

**MEDIA INQUIRY SUBMISSION: CASTAN CENTRE FOR HUMAN RIGHTS LAW, FACULTY OF
LAW, MONASH UNIVERSITY**

In this submission, we wish to draw attention to human rights issues surrounding the media, including newspapers, the focus of this inquiry.

Of course, the iconic human rights issue regarding the press concerns its own rights to freedom of expression and freedom of information. The relevant human right, as expressed in international human rights law is in Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”):

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

In the most extreme cases, there are also concerns regarding the safety of journalists (manifested, for example, in the murders of the Balibo Five) but thankfully, such issues do not arise in Australia.

However, our submission will focus on the flipside of the “human right and media” debate: the detrimental impact that the media can have on the enjoyment of human rights.

Human Rights and Business

Human rights obligations are normally conceived of as obligations of governments. In international law, States are generally the only entities with direct human rights obligations.¹ However, there has been much work done at the international level in recent years regarding the human rights responsibilities of multinational corporations and other business entities. In particular, the UN adopted the Guiding Principles on Business and Human Rights in mid 2011,² a set of non-binding guidelines for States and business to help

¹ There are some exceptions to this principle, particularly in the field of international criminal law with regard to grave international crimes such as the crime of genocide.

² See Un doc. A/HRC/17/31, 21 March 2011, adopted by Resolution of the UN Human Rights Council, A/HRC/Res/17/4, 6 July 2011.

guard against human rights harms caused by business activities. The Principles are built on three pillars: the State duty to protect, the corporate responsibility to protect, and the need to ensure that remedies are available to victims of relevant abuses.

The State duty to protect is premised on the fact that States have duties under international human rights law to protect the rights of individuals from private entities, including other people and businesses. Therefore, the Australian government has a duty to protect individuals from abuses of their human rights by businesses including the media,³ such as invasions of privacy,⁴ or the reporting of the new identities of notorious released killers to prevent vigilantism.⁵ It also has a duty to provide remedies to victims.

Businesses, including media companies, have their own responsibilities to respect human rights and to provide appropriate remedies to victims, separate from the State's duties. These duties stem from the basic global expectations of society. Businesses must basically avoid causing or contributing to adverse human rights impacts, and take steps to prevent or mitigate such impacts.

In this regard, we endorse the notion that media companies, like other businesses, should adopt human rights policies, which are communicated and enforced throughout their networks, and should make those policies available to the public, in accordance with the Guiding Principles.⁶ They should undertake an ongoing human rights due diligence process, aimed at identifying risks and ensuring that their operations do not harm the human rights of others. They should also mitigate and provide redress for any harms that have occurred or do occur. The outcomes of such a process should be integrated throughout the business, rather than confined to some detached "corporate social responsibility" unit.

The media and detrimental impacts on human rights

While the adoption of such due diligence processes is more common in other industries, such as extractive, oil, apparel or pharmaceutical industries, such processes are needed because the media is capable of detrimentally affecting the human rights of individuals in a number of ways.

Privacy

The right to privacy is recognised in international human rights law. Of most relevance to Australia is Article 17 of the ICCPR, which reads:

³ See also Graham Minter, "The media and human rights – is there a role for government", blog available at http://dayassociates.org.uk/our_blog_10.html

⁴ See, eg, *Von Hannover v Germany* [2004] ECHR 294

⁵ See, eg, *Venables and Thompson v News Group Newspapers* [2001] EWHC 32 (QB). Venables and Thompson are the notorious child killers of the toddler Jamie Bulger in the UK.

⁶ See also Lucy Amis, "Coming to the table – a time for media firms to respect human rights", blog available at http://dayassociates.org.uk/our_blog_10.html

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks

As a contemporary example, the disgraceful phone hacking and stalking by the *News of the World* in the UK constituted a gross invasion of the privacy of the victims as well as a crime.

Privacy is not an absolute right; it is permissible to invade privacy when such invasions are authorised by law and are reasonable (not “arbitrary”) in the circumstances.⁷ It is permissible under international human rights law for the media to engage in invasions of privacy when it is in the public interest to do so. For example, it is questionable whether the media harassment of “the collarbomb girl” after the relevant incident, and after her family had repeatedly pleaded for privacy, was in the public interest. At the least, one hopes that media organisations gave serious consideration to the question of the public interest before continuing to harass an innocent family that had been through so much trauma.

The Federal government is conducting a concurrent inquiry into privacy law reform. The Castan Centre has submitted a submission to that inquiry,⁸ so we will not engage in further discussion of privacy here.

