

Law and Regulation - COMM1179

Research Essay

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The 1999 inquiry by the Australian Broadcasting Authority into the “cash for comment” incident raised issues about the adequacy of the existing regulatory and ethical frameworks. Using the inquiry and its findings as a basis, describe how the regulatory and ethical frameworks might apply to citizen journalism, discuss their adequacy and comment on, if any reforms you think are necessary.

Executive Summary

In 1999, ABC’s television programme, Media Watch, exposed 2UE presenter, John Laws, for not disclosing commercial agreements giving “sponsors” undeclared advertising on air. The Australian Broadcasting Authority launched an inquiry which was expanded to fellow presenter, Alan Jones and several other commercial radio stations. The inquiry found that the stations had breached the code of practice and Broadcasting Services Act, but the code and Act were insufficient for substantial punishment, or to punish the presenters. The MEAA and PRIA codes of ethics were also ineffective as they are membership-based, and voluntary. Changes were made to the ABA code of practice and the Act, but personal ethics models are more effective in avoiding unethical practices.

Recently journalism has extended to citizen journalism. A new genre that has the general public writing and publishing their own reports, photographs and videos. Concern has arisen as they are generally untrained and cannot be held to any codes. Public relations practitioners have been seen exploiting this and offering payment for undeclared endorsements. As the choice to offer or accept these agreements are personal, it dilutes the effectiveness of the Act and codes, both by the ACMA (replaced the ABA) and industry organisations. However, it does maintain a level of independence by journalists and not a bad thing, as long as personal ethics are upheld. The PRIA does need to work to discourage offering paid reports though.

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In the current age of technology, the barriers between professional journalism and hobby reporter have begun to converge. Ten years ago the Cash for Comment incident and subsequent inquiry saw the start of this and prompted a massive shake-up of the journalist industry regulation and codes of conduct.

This research essay will look at what happened in the Cash for Comment incident; what industry changes occurred as a result of it; the current industry situation; and if regulation is still relevant.

Cash for Comment

On the evening on 12 July, 1999, ABC's television programme, Media Watch, aired a story about Sydney talk-back radio show presenter, John Laws. The programme claimed to have possession of a confidential document proving Laws had initiated a deal with the Australian Bankers' Association to receive payment in return for positive on air comments regarding banks and the banking industry. Previous episodes had unearthed the deal but Laws had insisted he was approached by the Australian Bankers' Association and that his opinion could not be bought. However the document stated "... the objective is to reduce the negative comments by John Laws from a present average of four a week to nil, concurrently receive positive comments from Mr Laws, over and above the paid advertisements..." (Johnson 2000). The deal was brokered by a group of advertising executives working with and on Laws's behalf in a communications company called Australia Street Consulting.

The, then industry regulator, Australian Broadcasting Authority (ABA), launched an inquiry into both Laws and the radio station, 2UE, for possible breaches of the Commercial Radio Code of Conduct and The Broadcasting Services Act 1992. The inquiry was later expanded to include fellow 2UE presenter, Alan Jones, and additional commercial radio stations around Australia who were part of the same group.

Industry Regulation

The ABA Commercial Radio Code of Conduct was just one regulation tool used in the semi-regulated commercial radio industry¹. The Commercial Radio Code of Conduct

¹ While the ABA at the time described the industry as self-regulated, the combined government/industry approach meets Breit's description of a semi-regulated industry (Breit, 2007).

requires commercial radio licensees to ensure no viewpoints are misrepresented or relevant information is withheld. It also requires the licensee ensures all advertisements not be presented as news or any other programmes (Australian Broadcasting Authority 2000). The inquiry looked at 2UE's compliance with these parts of the Code.

