established its own procedures for handling complaints and charges (see appendix V). Upon receipt of a complaint or charge, the Secretariat of the Council will first examine the case before referring it to the Chairman for direction as to whether the case should be pursued. If the Council decides to pursue a complaint, the complainant will be required to provide arguments and evidence in written form in support of his complaint within 15 days. The investigation will be carried out by a committee consisting of one to three Council Members. A meeting of Council Members will decide whether hearings will be held after the completion of the investigation. Finally, a meeting of Council Members will adjudicate on the case, the outcome of which will be publicized within seven days. Both parties in the case will be given 15 days to apply for a review of the adjudication.

18.2 The Council takes “the Code of Ethics for Chinese Journalists”, “the Code of Ethics for the Republic of China Press”, “the Code of Ethics for the Republic of China Radio Broadcasting” and “the Code of Ethics for the Republic of China Television” as the basis for its deliberation and resolutions. These codes are extracted at Appendixes II, III and IV respectively.

18.3 The resolutions passed by the Council are just comments on journalistic ethics rather than sanctions. According to Chapter IV (5) of its Constitution, other media organizations have the obligation to report the resolutions passed and decisions made by the Council.

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## 19. Complaints

19.1 The News Deliberation 《新聞評議》, a monthly periodical published by the Council, records in detail the conclusions drawn by the Council on various complaints it has handled. The Council also published selected cases for evaluation<sup>38</sup>. The Council handles on average about 100 cases<sup>39</sup> during a tenure of office (three years), which mainly involve the publication and broadcasting of advertisements, the handling of news reports on criminal activities, the publication of pornographic pictures and disputes between media institutions<sup>40</sup>.

## 20. Comments on the Council

20.1 Having analyzed cases handled by the Council and its history, MA Ji-shen(馬驥伸), a scholar in Taiwan, was of the view that the representativeness and fairness of the Council should be recognized and it did play a role in promoting self-discipline of the media<sup>41</sup>.

20.2 However, the effectiveness of the Council has been questioned by a number of commentators. FANG Lan-sheng (方蘭生), a journalism scholar in Taiwan, pointed out that the Council's performance in the promotion of self-discipline had been less than satisfactory mainly because of the limitations of its powers and scope of work. On one hand, the fact that Council Members are from the press circle and it is funded by the press has made it difficult to strike a balance. On the other hand, the Council lacks specific power to impose sanctions<sup>42</sup>.

20.3 LIN Zhao-zhen (林照真), a senior correspondent for the China Times (中國時報), pointed out in an article under the heading of "A few blind spots for media watch organizations in Taiwan" that the Council is a non-governmental organization under the supervision of the government, which maintained a close relationship with the Kuomintang, and the true purpose for the Council was to enforce "censorship" under the guise of "deliberation"<sup>43</sup>.

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<sup>38</sup> The National Press Council of ROC, *Cases handled by The National Press Council of ROC, Vol. I and Vol. II* (中華民國新聞評議會案例第一輯及第二輯) published by the Council in 1983 and 1986 respectively.

<sup>39</sup> The Council handled 38 cases in 1992-93.

<sup>40</sup> For detailed analysis of cases in this respect, see Ma Ji-shen (馬驥伸) (1997) *The Ethics for the Press* (新聞倫理) Taipei: Sea Wave Publishing Co. (海嘯出版事有限公司), Chapter 3.

<sup>41</sup> *ibid.*, pp. 144-6.

<sup>42</sup> Fang Lan-sheng (方蘭生) (1994) *Freedom for the Press and Self-discipline of the Press* (新聞自由與新聞自律) Taipei: Morning Culture (允晨文化).

<sup>43</sup> Lin Zhao-zhen (林照真) "A few blind spots for media watch organizations in Taiwan" at <http://www.mediawatch.org.tw/longterm/read.asp?index=33>

## **The Press Complaints Commission in the United Kingdom**

### **21. Historical Background**

21.1 The establishment of the Press Complaints Commission (“PCC”) of the United Kingdom has been stated in the early part of this Report. The PCC was set up in 1991 to replace the former Press Council.

### **22. Functions**

22.1 The PCC is an independent( non-statutory )body which deals with complaints from members of the public about newspapers and magazines.

### **23. Composition**

23.1 The PCC is composed of 16 members - nine are lay members, including the Chairman, and seven are senior editors from across the newspaper industry. The Chairman of the PCC is appointed by the newspaper industry and other members are all appointed by an independent 5-member Appointments Commission. The chairman of the Appointments Commission is also the chairman of the PCC. One of the members of the Appointments Commission is the Chairman of the Press Standards Board of Finance (see 24.1), who is the only representative from the newspaper industry in Commission. The remaining 3 members are unconnected with the press and are nominated by the Chairman of the Appointments Commission.

### **24. Funding**

24.1 The funding of the PCC comes entirely from the newspaper publishing industry. It is collected by the Press Standards Board of Finance. Fees are set in line with circulation of the newspapers concerned.

24.2 The total expenditure of the PCC in 1998 was £1.24 million with the majority spent on staff costs. The expenditures for 1997 and 1998 are listed in the following table :

**Table 3 - The Expenditures of the PCC for 1997 and 1998**

	<b>1998</b>	<b>1997</b>
Staff costs	748,323	729,433
Accommodation costs	68,710	81,037
Travel and subsistence	35,641	64,796
Consultancy and professional fees	122,401	119,190
Depreciation	8,744	7,732
Other general office expenses	154,782	117,632
External affairs and promotion	106,371	68,116
<b>Total</b>	<b>£1,244,881</b>	<b>£1,188,206</b>

Source : PCC Annual Review 1998

## **25. Code of Practice**

25.1 The PCC is responsible for implementing the Code of Practice which was formulated in 1991 and by the newspaper industry. An Editors' Code of Practice Committee, made up of editors from across the newspaper and magazine industries to review the Code periodically. Although the Code is formulated by the newspaper industry, it has to be ratified by the Press Complaints Commission. In 1997, the Code has undergone many major changes which cover the area of privacy, intrusion, protection of children and newspaper accuracy.

