

Response to MRC consultation on “Press regulation and small news organisations”

Executive Summary

The amendments to the Crime and Court Bill (C&C Bill) to support the Royal Charter on press regulation have caused a great deal of confusion and concern amongst bloggers and small news organisations. In the light of this, the Media Reform Coalition wrote a [briefing document](#) and devised an [online consultation](#) which went live on April 4th 2013. The following results were gathered in the 17 days up to April 21st (updated from a previous summary of results collected by April 12th).

The consultation was in two parts. Part 1 dealt with the definition of a "relevant publisher" for the purposes of exemplary damages and court costs penalties, and Part 2 asked about access to the benefits of a recognised self-regulator. A total of 102 respondents completed Part 1 and 89 completed Part 2. The majority of these were from individual blogs (67%) followed by group blogs (20%). From the URLs provided, these appeared to be a mix of hyperlocal news sites from across the country, individual citizen bloggers and campaigning blogs from across the political spectrum.

In Part 1, respondents were asked for their views on five different exemptions to a "relevant publisher" suggested to replace the holding amendment exempting a "small-scale blog". The most popular of these were:

- to exempt non-profit organisations – 66% liked this while 22% disliked this.
- to exempt anyone beneath the VAT registration threshold of £77,000 a year turnover – 65% liked this while 23% disliked this .

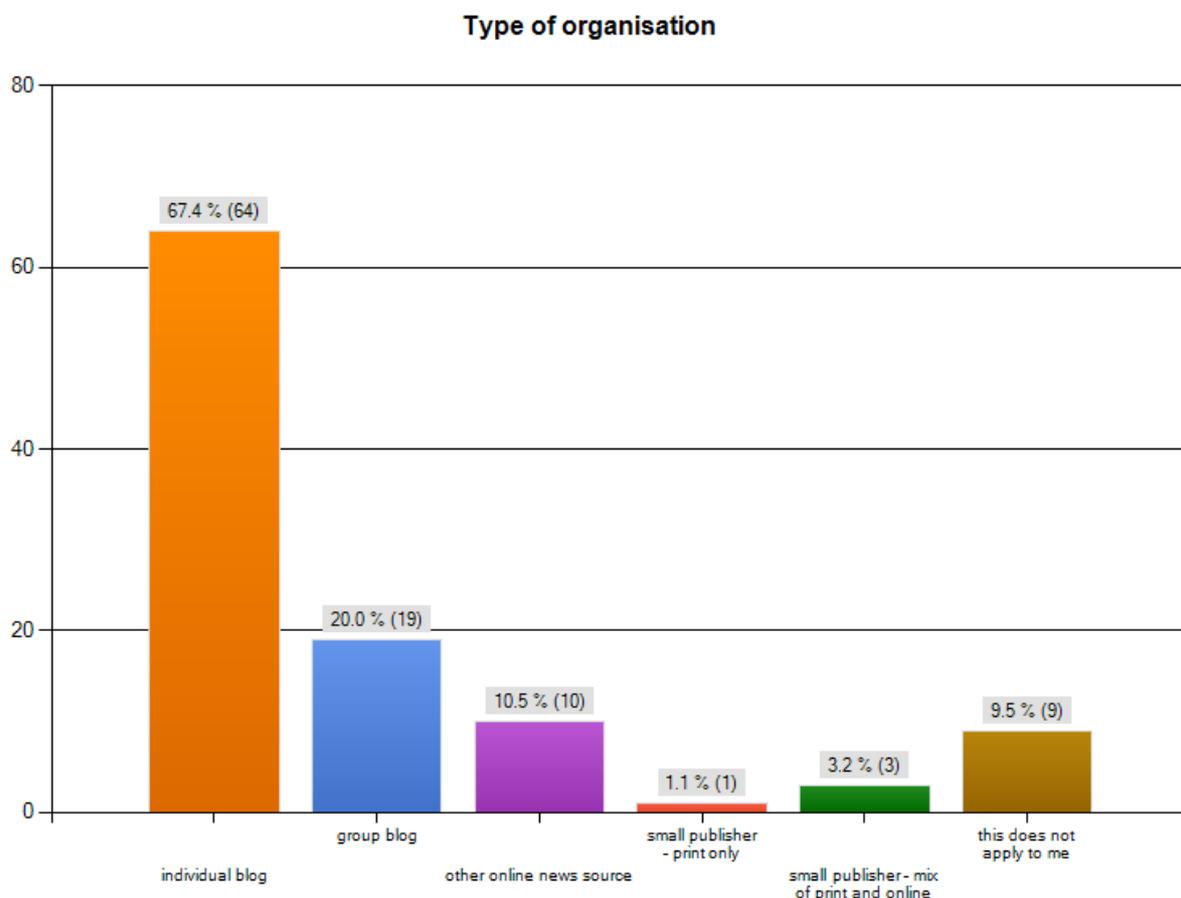
While all the other options were also liked more than disliked, respondents were more equivocal and comments indicated that many felt that a turnover threshold should not be significantly higher than the VAT registration level. This may be due to the large proportion of individual bloggers who took part, as opposed to respondents from larger organisations.

