

MEDIA REGULATION, MURDOCH AND THE JOURNALISM WARS OF OZ

BY JULIE POSETTI

Rupert Murdoch's toxic phone-hacking legacy has the potential to undermine media freedom in Australia – his country of birth – where the government is considering recommendations for the regulation of **all** 'news' media, including low traffic blogs.

The Australian media has been put on trial by the Federal government and the evidence is in. As the *News of the World* Scandal brewed, Murdoch's most influential Australian titles declared 'war' on the minority Labour government, the Australian Greens and other perceived ideological enemies. At the same time, public trust in professional journalism continued to diminish and many media critics declared self-regulation a failure.

Recommended: Statutory regulation of all Australian news media.

Media ownership concentration is a major cause of disaffection with Australian journalism. Murdoch owns nearly 70% of all print media in Australia, including the only national broadsheet newspaper *The Australian*, and he has a significant stake in the Australian Pay TV market. His ubiquitous brand is arguably a threat to media pluralism and diversity in Australia. It is certainly a threat to local politicians out of step with Murdoch's values and ambitions, along with News Limited (News Corporation's Australian subsidiary) critics who dare to challenge Murdoch's Australian media stranglehold and his journalists' work.

But while Australia's Prime Minister Julia Gillard, backed by Greens politicians and some independent MPs, insisted that News Limited had 'questions to answer' in the aftermath of the phone-hacking fiasco, the government balked at re-examining Australian media ownership laws. Instead, it hastily established the Independent Media Inquiry to examine ethics and regulation, with an emphasis on the print media.

Retired judge Ray Finkelstein oversaw the Inquiry, established in September 2011, with the assistance of journalism professor Matthew Ricketson.¹ After taking public submissions and hearing from invited participants (mostly senior editors, publishers and academics), the Finkelstein Inquiry (as it became known) reported back to government, at speed, in February 2012.

While the final report included important scholarship on the history of Australian media regulation, contemporary challenges to journalism, and professional journalistic standards and ethics, the key recommendation was for the establishment of an 'independent' government-funded, cross-platform regulator covering content defined as news and/or news commentary, to be called the News Media Council.

The NMC would replace the Australian Press Council (self-regulatory body for print media) and subsume some functions of the Australian Communications Media Authority (broadcast and online government regulator). The NMC would capture traditional news media across all platforms – including newspapers and the national public broadcasters ABC and SBS (multicultural broadcaster), which are already separately regulated by acts of Parliament. Foreign online

news publishers with 'more than a tenuous connection to Australia', would also be captured by the NMC.

Low traffic blogs & social media caught in the regulation net

The threshold for print publications would be 3 000 copies per issue. But websites with a paltry 15 000 'hits' per year (and by hits, they mean total page views per annum, not unique visitors), including social media sites, would fall within the NMC's jurisdiction.² Aside from the implications for freedom of expression, can you imagine the bureaucratic nightmare involving a statutory body, funded to the tune of AU\$2million (approx. R18million), being tasked with assessing complaints against the tens of thousands of Twitter feeds, Facebook pages and opinionated blogs caught by the regulator?

As respected Australian business journalist Alan Kohler wrote, at the time the report's recommendations were delivered, "This (15 000 'hits') is a very silly number and suggests that Finkelstein and Ricketson didn't do enough work on understanding online publishing. Even a tiny news blog would get that many page views in a week, or even a day."

Media wars

The recommendation for a News Media Council had an immediately polarising impact when the Finkelstein report was handed down, with much of the mainstream media coverage rich in hyperbole and insults directed at the report's authors and its supporters. In fact, in the wake of the report, *The Australian* newspaper appeared to declare a culture war on the journalism academy in response to the public championing of the Finkelstein recommendations by several journalism academics.

Rather than facilitating much-needed intelligent national debate on media standards and ethics, the effect of this coverage was the re-entrenchment of divides between journalists and audiences, and an anti-intellectual backlash against journalism academics and media studies scholars in general.