## **26. Mechanism for Handling Complaints**

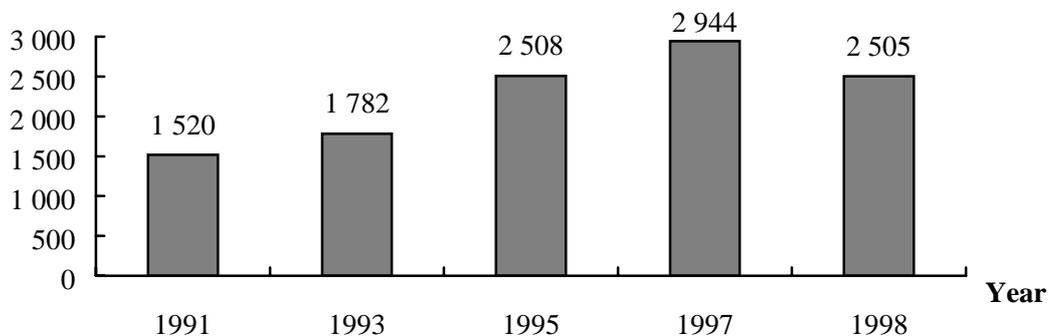
26.1 If the public consider that a publication has breached the Code of Practice, they can lodge their complaints by writing to the PCC. The PCC will try to resolve the complaints by conciliation initially. Should conciliation fails, the PCC will investigate into the complaints and adjudicate on them. The PCC will usually accept complaints lodged within one month. In 1996, the PCC formulated the Complainants' Charter (please refer to Appendix VIII) which stated the standards of service. The results of adjudication will be published in the periodicals of the PCC as well as in the newspaper being complained .

26.2 The PCC operates a Helpline service which dealt with nearly 2 400 calls in 1998.

## 27. Complaints

27.1 In 1998, the PCC received a total of 2 505 complaints, lower than the number in 1997, which stood at 2 944. The number of complaints received in recent years is as follows:

**Figure 1 - No. of Complaints Received by the PCC in Recent Years**



Source : Press Complaints Commission Annual Review 1998

27.2 According to the statistics of various annual reports of the PCC in recent years, Nearly 60% of the complaints were brought under Clause 1 (Accuracy) and Clause 2 (Opportunity to reply) of the Code of Practice. Just over one in eight complaints were raised under Clause 3 (Privacy) <sup>44</sup>.

27.3 Among the complaints received by the PCC, nearly 90% were resolved by conciliation. In 1997, the PCC launched investigations into 82 cases only and in 1998, the PCC adjudicated on only 86 complaints.

## 28. Comments on the Complaints Commission

28.1 Comments on the effectiveness of the PCC remain highly controversial in the UK, but the UK Government continues to let the press to exercise self-regulation.

<sup>44</sup> Annual Reports of the PCC (1996 to 1998)

28.2 It is found that the PCC is increasingly used by political figures, particularly members of Parliament.<sup>45</sup> In July this year, the PCC upheld a complaint lodged by the Prime Minister, Mr Blair, against the Mail on Sunday<sup>46</sup>. Mr Blair complained that a report about his daughter's acceptance by a school in the Mail On Sunday was misleading in breach of Clause 1 (Accuracy) of the Code of Practice, and intruded into his daughter's privacy in breach of Clause 6 (Children).

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<sup>45</sup> James Michael (1997) "Complaints Against the Media" in Eric M. Barendt, et. al., *The Yearbook of Media & Entertainment Law 1997/98*, Oxford: Oxford University Press, pp. 335-59 at pp. 355-6.

<sup>46</sup> Find the adjudication on <http://www.pcc.org.uk/adjud/default.htm>

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## **The Minnesota News Council in the United States**

### **29. Historical Background**

29.1 Founded in 1970, the Minnesota News Council (“the Council”) was formerly known as the Minnesota Press Council. The Council was first operated fully by volunteers. Later, a paid staff member was employed and the offices moved to the University of Minnesota. In 1979, the Press Council became the News Council.

### **30. Composition of the Council**

30.1 The Council has 25 volunteer members. Twelve are from the public (they have not worked in the media in the past seven years), twelve are from the media and the chairperson is always a state Supreme Court Justice.

### **31. Functions**

31.1 The Council’s mission is to promote fair, vigorous and trusted journalism. Their work include holding public hearings on complaints against the media, organizing public forums, production of newsletter and cable television program as well as other educational work. The Council has no power to issue sanctions on media. Their prime duties are to establish channels of communication between the public and the media. Their scope of work covers print and broadcasting media.

### **32. Funding**

32.1 The sources of funding of the Council are as follows: 20% of the funding of the Council comes from the news media, 35% from corporations, 35% from foundations and 10% from individuals. The Council does not take government subsidies. In 1997, the expenditure of the Councils was US\$226,331.

### **33. Mechanism for Handling Complaints**

33.1 The Council has formulated its own procedures for handling complaints (see Appendix XI). Complaints have to be lodged to the Council by writing within six months of the publication of the story. The complainants have to waive their rights to sue the media outlet. If the complaint is not settled between the complainant and the media within one month, the Council will hold a hearing. There are three stages in a hearing. In the first stage, each party is to make statement of their cases. In the second stage, the Council members will raise questions with each party and in the last stage, the Council members will discuss the case in an open meeting and adjudicate on it. The Council will prepare a written report on the hearing.

### **34. Complaints**

34.1 Between 1971 and mid of 1998, the Council has received more than 1 650 cases of complaints and 120 of them had to be determined after holding hearings<sup>47</sup>. Most determinations were related to newspapers.

### **35. Comments on the Council**

35.1 The Minnesota News Council is only a state organization. Although the Council has existed for nearly 30 years, its influence on self-regulation of the mass media for the USA is insignificant.

35.2 The many cases of false reporting by the media in the US in recent years as well as the wide coverage of sex scandals of political figures have again aroused the public concern about the ethical standards of the media. The people become more keen on setting up an organization such as the press council. The Minnesota News Council has also uploaded information on “How to Start a News Council” on its Homepage<sup>48</sup>.