One aspect of Article 17 is the right to protection of one’s reputation. Of course, reputational rights are protected in Australia under defamation law.

Hate speech

Article 20 of the ICCPR reads:

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Clearly, the media has the capacity to engage in hate speech. One of the more egregious examples in recent times was manifested by broadcast media in Rwanda, resulting in the

⁷ See, eg, Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights* (OUP, Oxford, 2nd ed, Chapter 16)

⁸ See Adam Fletcher, ‘Submission on Commonwealth Government’s Issues Paper: a Statutory Cause of Action for Serious Invasions of Privacy’, October 2011, at <http://www.law.monash.edu.au/castancentre/publications/privacy-cause-of-action-sub.pdf>

conviction of various radio and television media personalities for genocide by the International Criminal Tribunal for Rwanda.⁹

In Australia, a less extreme example arose with the finding by a NSW tribunal in December 2009 that Sydney radio personality Alan Jones had engaged in racial vilification against Lebanese Muslims.¹⁰ More recently, Melbourne columnist Andrew Bolt was found to have breached the *Racial Discrimination Act* 1975 by writing two columns which “offended, insulted, humiliated and intimidated” others on the basis of their race. That finding fell short of a finding of racial vilification, and thus fell outside the scope of Article 20 ICCPR. More likely, the Bolt finding was permissible under Article 19(3) ICCPR as it protected the rights of others to be free from racial discrimination. In a recent blog, Centre director Sarah Joseph has suggested that the relevant provisions of the *Racial Discrimination Act* go too far in inhibiting freedom of expression in its prohibition of “offensive and insulting” speech.¹¹ Certainly, it seems that there are adequate protections against racial hate speech under Australian law. However, such protections are patchy. For example, there is no such protection against religious hate speech at the federal level, nor for other groups such as gays and lesbians.¹²

The less discussed aspect of Article 20 is its first paragraph, concerning war propaganda. Of course, media coverage of wars has long been controversial. In this respect, it is pertinent to note the allegation that each of Rupert Murdoch’s global stable of 175 newspapers vigorously supported the waging of the Iraq war by the “Coalition of the Willing”,¹³ a war which is widely believed to have been an illegal use of force under international law. If true, this would indicate significant proprietor interference in editorial independence over an issue of extreme public importance.

More recently, the coverage of some aspects of the Libya war by Western newspapers might give rise to concern. Amnesty International has claimed that:

.... much Western media coverage has from the outset presented a very one-sided view of the logic of events, portraying the protest movement as entirely peaceful

⁹ See *Nahamina, Barayagwiza, Ngeze v Prosecutor* Case no ICTR-99-52-A, 28 November 2007, Decision of the International Criminal Tribunal for Rwanda. See also Concluding Observations on Slovenia by the UN Human Rights Committee, CCPR/CO/84/SVN, 25 July 2005, para 13.

¹⁰ “Court rules Alan Jones “racially vilified” Muslim youths”, *Sydney Morning Herald*, 22 December 2009.

¹¹ Sarah Joseph, “Andrew Bolt, Free Speech and Racial Intolerance”, 29 September 2011 at <http://castancentre.wordpress.com/2011/09/29/andrew-bolt-free-speech-and-racial-intolerance/>

¹² It is conceded that Article 20 only extends to certain types of hate speech, and does not extend to gays and lesbians. Nevertheless, it is submitted that freedom from hate speech for groups which are vulnerable to vilification can be subsumed within general rights of non-discrimination.

¹³ Robert Manne, “Bad News”, *Quarterly Essay* 43, 2011, p. 29.

and repeatedly suggesting that the regime's security forces were unaccountably massacring unarmed demonstrators who presented no security challenge.¹⁴

For example, one prominent allegation against Libya's (now late) former ruler Colonel Gaddafi was that he issued Viagra to his fighters to encourage them to rape.¹⁵ This allegation was in fact part of the dossier against Gaddafi by the International Criminal Court. However, those allegations could not be verified by key human rights groups, Human Rights Watch and Amnesty International.¹⁶ While the allegations themselves were a major news story, their lack of verification was not widely reported.

National Security and the right to life

There are no human rights to "national security" as such. Rather, as in Article 19(3) of the ICCPR, national security is invoked as an exception to rights rather than a right in itself. However, the protection of national security can protect rights such as the right to life (recognised in Article 6 ICCPR).