In the News Limited press, the report's findings were compared with media regulation in Nazi Germany and North Korea, something Ricketson found repugnant. "The problem was not media regulation, the problem was Hitler's criminality," he wrote on an ABC website. The problem with Ricketson's statement, however, is that it depends on unassailable confidence that Australia will never become beholden to a criminal government, nor a despotic leader.

Nevertheless, it's important to note that the Finkelstein report did not recommend the licensing of newspapers, which the retired judge described at the beginning of the Independent Media Inquiry's public hearings as "...probably as extreme an encroachment on

news dissemination as you could get" and "...as close as going back to the Dark Ages as you could find."

In his report, Finkelstein also noted some of the concepts put to him during the Inquiry designed to support quality journalism in the face of failing business models, such as increasing funding for the ABC's news functions, subsidies for investigative and public interest journalism and incentives for investment in news start-ups to increase media diversity. He also called for a Productivity Commission inquiry into the news media within two years to examine the sustainability of the industry.

Nevertheless, the recommendation for an NMC has significant implications for media freedom in Australia, although it has been difficult to find dispassionate assessments of the threat to freedom of expression amidst the vitriolic coverage of the Finkelstein Inquiry, which has, ironically, reinforced calls for government regulation of the print media.

Jailing journalists

According to the recommendations, the Council would comprise 50% civil society representatives (with no history of media connections) and 50% industry/academic representation. It would have the power to frame and compel apologies, corrections, right of reply and retractions, as well as being able to dictate the placement of apologies within a publication. There would be no right of appeal against an NMC judgement, unless the case was referred to a higher court for the enforcement of NMC adjudications, which could ultimately result in the gaoling of journalists, editors and small-time bloggers for contempt.

To fully appreciate the potential gravity of the NMC recommendation, it's important to note that Australia is the only Western democracy without a Bill of Rights or constitutionally enshrined rights to freedom of expression and/or media freedom.³

Australia's leading journalism-law scholar, Professor of Journalism at Bond University Mark Pearson, is extremely concerned about the prospect of the Australian government endorsing an NMC as recommended by the Finkelstein Inquiry, particularly in the absence media freedom protections. "This means politicians and judges can pass laws censoring the media without constitutional challenge, except in the very limited area of political free speech. Any mechanism thus needs to be self-regulatory until there is such a firm backdrop like they have in the US, the UK, Canada and New Zealand," Pearson said.

Impact of convergence on regulation

The Finkelstein Inquiry was conducted in parallel with the less hastily convened and better-resourced Convergence Review, also commissioned by



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the Australian government, which delivered its recommendations after the Finkelstein report was released.

The Convergence Review rejected Finkelstein's recommendation for government-funded, statutory regulation of all media via a News Media Council. Instead, it called for increased support for self-regulation of news media, via an industry-led body requiring compulsory membership, which would oversee journalistic standards in news and commentary across all platforms. Alongside this oversight body would sit a new cross-platform statutory regulator for large content producers, replacing ACMA (the body currently responsible for the regulation of broadcasting, the internet, radio-communications and telecommunications in Australia). As a result, the licensing of broadcasters would be scrapped.⁴ And news and news commentary would be exempt from statutory regulation on all platforms.