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<sup>47</sup> Minnesota News Council Determinations, <http://www.mtn.org>

<sup>48</sup> Bob Shaw, “How to Start a News Council,” <http://www.mtn.org/newscouncil/General/shaw.html>

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### 36. A Comparison of Self-regulatory Bodies

36.1 A comparison of self-regulatory bodies in these three selected jurisdictions is given in the following table.

**Table 4 - A Comparison of Self-regulatory Bodies**

	<b>Functions</b>	<b>Composition</b>	<b>Funding</b>	<b>Investigation/ adjudication</b>
The National Press Council of the Republic of China	<p>To accept complaints against the media and conduct investigation and hearings before making the resolution;</p> <p>To hold discussions on and investigation into allegations of breach of the code of ethics concerning news reports, commentaries, radio and TV programmes and advertisements before making a resolution;</p> <p>To conduct studies and symposiums for the elevation of journalistic ethics.</p>	11 members who are veteran journalists, journalism scholars and legal experts invited by its member associations with a tenure of three years.	Shared among its 8 member associations.	<p>Complaints will be investigated and adjudicated by the Council</p> <p>The media have the obligation to publish or broadcast the adjudication</p> <p>Criticism of journalistic ethics rather than substantive sanctions</p>
The Press Complaints Commission of the United Kingdom	An independent body dealing with complaints from members of the public about newspapers and magazines.	16 members, 9 are lay people, including the Chairman, the remaining 7 are senior editors from across the newspaper industry. The members are all appointed by an independent Appointments Commission	The Funding comes entirely from the newspaper publishing industry and it is collected by the Press Standards Board of Finance. Fees are set in line with circulation of the newspapers concerned	<p>Complaints will be investigated and adjudicated by the Commission</p> <p>Publications criticized by the Commission must print the adjudication in full and with due prominence</p> <p>No power to impose sanctions</p>
The Minnesota News Council	Holding public hearings on complaints against the media, organizing public forums, production of newsletter and cable television program as well as other educational work.	Has 25 volunteer members. Twelve are from the public (they have not worked in the media in the past seven years), twelve are from the media and the chairperson is always a state Supreme Court Justice.	20% of the funding of the Council comes from the news media, 35% from corporations, 35% from foundations and 10% from individuals. The Council does not take government subsidies.	<p>The Council will hold hearings on complaints before reaching decision.</p> <p>Determinations will be regarded as the expression of public opinion.</p> <p>No power to impose sanctions.</p>

## **PART 4 - REFERENCE FOR HONG KONG**

### **37. Reference for Hong Kong**

37.1 This research has found that the three jurisdictions subject the print media and the broadcasting media to different modes of regulation. Generally speaking, regulation of the broadcasting media is stricter than that of the print media. Governments there normally adopt a set of content-neutral regulations<sup>49</sup> unless obscene, violent contents or contents compromising national security, perverting the course of justice and defaming other people's reputation are involved. The mass media are not the specific target of legislation protecting privacy in the United States.

37.2 The United Kingdom has a long history lasting several hundred years in striving for the freedom of publication. The First Amendment to the US Constitution guarantees freedom of publication. Taiwan lifted newspaper restrictions in 1988 and abolished the Publication Law recently. The trend is that governments do not interfere lightly with the contents published by the print media.

37.3 The independence of the news media easily leads to the abuse of press freedom. The print media are normally required to exercise self-regulation in this respect. The formation of press council is one of the ways to achieve this.

37.4 Press self-regulatory bodies in the United Kingdom have a long history and have become a model for other places to follow. The recent controversy about self-regulation of the press arose from a number of cases involving gross violation of privacy by the media. Although the idea of establishing a statutory press complaints tribunal was floated in the United Kingdom in the early 1990's, it has never been adopted by either the Parliament or the Government mainly because such a tribunal with statutory powers to investigate and impose penalties will fundamentally change the government's mode of regulation of the print media. The UK government did not consider that a persuasive case had been made out for statutory regulation of the press and regarded self-regulation as the most practical way forward.

37.5 The Press Council for the Protection of Privacy recommended by the Subcommittee on Privacy of the Law Reform Commission of Hong Kong is different from those press councils operating in other countries at present. The propose mode of operation makes it in essence a tribunal.

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<sup>49</sup> There are two types of regulation for mass media, one is the content regulation, another is the structural regulation

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37.6 The Consultation Paper repeatedly stressed that the mode of regulation of broadcasting media could be applicable to the regulation of the print media. For example, “Legal regulation of the media are not a novel idea. As in other jurisdictions, the broadcasting industry in Hong Kong is regulated by an independent authority.....The success of the Broadcasting Authority shows that press freedom and legal regulation are not irreconcilable.....”<sup>50</sup>

37.7 Some countries pursue a mode of regulation targeting the broadcasting media by issuing codes governing programme contents, which are then monitored by independent bodies (such as the Broadcasting Standards Commission in the UK). Such mode of regulation targeting the broadcasting media has its special and historical reasons, such as the scarcity of outlets for broadcasting, the profound influence of audio and visual messages carried by broadcasting media on the public and the need to protect minors.<sup>51</sup> Nevertheless, the application of a mode of regulation for the broadcasting media to the press amounts to prior restrictions being imposed by a third party on the freedom of the press regardless of whether the relevant code of practice is strict or otherwise. The three jurisdictions covered in this research have not been found to have applied regulatory mode targeting broadcasting media to regulate the press. Such application represents a significant departure from existing modes of regulation and policies towards the print media.

37.8 Moreover, the Press Council as proposed in the Consultation Paper will have statutory power to launch investigations and take punitive actions and this will inevitably touch upon Article 27 of the Basic Law, which guarantees, among other things, the freedom of the press. The Consultation Paper did not discuss in detail in this respect.

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<sup>50</sup> See Consultation Paper on the Regulation of Media Intrusion by the Subcommittee on Privacy under the Law Reform Commission of Hong Kong, P 131

<sup>51</sup> Academics begin to rethink these justifications for regulating broadcast media, see Eric Barendt., (1993) *Media Law*, Aldershot: Dartmouth, Part II: Why Regulate Broadcasting?

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## Appendix I

### **Code of Ethics Issued by the Association of Taiwanese Journalists**

1. A journalist shall resist pressure to apply censorship from his subject or within the medium body for the purpose of distorting news contents.
2. A journalist shall not promote discrimination against any person on grounds of race, religious belief, gender, sexual preference, physical or mental disability in news reporting.
3. A journalist shall not distort or conceal facts by the use of certain techniques. Nor shall he adopt one-sided, sensational, exaggerating, ingratiating manner and other unbalanced means to present news information or commentary.
4. A journalist shall reject bribe or intimidation from his subject.
5. A journalist shall not use his position for personal gain or to threaten other people.
6. A journalist shall not take up another job which conflicts with his profession, or engage in such fields, and shall avoid assignments which are connected with his own interests.
7. A journalist shall respect the privacy of the subject of the news unless public interest is involved; even if public interest is involved, the journalist shall avoid disturbing a subject of news who is stricken with grief.
8. A journalist shall use fair and honest means to obtain news. The use of secret means can be justified only by overriding public interest.
9. A journalist shall not join any political party or take up public office, nor shall he take part in election campaigns. He shall quit his job if he decides to seek election for public office .
10. A journalist shall reject news awards or financial assistance offered by the Government or political parties.
11. A journalist shall make every effort to verify the news.
12. A journalist shall protect confidential source of news.