For example, such a criticism has been levelled at the Wikileaks whistleblower site for releasing unredacted diplomatic cables, which identify certain US informants, and may place them in danger of reprisals.¹⁷ It should be acknowledged that Wikileaks denies that its activities have endangered lives.¹⁸

A more difficult issue arose with the reporting of the Florida Pastor Terry Jones and his threat to burn a Koran. Jones initially made the threat in late 2010 and was convinced to refrain from such an activity, as it was made clear that the reaction by extremists in a number of Muslim States could be deadly. Jones however carried through with the threat in March 2011, which indirectly led to riots and killings by irate mobs in Afghanistan.¹⁹ The question begs: should the media have paid so much attention to the threats of a pastor with a tiny flock in Florida? After all, other fringe groups burnt Korans in the wake of Jones' original threat and these instances were not heavily reported. Should the media not have exercised judgment, particularly considering the deadly reaction by extremist Islamist crowds in some States to the Danish cartoons in late 2005? Alternatively, perhaps it is unreasonable to expect the media to be cowed by the apprehension of unreasonable reactions by others.

¹⁴ Patrick Cockburn, "Amnesty questions claim that Gaddafi ordered rape as a weapon of war", *The Independent*, 24 June 2011

¹⁵ Louis Charbonneau, "US Envoy: Gaddafi troops raping, issued Viagra", *Reuters*, 29 April 2011

¹⁶ Patrick Cockburn, "Amnesty questions claim that Gaddafi ordered rape as a weapon of war", *The Independent*, 24 June 2011

¹⁷ See Kim Zetter, "Ethiopian journalist flees country over exposure in Wikileaks cable", *Wired*, 15 September 2011.

¹⁸ The unredacted cables were apparently accessible on the internet prior to Wikileaks' full publication in September, as information had been published by other sources which revealed how to access them.

¹⁹ Laura King, "Taliban exploits Afghan riots over Koran burning", *Los Angeles Times*, 4 April 2011.

At the least, the media should not report such stories if they are not of significant public interest. It is arguable that Jones' activities were not of particular importance. His notoriety was entirely created and driven by the media as he had no prior public profile, and his planned Koran burning was based on extremist beliefs and was probably an irresponsible publicity grab. In contrast, it is submitted that the publication of evidence of torture by US (or any) troops, such as the Abu Ghraib photos, is in the public interest, despite the argument that such photos could provoke anger and reprisals against Western troops in Iraq and Afghanistan.

The Media and Public Debate

There has been a lot of discussion recently regarding the media's role in responding to and shaping public debate, and whether it performs that role well. Unfortunately there is often too much opinion masquerading as reporting or fact. For example, there is an allegation that the Murdoch press, particularly the *Australian*, gives disproportionate space to climate skepticism despite overwhelming scientific consensus that climate change is occurring and is caused by humans.²⁰ Another concern is the tabloid staple of running "law and order" campaigns, designed to make us all outraged and even scared, and prompt the passage of harsher laws targeting "criminals". A final example is the refugee debate: the media have played some role in creating the impression that marauding hordes of boat arrivals make up a large proportion of our immigration intake when they are, in reality, a tiny percentage thereof.

There is also an obsession with trivia, such as the "debate" over whether our Prime Minister should have curtseyed to the Queen or not.

The result of impoverished media-driven public debate is a weakening of the democratic process, where policy-making is distorted by media campaigns, and where we focus on personalities and trivia rather than policy. There are also real impacts on human rights if, for example, media campaigns on refugees encourage a hostile atmosphere and prompt governments to "crack down" on asylum-seekers in contravention of our international refugee law obligations. Media campaigns on law and order can goad governments into adopting overly harsh laws, such as mandatory sentencing regimes.

Solutions

Despite the numerous human rights issues that can arise from improper media coverage, the problem with introducing greater formal regulation is that such regulation risks "killing off the golden goose" by restricting the free press too much. Such issues arise, in particular, with regard to criticisms over the media's contribution and shaping of public debate. While we can all bemoan media bias or indulgences in distracting trivialities, it is extremely

²⁰ See, eg, Robert Manne, "Bad News", *Quarterly Essay* 43, 2011, pp 62-91.

problematic to somehow legislate such actions away without fundamentally undermining the free press.

Furthermore, the media cannot distort public policy unless politicians let that happen. Politicians do not have to succumb to media campaigns and may often be complicit in them, deploying, for example, anti-refugee rhetoric or “law and order” self-righteousness. Politicians themselves are also to blame for the “dumbing down” of public debate, for example with their perpetual use of soundbites to explain policies.