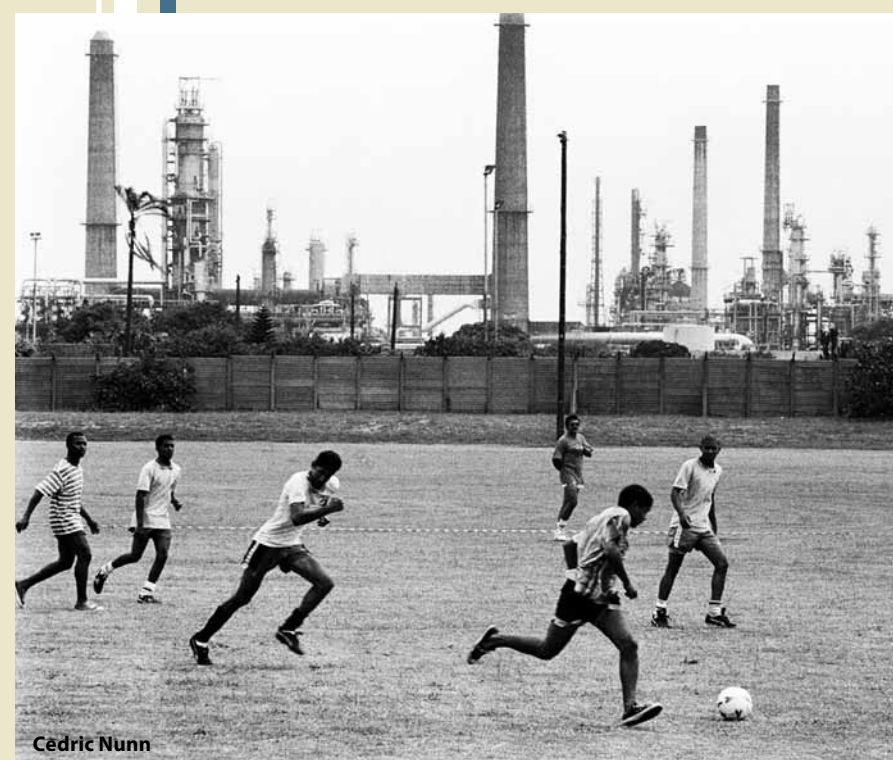
These recommendations recognise the anachronistic legal silos that continue to separate print, broadcasting and online media for regulatory purposes in Australia, in the midst of the mainstreaming of media convergence which has resulted in cross-platform publication by most content producers.

According to the Convergence Report's recommendations to government, a content provider/creator which has more than half a million Australian users a month, and AU\$50 million (approximately R450 million) of revenue per year from Australian-sourced professional content, would be subject to regulation (but the news/commentary they produce would be exempt from regulation).

While the main traditional media outfits would be captured under this regime, it could be extended to telecommunications corporations and internet companies like Google. In a converged media world, it's not just platforms that are melding, but media company identities that are changing.

Convergence Review Committee member Louise McElvogue told the ABC that media regulation needs to be approached differently, as a result. "Rather than deciding how entities are regulated based on the medium on which they deliver, entities would be regulated based on their size and the type of services they are, which means that large content services that have a large audience and have a large revenue from Australia would be subject to certain regulation," she said.

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The review also highlighted the need for media ownership diversity and recommended a public interest test for major ownership changes.

I welcomed the Convergence Review’s findings as a sensible response to the realities of converged media balanced against the importance of media freedom in a democracy. But my University of Canberra colleague Matthew Ricketson did not. Defending the Independent Media Inquiry findings, which he co-authored, he publicly dismissed the Convergence Review’s recommendations ahead of the Federal government’s response to them, saying they could not work because news organisations can’t be forced to join self-regulatory bodies.

According to Ricketson, the time for media self-regulation in Australia had passed and the Finkelstein report sent a clear message to the media. “It says to the industry: you have sound standards of journalistic practice that you say you believe in and you have had 35 years to make a success of the self-regulatory system for dealing with complaints about these standards and you haven’t – and you seem to be content with that situation. So, you’ve had your chance. If you won’t do it you have left us with little choice but to recommend some means of making it work and in your absence that someone will have to be government,” he told a University of Melbourne seminar in May.

But Bond University’s Mark Pearson says Ricketson, and other academic supporters of an NMC, should be careful what they wish for. “The Convergence Review makes the sensible recommendation that regulation be wound back slightly for broadcasters to self-regulation, but that all news media operators would have to be part of a new self-regulator to earn their current exemptions to consumer and privacy laws. That was the basis of my submission to the Finkelstein inquiry⁵ - that the blanket exemptions for ‘prescribed news providers’ to the misleading and deceptive conduct provisions of the consumer laws should be wound back so they needed to demonstrate they were ethical operators.”