## Appendix II

### Code of Ethics for the Republic of China Press in Taiwan

#### I. General Rules

1. This code is written in accord with the basic principles of the Code of Ethics for Chinese Journalists.
2. All journalists shall recognize the professional features of journalism and put the public interest before any partisan or private interest.
3. No matter printed in a newspaper shall violate decency, endanger social order or damage private interests.
4. News gathering shall be undertaken in the spirit of justice and fairness, without the journalist getting personally involved in any news event. News reports shall also be written with accuracy, objectivity, and balance.
5. The press should show respect for the court, and avoid interfering with the independence of any trial or verdict.
6. A newspaper should take the initiative to correct any error with a clear and definitive explanation.
7. The sources of all quotations and reprinted materials should be identified.

#### II. News Gathering

1. News gathering shall be conducted in a proper way, without intimidation, coaxing or bribery.
2. Any gift, bribe or improper treatment from a news source shall be resisted.
3. News reporters covering victims at a hospital or at an accident site shall observe the regulations of the hospital or obtain the permission of the persons involved. Reporters shall not interrupt treatment or emergency measures, and photographs shall not be taken against the wishes of the hospital or the persons involved.
4. Reporters shall maintain order when covering commemoration ceremonies, weddings, funerals, meetings and assemblies.

#### III. News Reporting

1. News shall be reported according to the principle of decency. It shall not be exaggerated, flippant, distorted, veiled, subjective, premature, or written on speculation or conjecture.
2. Except in cases where secrecy is necessary to protect an individual, all news reports shall indicate their sources.
3. Unless it effects the public interest, no news shall be reported that invades a person's privacy.

4. Unless first investigated and proved true and connected with the public interest, no news shall be reported that charges, exposes or condemns a person or an organization of any wrongdoing. When such news is reported it shall be based on the principles of balance and accuracy.
5. News reporters shall present balanced reports of controversial events by offering different arguments or points of view.
6. If a news report has stained a person's reputation, the newspaper shall provide space in the same location for the aggrieved party to defend itself or to present its case.
7. Any agreement made to withhold or postpone the publication of news shall be observed.
8. Headlines shall not exaggerate or distort the contents of a news story.
9. Reports of polls shall be made according to the following rules:
  - (1) The source and purpose of the poll, and the samples and sampling error shall be fully explained.
  - (2) The results of the poll shall be presented objectively.
  - (3) Polls and predictions of elections shall be undertaken fairly and without any special object or purpose.
10. No report on or analysis of stocks, real estate or other investments shall be distorted for private interest, and explicit prediction on speculative investments shall be avoided.
11. World news shall be presented with balance and reported with goodwill in order to promote cultural interflow and international understanding.

#### **IV. Crime News**

1. The covering of criminal cases shall not interfere with criminal investigations.
2. All defendants shall be considered innocent until found guilty by court verdict and their dignity shall be respected.
3. Reports on the details and methods of criminal acts, sex crimes and suicide cases shall be avoided.
4. Names, addresses or any other information enough to identify a juvenile suspect or delinquent shall not be published.
5. Rapes shall not be reported unless they represent a danger to public safety or involve an aggravated crime. Names, addresses or any other information enough to identify the victim shall not be kept from the public.
6. In kidnapping cases, the safety of the victim is of primary concern. No news shall be reported before the victim is free from danger.

## **V. News Commentaries**

1. To avoid confusion between opinion and fact, a strict distinction shall be drawn between news commentaries and news reports.
2. News commentators shall not express personal opinions or criticism based on unsubstantiated news.
3. News commentaries shall strive to be fair and just and avoid prejudice and arbitrariness.
4. No commentary on a person's private life shall be made if it has nothing to do with the public interest.
5. No commentaries shall be published on cases under investigation or trial.

## **VI. Readers' Opinions**

1. Newspapers shall public letters from readers with definite identities, making the paper a public forum for different groups and individuals.
2. Newspapers shall not advocate any argument in the guise of a reader's letter.
3. Newspapers shall publish letters without spotlighting a certain opinion in a special arrangement or design.

## **VII. News Photos**

1. No forged or doctored pictures shall be published.
2. Picture captions shall not include groundless implications or suggestive remarks.
3. No frightening, pornographic or obscene pictures shall be published.
4. No pictures of a person's private life shall be published without the permission of the person involved.
5. No pictures of juvenile suspects, juvenile delinquents, rape victims or secret witnesses shall be published.

## **VIII. Advertisements**

1. Newspaper advertisements shall be factual and reliable.
2. Advertisements and news shall be clearly defined. Advertisements cannot be in the form of a news report, recommendation of a new product, official record of a meeting, testimonial or reader's letter.
3. Newspapers shall refuse to publish advertisements for quack medicines or illegal doctors, exaggerated advertisements claiming guaranteed cures and advertisements that could endanger the public health.
4. No advertisement shall violate proper manners, disturb family life, contradict science, advocate superstition or disrupt social order.
5. Newspapers shall be responsible for examining and censoring classified advertisements. Applications for classified ads that do not include complete documents or definite contents shall be refused publication.

## **IX. Supplementary**

The National Press Council of the Republic of China shall undertake to resolve any question concerning this code.

## Appendix III

### **Code of Ethics for the Republic of China Radio Broadcasting in Taiwan**

#### **I. General Rules**

1. This code is written in accord with the basic principles of the Code of Ethics for Chinese Journalists.
2. Radio broadcasters shall recognize the professional features of journalism and put the public interest before any partisan or private interest.
3. Radio programmes shall be designed according to socially accepted moral standards and good taste.
4. Radio programmes shall avoid discrimination on the basis of race, religion, locality, gender and profession. They shall avoid talk involving obscenity, speculation or indecency.
5. Radio programmes involving law, medicine and technology shall be presented carefully and accurately.
6. Programmes and advertisements shall be clearly distinguished and programme announcers shall not broadcast commercials on their programmes in order to avoid confusion.
7. Radio announcers shall aim for decency and good taste.

#### **II. Newscasting**

1. News gathering shall be undertaken with fairness and justice, and radio journalists shall avoid personal involvement in news events. Newscasts shall aim at accuracy, objectivity and balance. Unsubstantiated news shall not be broadcast.
2. News gathering and reporting shall be undertaken without damaging private interests when these are not connected with the public interest.
3. News commentaries and news broadcasts shall be clearly distinguished, aim at fairness and justice and avoid bias and arbitrariness.
4. No commentaries shall be made on cases under investigation or trial.
5. Radio stations shall be held responsible for examining news and other information provided by the audience.
6. Reports on polls shall observe the following rules:
  - (1) The source and the purpose of the poll, and the samples and sampling error shall be fully explained.
  - (2) The results of the poll shall be presented objectively.
  - (3) Polls and predictions of elections shall be undertaken fairly and without any special object or purpose.