We do however agree that it is important that existing watchdogs be strengthened, or new stronger watchdogs created. For example, we support the reinforcement of the powers of the Press Council, which at present seems to be routinely ignored.²¹

Informal watchdogs are also very important, such as the ABC'S *Media Watch*, or even the latest offering from the Chaser team, *The Hamster Wheel*, which highlights many of the routine absurdities which arise in our media. Such programs, along with international counterparts like Jon Stewart's *Daily Show*, are important counterweights to “poor media”, and represent one important way of combating “bad speech” in the marketplace of ideas, by retaliating with “good speech”.

Media Monopolies and Human Rights

Another area in which regulation might be desirable is with regard to the ownership of newspapers.

This inquiry will have received many submissions on the adverse effects of private media monopolies, in light of the oft-quoted statistic that News Ltd own 70% of Australia's newspapers. Media monopolies can exercise perverse power over the political process. Perhaps such power was on display in the UK, where the former Labor party Minister Tessa Jowell recently admitted that her party, while in power, had lost voter confidence because it had become addicted to “courting media barons such as Rupert Murdoch”:²²

I think that the mistake that we made - it's a bit like the crack cocaine of politics, isn't it? Getting a good write-up, or the horror of a bad write-up. At its worst, Westminster politics is like a private conversation between Westminster media and Westminster politicians, and the rest of the world are eavesdroppers on a private conversation, and that's got to change.²³

²¹ See Andrew Crook, “Sheridan flouts Press Council directive on “illegal” asylum seekers”, *Crikey*, 2 November 2011, discussing the repeated use by the foreign editor of the *Australian*, Greg Sheridan, of the term “illegal immigrants” to describe asylum seeker in contravention of a Press Council ruling.

²² Jane Merrick et al, “We were addicted to Murdoch like crack cocaine, admits Jowell”, *The Independent*, 25 September 2011

²³ Samira Shackle: “Tessa Jowell: Labour's message is “just white noise””, *New Statesman*, 25 September 2011

Ms Jowell made this statement in the context of a more diverse media environment than that in Australia.

We do not aim here to make particular recommendations regarding ownership of the press in Australia, though we do note that media monopolies are an undesirable phenomenon. Instead, we draw the Inquiry's attention to the human rights issues associated with media monopolies.

In particular, media monopolies distort free expression, as they can drown out other views, thus undermining media diversity. In this regard, the UN Human Rights Committee, the body which supervises implementation of the ICCPR, stated in a General Comment on the Right to Freedom of Expression:²⁴

14. As a means to protect the rights of media users, including members of ethnic and linguistic minorities, to receive a wide range of information and ideas, States parties should take particular care to encourage an independent and diverse media. ...

40. The Committee reiterates its observation in General Comment No. 10 that "because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression". The State should not have monopoly control over the media and should promote plurality of the media. Consequently, States parties should take appropriate action, consistent with the Covenant, to prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views.

The UN Special Rapporteur on Freedom of Opinion and Expression, an independent expert appointed to report on the matter to the UN Human Rights Council, has also made some statements on the need for diverse media, particularly in relation to certain States. For example, regarding the Maldives, the Rapporteur has stated:

The Special Rapporteur commends the Government's decision to develop private media and encourages it to maintain plurality and diversity to guarantee freedom of expression and specifically suggests the possibility of establishing community radio in individual islands or provinces when created. Community-based broadcasting provides an alternative social and economic model for media development that can broaden access to information, voice and opinion. Such programmes should encourage active participation of the community in their initiation, production and presentation.

In the process of privatization of media enterprises a special effort should be made to ensure that the diversity and plurality of views and opinions are maintained; in

²⁴ General Comment 34, UN doc. CCPR/C/GC/34, 21 July 2011

this regard the Special Rapporteur would encourage the Parliament to introduce anti-monopoly legislation particularly with reference to communication.²⁵

Regarding Azerbaijan, the Rapporteur has stated:

The media environment also suffers from poor financial investments; while national television channels and radios have their own audience, newspapers and other printed press are able to sell only a few thousand copies. Furthermore, the presence of large foreign media groups, in particular from Turkey and the Russian Federation, does not encourage the growth of national media outlets. On the one hand, the dominance of powerful media corporations, often linked to political and business elites, can restrain editorial independence, narrow diversity of opinion and entrench self-censorship. On the other, media enterprises need considerable financial investments to operate not only freely but also effectively; the real challenge consists in maintaining a distance between truly autonomous media professionals and media corporations, which, by definition, are bound to make financial benefits. In this panorama, the survival of the country's rich and varied cultural heritage is at stake because of the prevalence of commercial programmes that prioritize economic return over quality information and other educational and socially-oriented initiatives.²⁶