In Part 2, a **large majority** (79% excluding 'don't know's) agreed that anyone who chooses to join a recognised regulator *should* have access to the costs benefits it provides, even if they are not a "relevant publisher". Our respondents also said they would be more likely to join a regulator if costs protections were available, and if a regulator was specifically designed for small news organisations.

Our respondents were not a representative sample of bloggers or small news organisations, but their view points are none-the-less a valuable addition to current debates.

Who responded?

Question 1-3 of the consultation asked for personal details, and Question 4 asked about the type of organisation or blog they were involved with. A number of those who answered this did not complete any more questions, so Chart 1 shows those who answered Question 4 *and* completed Part 1 of the consultation.



Part 1: Liability for exemplary damages and cost penalties (102 responses)

Respondents were provided with the definition of a “relevant publisher” and the exemptions as the currently stand in the C&C Bill amendments. They were then presented with 5 suggestions for clarifying these amendments and asked to rate them as:

- I strongly like this
- I like this
- I'm neutral about this
- I dislike this
- I strongly dislike this
- I don't know

After each question there was an opportunity to provide "reasons/comments" for the answer they had just given. A selection of these has been included, reflecting the substantive points made by respondents. The results were as follows:

Q5: *Non-profit organisations should be excluded, so that exemplary damages and costs penalties would only apply to news publishers who carry on a business with a view to a profit (whether or not they actually make a profit). Companies who do not aim to distribute profits would also be exempted.*

I strongly like or like this: 66% (67)

I strongly dislike or dislike this: 22% (22)

Those who *liked* this made comments such as:

- “Very often small scale blogs ... carry advertising to pay for some of their server costs. But this is very different from actually seeking to make a profit which is distributed to owners/shareholders.”
- “We are a non-profit volunteer-run publication, totally reliant on grants / donations / small amount of advertising. As such, we have no means of paying anything other than print & web hosting costs.”
- “Where there is no profit motive, publishers cannot be tempted to calculate that they have more to gain through irresponsible news reporting than they have to lose through civil legal actions.”

Those who *disliked* this made comments such as:

- “A site run, say, by two people could in theory be non-profit, but purely on the basis that the two people split all the 'profit' as salary, leaving no technical profit at the end.”
- “The fact that an organisation does not aim for a profit is no guarantee that it will behave responsibly or will not unreasonably damage those it writes about.”
- “This discourages start ups and small online based news sites like hyperlocal blogs”
- “There can be blogs with large audiences who do not make so much money as the newspapers [but] can be very dominating and bullying”

Q6: *'Small companies', as defined by the Companies Act, should be excluded from exemplary damages and costs penalties. A small company meets at least two of the following three criteria: turnover of less than £6.5 million; fewer than 50 employees; less than £3.1 million in assets. (A version of this amendment has been formulated to prevent very large publishers creating smaller subsidiaries in order to be exempted.)*

I strongly like or like this: 50% (51)

I strongly dislike or dislike this: 31% (32)

Those who *liked* this made comments such as:

- “If anything, it might be too generous - however, adopting the existing Companies Act definition does have the benefit of simplicity.”
- “The definition already exists in statute [so] it creates a consistent measure.”