7. No report on or analysis of stocks, real estate or other investments shall be distorted for private interest, and explicit predictions on speculative investments shall be avoided.
8. World news shall be presented with balance and reported with goodwill in order to promote cultural interflow and international understanding.

### **III. Educational and Cultural Programmes**

1. Educational and cultural programmes shall emphasize the introduction of new knowledge and the building of personal character.
2. Scholars or experts shall be invited to design and supervise educational and cultural programmes.
3. Educational programmes for children shall emphasize the growth of their intellect and cultivation of good habits in order to promote healthy physical and mental development.

### **IV. Entertainment Programmes**

1. Entertainment Programmes shall embody the spirit of education and not degenerate into vulgarity.
2. Song broadcasts shall meet socially accepted moral standards.
3. Radio plays shall emphasize a sense of humanity, and shall not include depictions of abnormal mentality or obscene, violent or decadent behavior.
4. Time shall be provided for broadcasting Peking opera, drum-songs, and other traditional performances.

### **V. Public-service Programmes**

1. In times of emergency, major public events, accidents, or efforts to find missing persons, radio stations shall offer prompt service in communicating with and serving the public.
2. Radio stations shall actively help the public to resolve their problems and to understand the laws and regulations of the government.
3. Experts shall be invited to conduct, design or supervise programmes related to legal, medical and health issues.
4. Commercials shall not be broadcast during public-service programmes.

## **VI. Advertisements**

1. All commercials shall be factual. Radio stations shall investigate any doubts that arise regarding the information presented in advertisements, and exaggerated commercials shall be rejected.
2. The wording of commercial shall aim for good taste and shall not be presented in a sharp or screaming voice.
3. Exaggerated medical commercials such as those that guarantee cures shall be rejected, and no commercials shall be broadcast in the form of calls or letters from the audience.
4. Radio commercials shall not involve pornography, superstition or gambling.

## **VII. Supplementary**

The National Press Council of the Republic of China shall undertake to resolve any questions concerning this code.

## **Appendix IV**

### **Code of Ethics for the Republic of China Television in Taiwan**

#### **I. General Rules**

1. This code is written in accord with the basic principles of the Code of Ethics for Chinese Journalists.
2. Television workers shall recognize the professional features of journalism and put the public interest before any private or partisan interest.
3. Television programmes shall be designed according to socially accepted moral standards and good taste.
4. Television programmes shall avoid discrimination on the basis of race, religion, locality, gender and profession, and they shall avoid violence, horror, pornography and obscenity.
5. Programmes involving law, medicine and technology shall be presented carefully and accurately.
6. There shall be a clear-cut distinction between programmes and advertisements. No propaganda shall be presented on behalf of a particular individual or group.

#### **II. News Programmes**

1. News programmes shall aim at fairness and justice, and television journalists shall avoid personal involvement in any news events. Newscasts shall also aim for accuracy, objectivity and balanced reporting. Unsubstantiated news shall not be reported.
2. The shooting and editing of news footage shall not be done so as to distort facts or otherwise mislead viewers.
3. With the exception of background information, news information coming from the station's files shall be identified with the word "file" or the original date of presentation.
4. Shooting of news programme footage shall be undertaken without damaging private interests when these are not connected with the public interest.
5. News reports on victims at a hospital or at the scene of an accident shall be made according to the regulations of the hospital or with the permission of the victim. The gathering of such news shall not impede treatment or emergency measures. Television footage shall not be shot against the wishes of the hospital or the persons involved.
6. Reports on crimes, suicides, and obscenity cases shall be carefully handled. The details or methods involved in such cases shall not be presented, either verbally or with still or moving pictures.
7. Images of corpses shall be avoided.
8. No commentaries shall be made on cases under investigation or trial.

9. All criminal suspects shall be considered innocent until found guilty by court verdict, and the dignity of all suspects shall be respected in the process of gathering news.
10. Names, descriptions, addresses or any other information enough to identify a juvenile suspect or delinquent shall not be presented on television.
11. Corrections shall be made on errors in news reports and commentaries. If the error has damaged a person's reputation, time shall be provided in approximately the same time period for the aggrieved party to present a defence or explanation.
12. News commentaries shall be strictly distinguished from news reports. Reports cannot be mixed with commentaries lest confusion between opinion and fact arise.
13. Reports of polls shall observe the following rules
  - (1) The source and purpose of the poll, and the samples and sampling error shall be fully explained.
  - (2) Results of the poll shall be presented objectively.
  - (3) Polls and predictions of elections, shall be undertaken fairly and without any special object or purpose.
14. No report on or analysis of stocks, real estate or other investments shall be distorted for private interest, and explicit predictions on speculative investments shall be avoided.
15. World news shall be presented with balance and reported with goodwill in order to promote cultural interflow and international understanding.

### **III. Educational and Cultural Programmes**

1. Scholars or experts shall be invited to design and direct educational and cultural programmes.
2. Educational programmes for children shall emphasize the growth of their intellect and cultivation of good habits in order to promote healthy physical and mental development.
3. Educational programmes for teenagers shall stress the cultivation of a correct way of life and help establish a healthy mental attitude.
4. Educational programmes for women and families shall pay attention to practical information and avoid becoming tools of advertising.

### **IV. Entertainment Programmes**

1. Entertainment Programmes shall embody the spirit of education and not advocate superstition.
2. Variety shows shall not cater to vulgar tastes. No conversation or action with insinuations of pornography or obscenity are allowed.
3. Limits shall be imposed on the cost of prizes given to winners in quiz or contest programmes so as to prevent participants from joining such programmes merely to make money.

4. Television dramas shall avoid meticulous exhibition of atrocities, drug abuse, incest and sex crimes. If the plot demands any of these, the depiction shall be dealt with lightly.

## **V. Public-service Programmes**

1. National celebrations or celebrations for special events shall be broadcast live.
2. Health and medical programmes shall be designed and directed by experts. Nonprofessionals shall not be passed off as professionals on the screen.
3. Commercials shall not be broadcast during public-service programmes.