Regarding South Korea, the Rapporteur has stated:

...in July 2009, amendments to the Newspaper Act and the Broadcasting Act were proposed by the GNP and adopted by the National Assembly. The amendments purportedly aim to allow cross-ownership in printing and broadcasting sectors. The Special Rapporteur is concerned that conglomerates, newspaper companies and foreign capital will now be able to enter the broadcasting sector, which may undermine media diversity and pluralism.²⁷

Finally, regarding the Ukraine, the Special Rapporteur has stated:

The media environment is marked by poor finances and unilaterally-oriented investments. Like in many parts of the world, newspapers and other printed press endure the increasingly aggressive competition of electronic communications tools, while national television and radio channels are struggling to keep their own audience. Powerful media corporations, which have links with political and economic elites, may intervene on editorial content, narrowing diversity of opinions and installing self-censorship. Public interest is best served by a variety of independent news media, both print and broadcast, which must be allowed to emerge and

²⁵ UN doc. A/HRC/11/4/Add.3, 25 May 2009, paras 62-63.

²⁶ A/HRC/7/14/Add.3, 19 February 2008, para 65

²⁷ A/HRC/17/27/Add.2, 21 March 2011, para 82.

operate freely. Unrestricted access to foreign media should be guaranteed at all times as it ultimately encourages the advancement of independence among the national media.²⁸

While Australia has little in common, in terms of its political and media heritage, with the above-mentioned States, the Rapporteur's statements are nevertheless of relevance to the human rights relevance and detriment of media monopolies.

Australia is a party to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005. Article 6(h) requires States to adopt "measures aimed at enhancing diversity of the media, including through public service broadcasting".

The Council of Europe has also commented on the importance of media plurality in the context of the European human rights system. The Committee of Ministers, in Recommendation 2007(2) on Media Pluralism and Diversity of the Media reaffirms in its preamble "that media pluralism and diversity of media content are essential for the functioning of a democratic society and are the corollaries of the fundamental right to freedom of expression and information as guaranteed by Article 10" of the European Convention on Human Rights, and that Article 10 will "be fully satisfied only if each person is given the possibility to form his or her own opinion from diverse sources of information". The Recommendation, which is not binding, is appended to this submission.

Rights of access

Can a right of access to the media, as in a right of access to a platform upon which to express one's views, be construed under international human rights law as a means of countering the threat to media diversity posed by media monopolies? Such a right has been rejected in the context of the US Constitution by the US Supreme Court in *CBS v Democratic National Committee* (1973) 412 US 94.²⁹ Nearly 40 years later, perhaps the issue should be revisited. Jerome A. Barron has written extensively on the matter in the US context and has stated "the need for access" is "simply a recognition of the enormous imbalances that characterized the contemporary marketplace of ideas".³⁰

The US Federal Communications Commission in fact used to impose a "fairness doctrine" in the context of broadcast media (rather than newspapers), which was designed to ensure that viewers and listeners were exposed to a diversity of views. The doctrine was dropped in 1987 when a variety of platforms, including cable television, multi-channels and the

²⁸ Ibid, para 66.

²⁹ See also *Miami Herald Publishing v Tornillo* (1974) 418 US 241

³⁰ Jerome A. Barron, "Access to the Media: a Contemporary Appraisal" (2006-7) 35 *Hofstra Law Review* 937 at 938. See also Jerome A. Barron, "Access to the Press – A new First Amendment Right" (1967) 80 *Harvard Law Review* 1641.

internet, meant that the broadcast spectrum was no longer so scarce and limited. It was formally revoked by the FCC in 2011.³¹

Of course, it is true that the internet, through blogs and social media, as well as the comments pages on media sites, provides a platform through which most people can transmit their opinions with little or no cost. As noted by Barron, the “media can no longer be described as consisting of those who speak and those who are spoken to. Potentially, the opinion process no longer belongs just to the fourth estate – it belong to everyone”.³² Furthermore, the internet means that many people receive their news from non-traditional sources, and even curate their own news via mobile “apps” and social media, rendering traditional monopolies, such as that alleged regarding News Ltd and newspapers, less relevant.