Those who *disliked* this made comments such as:

- “[This] *only* applies to Companies! This is a huge regulatory burden to impose on sole traders, partnerships or individual bloggers.”
- “Many mainstream publishing enterprises will come below this threshold.”
- “Small organisations / publishers are often the most blasé in pursuit of readership. They

- have more to gain from sensationalism.”
- “It’d be all too easy for a large publisher to create smaller subsidiaries”

Q7: Any organisation with a turnover beneath the VAT registration threshold should be excluded from exemplary damages and costs penalties (currently £77,000 a year, linked to inflation).

I strongly like or like this: 65% (66)

I strongly dislike or dislike this: 23% (23)

Those who *liked* this made comments such as:

- “This is a very sensible proposal, especially since it is very easy to check whether a publisher is VAT registered.”
- “VAT threshold [is] best as long as the regulator's fees are very low”

Those who *disliked* this made comments such as:

- “This has the potential danger to create one off campaign blogs and websites that could deliberately spread lies and innuendo, then simply close down once the deed is done.”
- “The VAT registration is fairly low.”

Q8: Any organisation with a turnover beneath a multiple of the VAT registration threshold should be excluded from exemplary damages and costs penalties – for example 3x or 5x £77,000 a year.

I strongly like or like this: 40% (42)

I strongly dislike or dislike this: 27% (28)

Those who *disliked* this made comments such as:

- “Most bloggers do not earn anything like the VAT threshold. There's no need to scale up the threshold.”
- “If you're bringing in over £200,000 from a website, then I think you're well out of being a small blog.”

Q9: Companies beneath a certain turnover threshold (unrelated to the VAT registration, so not rising with inflation) should be exempted from exemplary damages and cost penalties. (Figures which have been suggested range from £250,000 to £750,000 a year.)

I strongly like or like this: 36% (37)

I strongly dislike or dislike this: 34% (35)

Those who *disliked* this made comments such as:

- “This might be considered as a simpler alternative to the 'small companies' exemption. However, the threshold may be too low at £750k, and is certainly too low at £250k.”
- “Should be far lower.”
- “Arbitrary and will become meaningless over time.”
- “Not clearly defined with respect to existing statutes.”
- “The threshold should automatically rise with inflation.”

Q10: Do you have any other comments about exemptions from exemplary damages and cost penalties?

The substantive suggestions made in this section were:

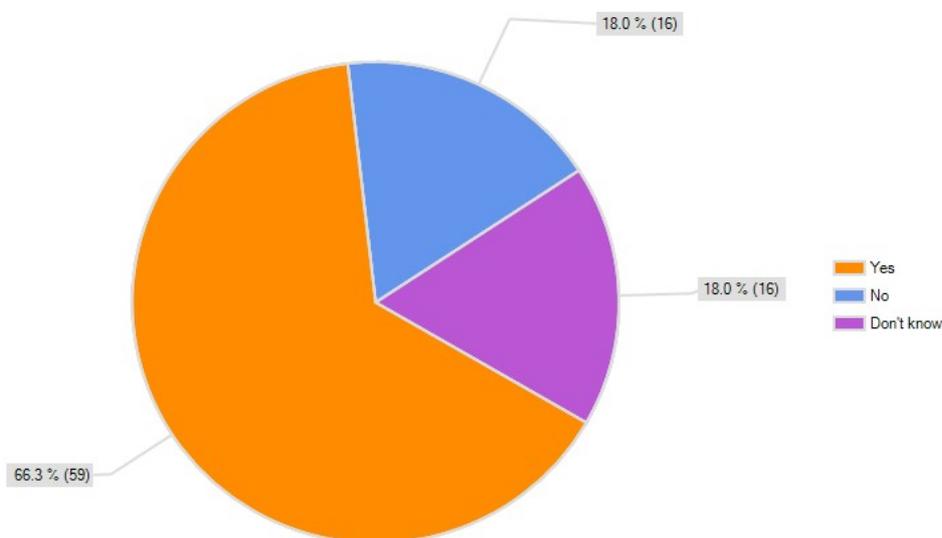
- To strengthen Article 10 of the ECHR to protect small publishers
- To apply the proposals only to printed newspapers and exclude the internet altogether
- To set exemplary damages as a percentage of turnover so always proportionate to ability to pay
- To define "in the course of a business", "editorial control" and "special interest title" more clearly
- To limit the jurisdiction of incentives and penalties to the UK
- To make a non-discriminatory system that mitigates against loopholes
- To use audience share as a better measure of power online
- To distinguish between profit and non-profit organisations in a similar way to the formulation of exceptions for religious organisations in the Equality Act 2010