## **VI. Advertisements**

1. All commercials shall be factual. TV stations shall investigate any doubts that rise regarding the information presented in advertisements, and exaggerated commercials shall be rejected.
2. The voice, wording and images of a commercial shall aim at good taste and avoid vulgarity.
3. Pornographic, obscene or indecent images shall be prohibited in commercials.
4. Medical commercials shall not contain obviously exaggerated phrases such as those that guarantee a cure.
5. Commercials that could harm the psychological health of children shall not be allowed.
6. Commercials for funeral services or graveyards shall not be allowed.
7. Commercials involving superstition or gambling shall be prohibited.

## **VII. Supplementary**

The National Press Council of the Republic of China shall undertake to resolve any questions concerning this code.

## Appendix V

### **Procedures for Handling Complaints and Charges Submitted to the National Press Council of the Republic of China in Taiwan**

1. With the exception of cases involving evident and serious damage to public order, decency or public interest and investigated by the Council on its own initiative, all cases concerning news reports, commentaries, radio or television programs, or advertisements shall be handled in accordance with these procedures.
2. The direct victims in the a fore-mentioned cases may file complaints with the Council. In the case of acts by the mass media that are perceived to damage public order, decency or public interest, any individual or civic body may make an appeal to the Council. All complaints and charges shall be submitted with a concise statement signed and sealed by anyone concerned together with a copy of the person's ROC identification card or official letter of identification. These items shall be submitted to the Council within one hundred and eighty days after the publication or broadcast of the relevant news report, commentary, radio or television program, or advertisement. The Council will not accept cases that are beyond this time frame.
3. In addition to members of the eight mass media associations, these procedures shall apply to all other mass media organizations that publish or broadcast news reports, commentaries, radio or TV programs, or advertisements. The Council will make public all resolutions and proposals regarding these procedures after they are decided by a meeting of the Council members.
4. After receipt of a complaint or charge, the secretariat will first determine whether the complaint or charge meets the procedure requirements, and then submit it to the chairman for a decision. If the chairman cannot reach a decision, the case shall be submitted to the Council for discussion.

If a case does not meet the procedure requirements, the secretariat shall inform the complainant or accuser for rectification. No such case shall be accepted without corrections being made to meet the requirements.

5. After it accepts a complaint or charge, the Council shall inform the complainant or accuser as well as the accused mass media in a formal letter. This letter shall include a statement detailing the complaint or charge and the related documents. The required contents of this letter may be modified in order to protect the identity of the complainant, if necessary.

The persons involved may submit in written form a defense or supplementary statement or reasons for the charge and evidence within fifteen days after being informed that the Council has accepted the case.

6. After it accepts a case, the Council shall designate one to three of its members to conduct an investigation. The withdrawal of any complaint or charge shall be done by formal letter. If a case has been decided at a Council meeting, a withdrawal will not be accepted.
7. After its investigation, the Council shall meet to decide whether to hold a public hearing. The members assigned to conduct the investigation shall draft a verdict and present it at a Council meeting for a decision.
8. After a resolution is made on a complaint or charge, the Council shall make public its verdict. The secretariat shall have the verdict printed and distributed within seven days.
9. The involved mass medium can apply for reconsideration within fifteen days after receipt of the verdict. If a reconsideration case is accepted, two more members shall be added to the original investigation team. The final decision shall be made at a Council meeting. The relevant news script, reply letter, and decision shall be made public.
10. After accepting a reconsideration case, the Council shall inform all those involved by formal letter. The complainant or accuser shall be presented with a statement of application for reconsideration and related documents, except in cases that require the Council to protect the identity of the person submitting the reconsideration. The persons involved shall have fifteen days after being informed to submit in written form a defense or supplementary reasons for reconsideration and related evidence.
11. An application for reconsideration of a complaint, charge, or judgment initiated by the Council can be made only once, unless approved by the investigation team of the original reconsideration case.
12. The Council shall decide at a meeting whether to comment on a complaint or charge that is being considered by the court.

## Appendix VI

### **Code on Fairness and Privacy Issued by the Broadcasting Standards Commission in the United Kingdom (extract)**

#### **Privacy**

##### **General**

1. The line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, the Commission will therefore address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted?

An infringement of privacy has to be justified by an overriding public interest in disclosure of the information. This would include revealing or detecting crime or disreputable behaviour, protecting public health or safety, exposing misleading claims made by individuals or organisations, or disclosing significant incompetence in public office. Moreover, the means of obtaining the information must be proportionate to the matter under investigation.

2. Privacy can be infringed during the obtaining of material for a programme, even if none of it is broadcast, as well as in the way in which material is used within the programme.

3. For much of the time, the private lives of most people are of no legitimate public interests. It is important that when, for a short time, people are caught up, however involuntarily, in events which have a place in the news, their situation is not abused or exploited either at the time or in later programmes which revisit those events. When broadcasters are covering events in public places, they should ensure that the words spoken or images shown are sufficiently in the public domain to justify their broadcast without the consent of the individuals concerned. When filming or recording in institutions, organisations or agencies where permission has been given by the relevant authority or management, broadcasters are under no obligation to seek the individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public. However, in clearly sensitive situations in places such as hospitals or prisons or police stations, individual consent should normally be obtained unless their identity has been concealed. Broadcasters should take similar care with material recorded by CCTV cameras to ensure identifiable individuals are treated fairly. Any exceptions to the requirement of individual consent would have to be justified by an overriding public interest.

4. People in the public eye, either through the position they hold or the publicity they attract, are in a special position. However, not all matters which interest the public are in the public interest. Even when personal matters become the proper subject of enquiry, people in the public eye or their immediate family or friends do not forfeit the right to privacy, though there may be occasions where private behaviour raises broader public issues either through the nature of the behaviour itself or by the consequences of its becoming widely known. But any information broadcast should be significant as well as true. The location of a person's home or family should not normally be revealed unless strictly relevant to the behaviour under investigation.

## Appendix VII

### **Code of Practice Ratified by the Press Complaints Commission in the United Kingdom**

#### **Introduction**

All members of the press have a duty to maintain the highest professional and ethical standards. This code sets the benchmarks for those standards. It both protects the rights of the individual and upholds the public's right to know.

The code is the cornerstone of the self-regulatory system to which the industry has made a binding commitment. Editors and publishers must ensure that the code is observed rigorously not only by their staff but also by anyone who contributes to their publications.

It is essential to the workings of an agreed code that it be honoured not only to the letter but in the full spirit. The code should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it prevents publication in the public interest.

It is the responsibility of editors to co-operate with the PCC as swiftly as possible in the resolution of complaints.

Any publication which is criticised by the PCC under one of the following clauses must print the adjudication which follows in full and with due prominence.