On the other hand, *Crikey’s* Andrew Crook recently reported that News Ltd owned four of the top ten internet sites visited by Australians.³³ And, presently, it is simply impossible in Australia to equate the power and reach of blogs or other alternative forms of opinion with that of the mainstream press.

Australia is not presently required to demand rights of access of its media outlets under international human rights law. However, media outlets themselves, as part of their responsibility to respect human rights, should give due consideration to ensuring that a range of views on important matters are represented, even if they are not necessarily represented equally in their pages. Furthermore, the advent of the internet means that newspapers can devote more space to granting such access.

Right of Reply

A right of reply is narrower than a right of access, as it relates to the right to “reply” to a particular story, rather than put across a particular point of view. The right of reply, or a right of correction is explicitly recognised in Article 14 of the American Convention on Human Rights:

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.

³¹ See “Fairness Doctrine” entry, *Wikipedia*.

³² Jerome A. Barron, “Access to the Media: a Contemporary Appraisal” (2006-7) 35 *Hofstra Law Review* 937 at 951

³³ Andrew Crook, “Forget new media diversity: the Internet has tightened News’ squirrel grip”, *Crikey*, 8 November 2011.

On the other hand, the Special Rapporteur on Freedom of Opinion and Expression has been more sceptical. In the context of Hungary, the Rapporteur has stated:

The Special Rapporteur is of the view that if a right of reply system is to exist, it should ideally be part of the industry's self-regulated system, and in any case can only feasibly apply to facts and not to opinions.³⁴

The European Court of Human Rights commented on the matter in *Melnychuk v Ukraine*:³⁵

... as a general principle, newspapers and other privately owned media must be free to exercise editorial discretion in deciding whether to publish articles, comments and letters submitted by private individuals. However, there may be exceptional circumstances in which a newspaper may legitimately be required to publish, for example, a retraction, an apology or a judgment in a defamation case. Consequently, there will be situations when a positive obligation may arise for the State to ensure an individual's freedom of expression in such media ...

In *Vitrenko v Ukraine*,³⁶ the Court stated:

the Court bears in mind the positive obligation on the State to ensure that persons subjected to defamation have a reasonable opportunity to exercise their right to reply by submitting a response to defamatory information in the same manner as it was disseminated.

These statements imply that States parties to the European Convention on Human Rights should ensure that media outlets provide for rights of reply in a timely fashion to defamed persons.

The Committee of Ministers of the Council of Europe, as long ago as 1974, recommended that, at a minimum, the following rights be ensured by member States:

In relation to information concerning individuals published in any medium, the individual concerned shall have an effective possibility for the correction, without undue delay, of incorrect facts relating to him which he has a justified interest in having corrected, such corrections being given, as far as possible, the same prominence as the original publication.³⁷

The Committee of Ministers seems to have gone even further than the European Court in recommending extension of the right to the correction of wrong information, as opposed to a reply to defamatory statements. However, its recommendation is not binding.

³⁴ UN doc. E/CN.4/1999/64/Add.2, 29 January 1999, para 35

³⁵ (2006) 26 EHRR 42

³⁶ (2008) No 23510/02

³⁷ Resolution on the Right of Reply, Res (74) 26

The right of reply is more firmly based in international human rights law, for example with regard to protection of one's reputation under Article 17 of the ICCPR, than the right of access. And indeed, if a newspaper has in fact published incorrect information, one would wonder why it would resist an obligation to correct it.

Conclusion

As noted, this submission is largely designed to ensure that the Inquiry is aware of the myriad human rights issues associated with the media, particularly in the new international regulatory environment where human rights are recognised as a genuine and necessary business concern. The old Milton Friedman mantra that "the business of business is business" is no longer (openly) adhered to by most business organisations.

Of course, the business of the media is largely assumed to be well within the realm of human rights, given its crucial role in ensuring accountability and contributing to a vibrant civic sphere. However, the media can also act to the detriment of human rights, as most dramatically demonstrated by the *News of the World* scandal in the UK.

Greater government regulation of the media is problematic, given the danger of undermining freedom of the press too much. For example, Hungary has recently introduced a draconian new law under which journalists face severe fines if their coverage is deemed to be too "unbalanced".³⁸ Nevertheless, we do believe that a stronger Press Council is necessary.

Regarding media monopolies, rights of access and reply, we again have simply drawn the Inquiry's attention to relevant human rights resources.

³⁸ Freedom House, "Proposed Hungarian Media Law would threaten Freedom", 13 December 2010.