The other potential breach investigated was of the Broadcasting Services Act (1992). Section 4(1) of the Act states:

"to encourage providers of commercial and community broadcasting to be responsive to the need for a fair and accurate coverage of matters of public interest and for appropriate coverage of matters of local significance". (Australian Broadcasting Authority 2000)

The Act acknowledges radio stations can influence communities and different levels of regulation is required for each broadcasting method. It gives the ABA authority to create and administer the Commercial Radio Code of Conduct, investigate possible breaches and apply penalties to licensees who breach the Act or the Code. Under the Act, breaches can be penalised by the radio station license being suspended or even terminated (Australian Broadcasting Authority 2000). It is important to note that the penalties only apply to the station's licensee, not the presenters themselves.

While these were the two areas the ABA based their inquiry on, other stakeholders in the industry were also watching closely to see if Laws, Jones or any of the radio stations had breached their own codes of ethics.

The main journalist membership organisation in Australia, the Australian Journalists' Association, part of the Media, Entertainment and Arts Alliance (MEAA), requires its members to "disclose conflicts of interest that affect, or could be seen to affect, the accuracy, fairness or independence of your journalism. Do not improperly use a journalistic position for personal gain." (Media Entertainment & Arts Alliance).

Its code of ethics also requires members to commit themselves to honesty, fairness and independence. Two additional points specify that these three key areas cannot be undermined by any personal benefits or commercial agreements such as payments or advertising agreements. As with the Broadcasting Services Act, there are limits on who must adhere to this. The MEAA can only enforce the Code on its members, and there is no industry requirement for journalists to be members. Penalties for breaching the code

include censure or rebuke, fines up to \$1,000 for each offense, and/or expulsion from the organisation (Media Entertainment & Arts Alliance).

Journalists may also be required to adhere to company codes of conduct or ethics, as part of their employment contracts.

The final form of regulation specifically for journalists is that which started the Cash for Comment inquiry: ABC's Media Watch programme. For the last 20 years, the weekly programme has been holding journalists publicly accountable for sloppy and unethical journalism. Covering print, television and radio, it uses the catch phrase: "everyone loves it until they're on it" (ABC 2009). Which is true, journalists watch it enjoying seeing their colleagues faulted.

Another industry stakeholder involved in Cash for Comment was the Public Relations Institute of Australia (PRIA). PRIA is the main membership organisation for the Australian public relations industry. Its code is another that only concerns its members, but requires them to deal fairly and honestly to all; avoid conduct or practices likely to bring discredit...; and be prepared to disclose the source of funding (PRIA 2001). Penalties are similar to those of the MEAA and include fines, censure, suspension, and expulsion.

When the Cash for Comment incident came to light the PRIA was concerned that it could create misunderstandings between these practices and legitimate public relations so chose to submit a report for the inquiry. The submission stated that the PRIA's code "does not permit the practice of hidden payment for editorial content." (Johnston 2004).

The MEAA has not published the date their AJA Code of Ethics was introduced, and the PRIA Code was revised after the Cash for Comment incident.

While there is dispute over journalism being self or semi-regulated industry, the need for a high level of industry freedom is essential for journalism to remain the fourth estate, keeping government in check. Self and semi-regulation in journalism both depend on social responsibility theory, which accepts its role in servicing the political and economic systems. This has developed as the traditional role of journalists as "the providers of information" and an expectation of anything published as being true, factual and unbiassed.

The Cash for Comment incident highlighted some major limitations of self and semi-regulation. While the inquiry was specifically covering the commercial radio industry, the industry codes and Media Watch programme cover journalists in all fields. The inquiry doesn't appear to have been to the detriment of either the presenters and commercial radio stations or industry.

The Cash for Comment Inquiry Findings

As mentioned, the inquiry findings unearthed some flaws in the commercial radio regulation systems. The ABA only has jurisdiction to investigate, identify and punish for breaches of The Broadcasting Services Act and its Code of Practice (conduct/ethics). The Act details the conditions attached to holding a broadcasting licence.

The six-week inquiry heard from 2UE and other involved radio stations executive managers, representatives from the Australian Bankers' Association and other organisations Laws and Jones had commercial arrangements with, and the presenters themselves, John Laws and Alan Jones. Written submissions were received from other relevant stakeholders such as the MEAA and PRIA.