1. Accuracy
  - (i) Newspapers and periodicals should take care not to publish inaccurate, misleading or distorted material including pictures.
  - (ii) Whenever it is recognised that a significant inaccuracy, misleading statement or distorted report has been published, it should be corrected promptly and with due prominence.
  - (iii) An apology must be published whenever appropriate.
  - (iv) Newspapers, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.
  - (v) A newspaper or periodical must report fairly and accurately the outcome of an action for defamation to which it has been a party.
2. Opportunity to Reply

A fair opportunity for reply to inaccuracies must be given to individuals or organisations when reasonably called for.

3. Privacy

- (i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence. A publication will be expected to justify intrusions into any individual's private life without consent.
- (ii) The use of long lens photography to take pictures of people in private places without their consent is unacceptable. Note - Private places are public or private properly where there is a reasonable expectation of privacy.

4. Harassment

- (i) Journalists and photographers must neither obtain nor seek to obtain information or pictures through intimidation, harassment or persistent pursuit.
- (ii) They must not photograph individuals in private places (as defined by the note to clause 3) without their consent; must not persist in telephoning, questioning, pursuing or photographing individuals after having been asked to desist; must not remain on their property after having been asked to leave and must not follow them.
- (iii) Editors must ensure that those working for them comply with these requirements and must not publish material from other sources which does not meet these requirements.

5. Intrusion into Grief or Shock

In cases involving personal grief or shock, enquiries should be carried out and approaches made with sympathy and discretion. Publication must be handled sensitively at such times but this should not be interpreted as restricting the right to report judicial proceedings.

6. Children

- (i) Young people should be free to complete their time at school without unnecessary intrusion.
- (ii) Journalists must not interview or photograph a child under the age of 16 on subjects involving the welfare of the child or any other child in the absence of or without the consent of a parent or other adult who is responsible for the children.
- (iii) Pupils must not be approached or photographed while at school without the permission of the school authorities.
- (iv) There must be no payment to minors for material involving the welfare of children nor payments to parents or guardians for material about their children or wards unless it is demonstrably in the child's interest.
- (v) Where material about the private life of a child is published, there must be justification for publication other than the fame, notoriety or position of his or her parents or guardian.

7. Children in Sex Cases

- (a) The press must not, even where the law does not prohibit it, identify children under the age of 16 who are involved in cases concerning sexual offences, whether as victims or as witnesses.
- (b) In any press report of a case involving a sexual offence against a child -
  - (i) The child must not be identified.
  - (ii) The adult may be identified.
  - (iii) The word “incest” must not be used where a child victim might be identified.
  - (iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

8. Listening devices

Journalists must not obtain or publish material obtained by using clandestine listening devices or by intercepting private telephone conversations.

9. Hospitals

- (i) Journalists or photographers making enquiries at hospitals or similar institutions should identify themselves to a responsible executive and obtain permission before entering non-public areas.
- (ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.

10. Innocent Relatives and Friends

The press must avoid identifying relatives or friends of persons convicted or accused of crime without their consent.

11. Misrepresentation

- (i) Journalists must not generally obtain or seek to obtain information or pictures through misrepresentation or subterfuge.
- (ii) Documents or photographs should be removed only with the consent of the owner.
- (iii) Subterfuge can be justified only in the public interest and only when material cannot be obtained by any other means.

12. Victims of sexual assault

The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and, by law, they are free to do so.

13. Discrimination

- (i) The press must avoid prejudicial or pejorative reference to a person's race, colour, religion, sex or sexual orientation or to any physical or mental illness or disability.
- (ii) It must avoid publishing details of a person's race, colour, religion, sexual orientation, physical or mental illness or disability unless these are directly relevant to the story.

14. Financial Journalism

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15. Confidential Sources

Journalists have a moral obligation to protect confidential sources of information.

16. Payment for Articles

- (i) Payment or offers of payment for stories or information must not be made directly or through agents to witnesses or potential witnesses in current criminal proceedings except where the material concerned ought to be published in the public interest and there is an overriding need to make or promise to make a payment for this to be done. Journalists must take every possible step to ensure that no financial dealings have influence on the evidence that those witnesses may give.

(An editor authorising such a payment must be prepared to demonstrate that there is a legitimate public interest at stake involving matters that the public has a right to know...)

- (ii) Payment or offers of payment for stories, pictures or information, must not be made directly or through agents to convicted or confessed criminals or to their associates - who may include family, friends and colleagues - except where the material concerned ought to be published in the public interest and payment is necessary for this to be done.

The public interest

There may be exceptions to [clauses 3, 4, 6, 8, 10, 11 and 16] where they can be demonstrated to be in the public interest.

- 1. The public interest includes: (i) detecting or exposing crime or a serious misdemeanour; (ii) protecting public health and safety; and (iii) preventing the public from being misled by some statement or action of an individual or organisation.
- 2. In any case where the public interest is invoked, the PCC will require a full explanation by the editor demonstrating how the public interest was served.
- 3. In cases involving children, editors must demonstrate an exceptional public interest to override the normally paramount interest of the child.

## **Appendix VIII**

### **Complainants' Charter Issued by the Press Complaints Commission in the United Kingdom**

#### **Complainants' Charter**

#### **12 Key Commitments to the Public**

##### **Standards of Service : Responding Quickly to your Enquiries**

1. We aim to answer your telephone call - either on our main switchboard or on our Helpline (0171 353 3732) - within four rings during business hours.
2. During work hours, you will be able to receive specific advice about our procedures by calling our Helpline. If you ring us about a matter is outside our remit, we will tell you so and give you information on the appropriate regulatory body to talk to. We will also be able to give you information about the relevant publication, so that you can be in touch with them directly.
3. If you have a general question about the work or the role of the PCC, we have our own Information Officers, who will deal swiftly with your written or verbal inquiries, or a request for further information.

##### **Standards of Service : Dealing Thoroughly with your Complaint**

4. If you decide to complain, the PCC is committed to acknowledging your first letter to us within five working days of our receiving it. If your complaint is not for us, but for another regulatory body, you will be informed at this point; otherwise, you will be informed of how our procedures will be applied.
5. If your complaint falls within the remit of the PCC, it will be investigated to see whether there has been a possible breach of the Code. We will keep you informed of the progress of your complaint at no longer than intervals of fifteen working days.
6. From the point at which we take up your complaint, a named Complaint Officer will be in charge of the investigation and act as a continuing point of contact for you.

##### **Accessibility to the Public: Making Sure you Know How to Complain**

7. A simple leaflet setting out how you can complain is available free of charge from the PCC. Nearly 12,000 copies of it are mailed out each year to advice centres, public libraries, police stations, hospitals and so on to ensure that the PCC is as accessible as possible to members of the public. The PCC will continue to be listed in each of the main phone books.

