

## GD MEDIA LAW BULLETIN 19

---

GD Media Law Bulletin is a news review compiled quarterly by Goodman Derrick's Media Group. The aim of the Bulletin is to provide a brief summary of interesting developments in media law and regulation. The Bulletin is directed at journalists, producers and compliance officers. Detailed guidance on how those developments may impact upon programme makers and broadcasters is available from any member of the Media Group.

---

### INTRODUCTION

This Quarterly Bulletin coincides with the disappearance of the ITC and the assumption of its regulatory powers by Ofcom. Therefore additional emphasis is given to reporting the last Programme Complaints Bulletins of the ITC and the BSC to December 2003. Ofcom was due to issue the first of its Fairness and Standards Complaints Reports with effect from 27 January 2004. It will be very interesting to see if these betray a change of policy or approach from that of the ITC or the BSC who, not infrequently, issued conflicting adjudications over the same programmes.

Interestingly, visitors to the ITC's Website in December 2003 were greeted by the following announcement: "The ITC has ceased to exist from 18 December 2003 and its duties have been assumed by Ofcom ... [which] will have wide ranging responsibilities when it assumes its powers on 29 December 2003". One wonders as to the fate of any contravening programme material which may have been transmitted between these two dates. Will it fall into a regulatory void, or would Ofcom exercise retrospective powers in respect of this apparent hiatus?

### REGULATORY

#### Warnings

Latter ITC and BSC findings in the area of taste and decency and prior warnings contain a few interesting examples. In relation to ITV's *Boudica* which was broadcast on a Sunday evening in September 2003 at 9.20 pm, the pre-broadcast warning referred to "violence and scenes of a sexual nature". Twelve viewers complained about a scene featuring the flogging of *Boudica* and the rape of her two daughters. The ITC accepted Channel TV's Submissions (it being the compliance licensee) that the scene had been handled with appropriate care, was not gratuitous and was in context of the story as a whole. It also appreciated that it only appeared some 50 minutes into the programme. On the other hand, the ITC recognised that many viewers would have found the rape scene disturbing to watch. Although the ITC was satisfied that sufficient care had been exercised in relation to the content of the programme and in relation to this particular scene, it decided that greater care should have been exercised in relation to the warning. In an approach which might be described as pedantic, the ITC felt that it was insufficient to mention "violence and scenes of a sexual nature" when in fact the rape scene incorporated both elements in one.

Contrast this to *Joan of Arc*, broadcast on BBC2 also at 9.20 pm, where a single viewer complained about the graphic portrayal of a rape. In that case the BBC successfully persuaded the BSC that the scene was not gratuitous, was in context and that the pre-broadcast warning was sufficiently clear and explicit as to put the viewers on notice. [Unfortunately, at the time of going to press it has not been possible to obtain further detail of this adjudication].

Finally, the ITC upheld complaints from three viewers of Teachers (Channel 4, October 2003 9.00 pm) who were concerned about the amount of strong language used. They were particularly concerned about the repeated use of f\*\*k, so soon after the Watershed. Channel 4 pointed out that the pre-broadcast warning had expressly referred to "very strong language from the start". Nevertheless, the ITC was not sufficiently impressed. It was concerned that this was a programme which had normally been broadcast at 10.00 pm, and that this particular episode (and two others) had been brought forward to 9.00 pm. It pointed out that since the series had previously been established in the 10.00 pm slot, its viewers could be taken to be less concerned about the use of offensive language. However, by bringing the series forward to 9.00 pm, the ITC must have regarded it as likely that the programme would attract viewers who were not familiar with it and would be concerned about the level of bad language so close to the Watershed, notwithstanding the explicit warning. As the adjudication explained, "Warnings have a helpful role in enabling viewers to make informed choices, but this does not diminish the licensee's responsibility to schedule programmes appropriately".

On a more positive note for the Channel, both regulators dismissed a large number of complaints relating to "Derren Brown plays Russian Roulette Live". They both considered that the stunt had been carefully and responsibly treated and had been preceded by unambiguous warnings. The BSC further rejected a complaint about the juxtaposition of this programme with an earlier one concerning the suicide of Dr David Kelly, and held that the scheduling was not inappropriate. Interestingly, the ITC's decision appeared to be unaffected by the apparent refusal of Channel 4 to answer its enquiry as to whether live or blank bullets had been used in the stunt.