In February 2000 the ABA found breaches of several licence conditions and Code of Practice points, specifically relating to 2UE, Laws and Jones. There were five instances of 2UE breaching its radio broadcasting licence condition relating to political matters. 2UE was found to have breached two conditions of the Code of Practice. The first was condition two which ABA spokesperson, Michael Gordon-Smith, described: "concerns accuracy and fairness in news and current affairs programs and requires broadcasters to ensure that relevant available facts are not withheld,". This was breached 60 times. A further 30 breaches of condition three were also found. Condition three "requires broadcasters to ensure that advertisements are not presented as news programs or other programs" (Johnson 2000).

Each of these breaches were found to be committed by 2UE. During the findings announcement, when asked about breaches by Laws and Jones, Gordon-Smith said:

"The conduct of Mr Alan Jones and Mr John Laws in giving effect to agreements they had made with a range of commercial entities has lead to a substantial failure by 2UE to comply with the

Commercial Radio Codes of Practice and one of the conditions of its licence. The panel has concluded that 2UE's management systems were not adequate to prevent breaches of the Codes or conditions of its licence," (Johnson 2000).

Radio stations 3AW Melbourne, 5DN Adelaide and 6PR Perth were found guilty of similar breaches in an announcement by the ABA in August 2000, closing off the inquiry.

Testimony during the inquiry revealed the values of payments received by Laws were over \$2.5 million per year and sizable payments were made to Jones (O'Brien 1999). These were over and above their salary payments and declared sponsorships. Listeners to their programmes were never informed of the presenters profiting from the endorsements and only Laws denied how easily influenced their devoted audiences were. Despite all this, Laws and Jones were unable to be found at fault.

None of the presenters were liable for penalties under either the MEAA or PRIA codes of conduct as Laws famously pointed out during his testimony: he's an entertainer, not a journalist. It can be assumed neither him nor the other presenters were members of the MEAA or PRIA. The only punishment handed out to Laws was to be exposed on the television programme Media Watch. With the level of devotion his listeners had for him (and the other presenters), it could be said they "got away with it scott free".

The sole penalty handed down to 2UE from the 95 breaches was to ensure a brief announcement declaring commercial interests was made before any sponsor mention or sponsor representative is interviewed on air.

Weaknesses of a semi-regulated industry

There is no denying the Cash for Comment incident highlighted weaknesses in the industry regulation model.

During the inquiry, the 2UE Chair and person responsible for ensuring station compliance with the code, John Conde, claimed not to know of Jones' sponsorship deals. He explained it as assuming there weren't any when none were declared. While sending out directives to all station presenters requesting details of any sponsorships he appeared not to press hard for details from Laws and Jones. These two presenters were also the highest

rating with enormous fan followings. If they chose to move to a different radio station the commercial impact on 2UE would be huge. Even with the threat of losing their broadcasting licence, the economic impact of breaching the code was not as seen to be as heinous as the economic cost of losing their star presenters.

Another weakness of industry regulation is the convergence of news and entertainment and media sources. Talk back radio is based around current affairs. To maintain a listening audience, the presenters need to be topical, knowledgeable on current affairs and also entertaining. Especially in commercial radio, there is a lot of competition and churn with listeners between stations. While the ABA, the Media Watch team, and possibly 2UE considered Laws and Jones to be news presenters or journalists and therefore needing to abide by the rules and ethics pertaining to those occupations, we know that Laws saw himself as an entertainer, therefore exempt.

Laws declaring himself an entertainer has an impact on the effectiveness of industry codes of ethics and conduct. Unlike medicine or law, practitioners of both journalism and public relations are under no obligation to join an industry association, and in turn abide by its rules. In public relations there are also multiple associations to choose from. The PRIA is the main in Australia, but the International Association of Business Communicators has several chapters in Australia covering all aspects of communications, not just public relations. None of these associations have the jurisdiction to enforce penalties on non-members or former members, even if the breach was committed while a member.