8. Our 'How to Complain' leaflet, along with the industry Code of Practice, has been available in Welsh, Urdu and Bengali since the start of 1997.

9. A textphone (0171 583 2264) has also been available since the start of 1997 so that those who are deaf or who have difficulty hearing will be able to make inquiries direct, rather than relying on hearing friends to do so on their behalf. For the visually impaired, an audio cassette is available explaining our complaints procedures.

10. Members of staff will at all times identify themselves by name and endeavour to be as polite and courteous as possible. If a member of the public feels that any member of staff is not living up to the high standards we set ourselves, complaints can be sent to the Director of the Commission who will look into each case.

11. The PCC costs nothing to the taxpayer, or to those who use the system. We will continue to operate a service which is free of charge.

### **Improving our Service Year on Year**

12. Every year we will publish statistics on the number of complaints received and resolved, and the initial time it takes to deal with them. We will also publish performance tables setting out our success in meeting the aims of this Charter, including the average number of days taken to deal with a complaint and improvement targets for future years.

## Appendix IX

### Grievance Procedures of the Minnesota News Council

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#### How to Bring a Complaint

- Submit the complaint in writing to the News Council staff within six months of publication or broadcast of the story. Complaints brought more than six months after the story will be accepted if the media outlet agrees to participate. Relevant news clips should be included. If you do not have audio or videotapes, staff will help you acquire them.
- Two forms must be completed. The complaint form (which can be found on our website) and a Waiver of Claims form, which must be received from the Council office and returned with your signature. The waiver form states your agreement to waive the right to sue the news outlet on the story in question, or to sue the News Council members or staff. The News Council process is an alternative to the court, and its proceedings are not to be used for later court proceedings.
- You agree to make a good faith effort to resolve the complaint. Both sides report their attempts at resolution to the Council.
- If, after one month there is no resolution, the Council staff will ask the parties to submit a final written statement of their positions within two weeks. The Council will schedule a hearing on the next available hearing date. The matter still may be settled at any time before the hearing.

#### About the Waiver

By proceeding to a hearing, the complainant waives libel and slander claims against persons providing the Council with information, against members of the Council, and against the news media for publication of information acquired during the hearing process or provided by the Council in its written determination of the hearing. The Council will not consider a grievance if legal or regulatory agency action is pending on the same matter against the news medium or its employees.

1. If the complainant is an organization, the waiver must be executed by the duly authorized officers of the organization, as well as any aggrieved individual of the organization.
2. A waiver does not constitute a waiver of legal action for future incidents of alleged misconduct or repetition of the matter involved in the pending complaint.

## **Writing your Complaint**

1. Council staff may assist a complainant in putting the grievance in written form if the complainant has difficulty in doing so. Council staff will be careful to ensure that the complainant's grievance is accurately stated and the issues appropriately framed. Staff will not improperly influence the complainant or suggest additional issues for consideration.
2. The written complaint should set out the relevant facts briefly and accurately. Exhibits may be attached to the grievance, such as the news story at issue or other statements.
3. The complaint should state succinctly the issue or issues it seeks to raise. An issue must concern an allegation of breach of proper journalistic practice relating to fairness, accuracy, balance, conflict of interest, or other pertinent journalistic practice (see the complaint form for specifics).

## **Screening of Complaints before Hearings**

Council staff shall conduct a preliminary screening of complaints to ensure that a complaint meets the standards for a Council determination. Complaints that are frivolous or submitted in bad faith will be dismissed.

If a complaint is dismissed without hearing, the complainant may appeal the decision to the Complaints Committee in writing. If the Complaint Committee decides the grievance should be dismissed, the complainant shall be so notified in writing. Dismissals are without prejudice to either party.

## **Conduct of the Hearing**

There are three stages to a grievance hearing:

1. Presentation of case by each party, with complainant proceeding first,
2. Questioning of the parties by Council members to clarify facts and issues,
3. The deliberative stage, when Council members, in open meeting, discuss the case among themselves and arrive at a decision.

Evidence is usually presented by narrative statements from the parties, together with relevant exhibits and other documentary evidence. Documentary evidence should be submitted to the Council prior to the hearing so that the Council members can have an opportunity to study the documents prior to the hearing. Witnesses may also attend and give oral testimony. Witnesses are not sworn. Expert witnesses may be called by the parties or by the Council.

The Council staff is responsible for making all arrangements for the hearing, and inquiries about the procedure should be directed to the staff.

A Council hearing is not a trial, but a serious discussion of the complaint in an informal, yet structured setting. The presiding officer rules on matters of relevance and matters of due process.

A quorum for a Council hearing shall consist of half the members. Neither the public nor media representation shall be more than 70% of the quorum. A Council member may rescue himself or herself before or during the hearing.

### **Hearings Outside Metropolitan Area**

Where a complaint arises in a community outside the metropolitan area, it may be more convenient and practical for a hearing to be held in that community. If the Council decides to do so, and the complainant and news outlet agree, the Executive Committee may appoint a subcommittee of Council members to travel to the site of the complainant and media outlet and conduct the hearing there. The ruling of this special Council committee shall be deemed the ruling of the Council in full.

### **Media Coverage of Hearings**

The hearing may be tape recorded by the Council staff, but ordinarily no transcript will be prepared. Print and broadcast media may attend and hearings and portions of hearings may be broadcast. Complainants may be asked by the media to comment on their complaint after the hearing. Council staff will assist the media in covering the hearing and such coverage will be accomplished in as unintrusive a manner as possible.

### **The Council's Determination**

In the deliberation stage of the hearing, the Council will decide by majority vote whether to deny or sustain a complaint.

A media Council member will rescue him or herself from a case involving his or her own media outlet. A Council member will rescue him or herself or will abstain from voting on a case in which there is a conflict of interests. A Council member may abstain from voting on an aspect of a case.

Because the decision is reached at an open meeting, it may be reported immediately by the news media. A press release will be distributed to news agencies throughout the state on the same day the Council reaches its decision, stating relevant facts and reasons for the decision. A more detailed written report of the hearing (a determination) will be written at a later date and will include an exact statement of the written complaint, a restatement of the discussion, and a record of member votes. The determination may contain various qualifications, cautionary observations, and comments on extenuating or mitigating factors.

The Council staff will write the press release and the determination. Dissenting members may write statements for inclusion with the determination. Members may also submit a concurring opinion. Determinations shall be published and distributed on our website and through our publications. It is usually available within two weeks of a hearing.