Pearson’s recommendations to the Finkelstein Inquiry were rejected, but he maintains that they provided a working solution enabling the preservation of media freedom. “Such an approach would bolster the hundreds of existing laws impinging on media freedoms and minimise the risk of News of the World-style situations. Conduct that is ‘misleading or deceptive’ in news or commentary, or invading privacy, would be actionable UNLESS (Pearson’s emphasis) the outlet was a member of the News Standards Body and complying with its guidelines. This would encourage smaller players into the system, too. It would be self-regulation with the encouragement of some handy defences to existing laws, rather than a big stick approach bringing jail and fines for contempt that we would (see) under the Finkelstein body,” he argues. “And that is not strictly new government regulation, but instead a modification of some existing laws to exclude defences for unethical journalism.”

Against this backdrop, the Australian government is considering a new privacy tort applicable to journalism. Labour politicians who’ve been stung by campaigning News Ltd journalists, and salacious media coverage more broadly, turned up the volume on the media regulation mega-phone as the Federal government contemplated its formal response to the dual Convergence and Finkelstein inquiries.

Bad news

It is important to note News Limited’s campaign against the minority Labour government and their ‘coalition’ partners, The Greens, as a factor relevant to understanding both the impact of over-concentrated media ownership, and significant support within the

journalism academy for an NMC, in spite of the threat it poses to media freedom.

The perceived influence of News Limited on Australian election outcomes and policy formation is well documented. And the News Ltd brand has been increasingly scrutinised and challenged by civil society activists and academics (including this one⁶) in the past two years. The company’s penchant for “vendetta journalism”, which is most evident within the pages of Murdoch’s flagship newspaper *The Australian* under the editorship of Chris Mitchell,⁷ has also made it a thorn in the side of any grass roots campaign to protect Australian media freedom, especially as *The Australian* has been accused by some of Australia’s leading academics and public intellectuals as having a damaging effect on Australian democracy.⁸

Falling public trust in Australian professional journalism, magnified by the phone-hacking scandal that revealed an ethically corrupt and cover-up prone culture within Murdoch’s News International, is a problem that needs addressing in the interests of democracy. And I am convinced that a converged media world requires a review of traditional media regulation structures. Similarly, I believe news publishers and individual journalists need to be more accountable to audiences through an active commitment to more robust self-regulatory processes, transparent practice, and established codes of ethics and professional journalistic conduct.

But even as one who has felt the sting of defamatory, inaccurate, vendetta-driven journalism penned by News Limited’s attack dogs, I am not willing to support a recommendation for a government-funded, all-platform Australian News Media Council that might have the power to compel the “hate media”, as former Australian Greens leader Bob Brown describes the Australia Murdoch press, to act. The risk to media freedom is simply too great. And the signal that would be sent to despots and media freedom opponents the globe over, should Australia head down the path of a statutory, government-funded News Media Council, would, in my view, be far too high a price to pay for increased media accountability.

Endnotes

1. Declaration: Matthew Ricketson is a colleague and former supervisor of the author at the University of Canberra.
2. Finkelstein, R with Ricketson, M (2012) *Independent Media Inquiry Report*, Department of Broadband Communications and the Digital Economy (http://www.dbcde.gov.au/digital_economy/independent_media_inquiry)
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4. Convergence Review Final Report (2012) (http://www.dbcde.gov.au/digital_economy/convergence_review#report)
5. Pearson, M (2011) *Consumer Law Holds Solution to Grossly Irresponsible Journalism*, Journlaw Blog (<http://journlaw.com/2011/11/07/consumer-law-holds-solution-to-grossly-irresponsible-journalism/>)
6. Posetti, J (2010) *The Australian, Think Again The Drum Unleashed*, ABC <http://www.abc.net.au/unleashed/39654.html>
7. Declaration: Mitchell threatened to sue the author in 2010 for defamation after she reported comments made by one of his former journalists, critical of his editorship c.f. Berger, G (2010) *When Tweets Get Up an Editor's Nose, He Shouldn't Become A Twitter Troll*, Thoughtleader, M&G Online (<http://www.thoughtleader.co.za/guyberger/2010/12/03/when-tweets-get-up-an-editors-nose-he-shouldn%E2%80%99t-become-a-twitter-troll/>)
8. Manne, R (2011) *Bad News: Murdoch's Australian and the Shaping of the Nation*, Quarterly Essay 43, Black Inc.