Central to all of these codes is the question of what are society's current ethical base. Laws and Jones knew their audiences well to see they were so trusted any breaches would be overlooked. The rest of Australia wasn't as forgiving. It also needs to be stated that while the common ethical theory of social responsibility creates a mutual obligation of ethics and responsibility they are not definitive, the same as law and ethics. So irrespective of which ethical base a person chooses (deontological, consequential or virtue) 'codes cannot replace ethical decision-making - they are merely part of the process' (Breit 2007). Therefore codes and legislation should not be too restrictive and attempt to replace ethical decision-making in journalism or they will erode its power as the fourth estate.

The Outcome of Cash for Comment

The Cash for Comment inquiry found that the current standards governing commercial radio stations to be insufficient. One main concern was the lack of conditions imposed to specifically address commercial arrangements entered into by presenters.

New standards introduced in 2000 required commercial radio station licensees to establish internal compliance programmes; all commercial agreements between sponsors and presenters to be disclosed on-air during current affairs programmes; licensees to maintain a register of commercial agreements between sponsors and presenters, available to both the ABA and the public; compliance to the Act, the Codes and Standards to be a condition of employment for all current affairs programme presenters; and that advertisements are distinguishable from other programmes. These standards were included in each commercial radio station licence, so unable to be avoided by stations.

Further changes were recommended to be introduced later as they required a legislative change to be enacted. These included the power to:

- direct advertising free periods;
- suspend a presenter for a period of time;
- require on-air corrections or the findings of ABA investigations to be broadcast;
- impose a civil penalty; and
- approach the Federal Court for injunction orders.

However, these moves were not enough to ensure compliance and fair current affairs radio journalism for Australia. In 2004 Laws was again investigated for breaches of the ABA Code of Practice. Jones was named in the same arrangement with telecommunications company, Telstra. This time though, during the inquiry ABA Chair, David Flint, sent Jones an email assuring him he would be fine. While Laws was found guilty, Jones was found not to liable as the commercial arrangement was between Telstra and the radio station, despite claims of Jones showing a positive bias towards Telstra. The ensuing investigation resulted in Flint standing down as Chair, and the ABA being merged with the Australian Communications Authority to become the Australian Communication and Media Authority (ACMA). The new authority regulating broadcasting, radio communications, telecommunications and online content.

In 2007 legislation was enacted allowing the ACMA a stronger set of penalties which could be enforced. These included civil penalties via the Federal Court, remedial directions, acceptance of enforcement undertakings; seek injunctions, and issue infringement notices (Australian Communication and Media Authority 2007).

The reactions of the MEAA and PRIA to the inquiry outcomes were lighter, but that could be because neither association was directly impacted by Laws or Jones's actions. The PRIA introduced the Code of Ethics mentioned above in 2001. This could have been influenced by the outcomes of Cash for Comment. The MEAA has not disclosed when its current Code of Conduct was introduced.

Cash for Comment 10 Years Later

It is now ten years since Media Watch screened the episode that prompted the Cash for Comment inquiry and subsequent industry shake-up. Commercial radio is more heavily regulated, other areas of journalism and also public relations have been scrutinised with some industry controls seeming to be tightened. John Laws retired on 1 December 2007, Alan Jones can be heard on 2GB's breakfast programme. Both continued to breach the ACMA codes and standards, but as they have jointly funded more than one lawyer's retirement from a string of defamation and contempt case fees, they appear to think of themselves as above the law.

The convergence of media and job roles which allowed Laws to escape penalty in 1999 has deepened creating a new genre of current affairs and journalism that codes and regulations are yet to catch up with.

Citizen journalism has developed as a new source of current affairs. The general public are using the internet and social media tools to report the news themselves. Dedicated citizen journalism websites such as NowPublic has reporters in over 140 countries and is recognised by Time and the Guardian. Photography website, Flickr, featured photos from the terrorist attacks in India before the mainstream media was able to get there. Other stories are written or filmed and published on personal blogs or video sharing site, YouTube.