## **Fairness**

There is only one minor and fairly mundane report to mention, but it does no harm to remind us of the basic principles of fairness: In its December Report the BSC upheld a complaint from a Mr Harmesh Manghra concerning a discussion programme transmitted by Asian broadcaster Radio XL in November 2002. The programme discussed the fate of a woman who was holidaying with her husband in India, but was then left stranded there after her husband allegedly stole her passport and returned to the UK without her. Mr Manghra was not named in the piece, but was identifiable to his family and local community. Rather surprisingly the broadcaster had not seen fit to give Mr Manghra an opportunity to comment or respond to this rather serious allegation and in the absence of any legitimate or overriding public interest, the BSC had little hesitation in ruling that Mr Manghra's privacy had been unwarrantedly infringed by the broadcast.

## **LEGAL**

The writer nearly choked on his cornflakes when he was watching an item on breakfast news in early January concerning the tragic murder of 10 year old Rosie Storrie, who was discovered dead in an upstairs room at a family Christmas party. The item reported that a 17 year old had been arrested in connection with the murder. It then proceeded to show the accused, who was named as Paul Smith, leaving Loughborough Magistrates Court after an initial hearing. The mystery of this apparently clear contravention of the Children and Young Persons Act 1933 was subsequently revealed: the Magistrates had agreed that although Paul Smith was only 17, they were prepared to waive the restrictions on reporting his identity as his 18th birthday fell in the following week. This welcome development followed the earlier case of Todd -v- Crown Prosecution Service in October 2003, in which the Court of Appeal upheld a Youth Court's ruling that a defendant who attains the age of 18 during Youth Court proceedings cannot continue to have his identity protected under S49 CYPA 33.

Another variation on the theme of youth offenders is the subject of Anti-Social Behaviour Orders

(ASBOs). Owing to an apparent oversight when ASBOs were initially introduced under the Crime and Disorder Act 1998, it was discovered that because the imposition of an ASBO is a civil process, which is separate from any earlier criminal proceedings by which the youth was convicted, those earlier criminal proceedings would still be covered by an automatic prohibition on reporting under S49 CYPA 33. The reporting of the imposition of the ASBO could be authorised, but this would not necessarily refer to the earlier criminal proceedings unless these restrictions had been expressly lifted. This wrinkle has now been tidied up by the Anti-Social Behaviour Act 2003, which has amended the 1998 Act to permit reporting of both the ASBO proceedings and the earlier criminal proceedings by revoking the automatic prohibition on reporting of the latter. A case involving what is believed to be the first exercise of these provisions took place on 22 January 2004 involving 16 year old Terence Westran. A Manchester Youth Court convicted Westran of assault, affray and criminal damage (among other things) and sentenced him to 12 months detention. An ASBO was also imposed which prevents him from entering Manchester for 10 years! The District Judge who imposed the ASBO had little hesitation in waiving the reporting restrictions in respect of the youth criminal proceedings. Hence, the case was extensively reported, both locally and nationally.

## **COPYRIGHT**

Since our last Bulletin, the Copyright and Related Rights Regulations 2003 have come into force. These Regulations make various amendments to the existing copyright legislation enshrined in the Copyright, Designs and Patents Act 1988. Most prominent and widely reported is the curtailment of the defence fair dealing for the purposes of research or private study. This defence now only applies to research or private study for a non-commercial purpose. However, of equal if not greater importance to programme makers and broadcasters, are two amendments to S30 of CDPA 88. The first provides that fair dealing with a work for the purpose of criticism or review can now only apply where the work in question has already been made available to the public. In other words, the defence cannot apply in respect of a work which has not been previously published or disseminated. Previously the question of prior publication was one of several factors to be taken into account in deciding on the applicability of the defence of fair dealing; it has now become a mandatory requirement. (This does not apply where the fair dealing is for the purpose of reporting current events). The other amendment relates to S30(3) CDPA 88 which provided that in relation to fair dealing for the purposes of reporting current events by means of a broadcast, no acknowledgement of the copyright owner was required. Under the new Regulations this dispensation has now been significantly reduced by an amendment which limits its application to cases where "this would be impossible for reasons of practicality or otherwise". Though unhelpful for programme makers and broadcasters, this has a certain logic since the primary reason for the original introduction of this dispensation was by reason of practicality, having regard to the exigencies of TV news reporting.

Top ^^

---

**This guide is for general information and interest only and should not be relied upon as providing specific legal advice. In relation to any particular matter, readers are advised to seek advice.**

### **further information:**

If you would like more information about any of Goodman Derrick's Media Law services please telephone and ask to speak to a member of the Media Group.

Goodman Derrick  
90 Fetter Lane  
London EC4A 1PT

tel +44 (0)20 7404 0606  
fax +44 (0)20 7831 6407

e-mail [law@gdlaw.co.uk](mailto:law@gdlaw.co.uk)

---

Goodman Derrick

[Disclaimer & Privacy policy](#)