There have been concerns raised about citizen journalists. While most concerns focus on the journalist's lack of training, public relations writer, Brian Solis is quick to dismiss citizen journalists as bloggers. While some bloggers are more influential than professional journalists, many are just people publishing their personal diaries online. However, Solis is distinct in dismissing even professional journalists writing in a blog-style and stresses that while citizen journalists play an important part of social media and public relations, they should not be linked to mainstream journalists. The final concern comes back to citizen journalists not being trained in the same manner as professional journalists. Often for citizen journalists, journalism is a hobby, for others it's an off-shoot of their professional lives in other fields. They often write on blogs what they are passionate about and gather followings of hundreds, sometimes thousands. They are influential and this has been noticed by public relations practitioners.

A recent survey showed that one in four bloggers/citizen journalists have been paid by public relations practitioners for specific article topics. And more have declined offers (Rowse 2009). While many who accept payment claim they disclose which posts/reports are paid, there is an increasing number of instances of public relations practitioners requiring the journalists to sign non-disclosure statements regarding the posts. In February 2009, the Age newspaper in Melbourne reported Hugh Thomas, an amateur film maker from Bondi, NSW with approximately 20,000 people subscribed to his video blog, accepted payment from 20th Century Fox. The video blog post promoted a new television programme, Lie to Me. Thomas was asked to sign a non-disclosure agreement by 20th Century Fox, so declined to give more details on the commercial agreement. He did however, admit to previous agreements with Sony and Paramount Pictures. Thomas justified his decision to accept payment as "if you can still create a video that is interesting, funny ... and it can advertise a product as well ... then I don't see any [ethical] issue with that," (Moses 2009). Comments on the video posting say his subscribers think otherwise.

Another recent occurrence was the campaign for the review website, Testfreaks. Jay Haffling approached several technology blogs and had at least two takers. Neither of which declared payment for endorsing Testfreaks (Burrowes 2009).

Tim Burrowes, editor of media and marketing blog, mUmBRELLA, sees this as the same as the Cash for Comment incident of 1999, thus bringing it to his readers' attention. This sentiment is echoed by Gerry McCusker. McCusker is a Public Relations Analyst and

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author of PR Disasters. On his blog, he was very critical of both the blogger/citizen journalist for accepting the payment without declaring it and also of the public relations practitioners for offering in the first place (McCusker 2009).

These offers are in direct conflict with the PRIA's code of ethics, which all members agreed to abide by.

The Future of Codes and Regulation

As can be seen from the current reoccurrence of Cash for Comment it looks like the professional journalists have learned and the public relations practitioners have learned to be more creative.

While the subscribers' comments on Hugh Thomas's video show the audience won't accept a repeat of Cash for Comment, the citizen journalists only have their personal ethics to draw from in deciding if they should accept it or not. There's nothing to prevent them from reporting or blogging if they accept undisclosed payments. Neither the ACMA or MEAA codes apply to them as amateur journalists. They also haven't had the formal training on regulations and ethics professional journalists receive.

Therefore the onus is on PRIA member public relations practitioners to maintain ethics in citizen journalism. As more audiences are looking to citizen journalism for their news, the only regulations are on the public relations practitioners.

The outcome for the MEAA and ACMA is not good. Their power has been diluted and will continue to do so citizen journalism grows. Smart citizen journalists will turn to the codes for guidance to put professionalism into their reports. Despite this, there are no changes to the current regulations or codes required. Any changes to either the ACMA Codes, the Act or the MEAA code of conduct would be unenforceable with no obligation to learn them.

This is good for maintaining the fourth estate. Journalists, professional and citizen, will be more focussed on their ethics and those of their audiences to maintain the balance between right and wrong journalism. For the public relations practitioners (both in the PRIA and others) nothing changes.

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