In addition, there were comments condemning the legal incentives as "oppressive", querying the necessity of regulation given the existence of libel law, speculating on the effectiveness of the future arbitration system, and criticising the survey design.

Part 2: Access to the benefits of a regulator (89 responses)

This part of the survey outlined the costs protections that will be provided to go those who join a recognised regulator. It then explained that in the C&C Bill amendments as currently drafted these benefits won't be available to anyone who is not a "relevant publisher", even if they *do* opt to join a recognised regulator, highlighting that this was contrary to the intentions of the Leveson Report.

Question 10 asked: *Do you think that the cost benefits of the recognised self-regulator should be available to anyone who chooses to join, regardless of whether they are a "relevant publisher"?*



Excluding those who answered 'Don't know', 79% (59 out of 75) were in favour of making the benefits of the regulator open to all.

Those who answered 'Yes' made comments such as:

- "It's actually a good way of strengthening protection for small publishers from the costs of libel action."
- "Hyperlocal publishers... are run very well indeed and are much more balanced than local papers. They might welcome the opportunity to take part in an appropriate regulation scheme as a badge of quality"
- "Only if free membership is provided to small businesses and non-profit blogs."
- "Arbitration has produced an overall cheaper, fairer result in many areas of civil litigation, so should be incentivised."

Someone who answered 'Don't Know' commented that:

- "There is far too much ambiguity about the whole idea, and the rush to legislation is both ill conceived and fraught with problems for the future."

Questions 11 and 12 asked about likelihood to join the new regulator, asking respondents to rate their answer as:

- Much more likely
- Somewhat more likely
- No difference
- Somewhat less likely
- Much less likely
- Don't know

Again, comments were requested and have been included here to reflect the principle substantive points made by respondents.

Q11: If there was a self-regulator which was suitable for your organisation, and affordable to join, would you be more likely to consider joining if costs protection was available as a result?

Much or somewhat more likely: 62% (55)

Much or somewhat less likely: 2% (2)

Those who were *more likely* to join made comments such as:

- "The main benefit of joining would be gone if this protection didn't apply."
- "I am very scared of litigation as I have no protection."

Those who said it would make *no difference* made comments such as:

- "We have no money."
- "There is no chance whatsoever that I will join a regulator."

Q12: The Royal Charter allows for any number of self-regulators to be officially recognised so long as they meet the required criteria. Would you be more or less likely to join a self-regulator if it was specifically designed for small news organisations?

Much or somewhat more likely: 61% (54)

Much or somewhat less likely: 3% (3)

Those were *more likely* to join made comments such as:

- “There's a world of difference between small amateur news orgs and tabloids and the little guys wouldn't have a voice at the top table of a monoregulator.”
- “There are different issues for small businesses and multinationals, so an organisation fitting the relevant scale would provide a more tailored method of providing support and applying relevant regulation.”
- “I am tentatively involved in creating one for hyperlocals.”

Those who said it would make *no difference* made comments such as:

- “Even if it is "specifically designed for small news organisations", it could still be too expensive, untrustworthy, or politically biased to join.”
- “I'm wary of having multiple self-regulation bodies in principle.”
- “I already self regulate, as do almost all bloggers.”

Conclusion

These results, of course, cannot be taken as representative of the views of small news organisations, especially given the relatively low response numbers and the fact that the consultation was largely promoted through individuals and organisations already supportive of MRC. However, we did also invite dozens of bloggers and local news sites from outside our networks to participate, and from the personal details provided we do appear to have reached a reasonably broad demographic.

What is particularly striking is the level of support for having access to the benefits of a regulator once this question is decoupled from the exemplary damages and costs penalties. We believe that bringing this support to light makes the results of our consultation a valuable contribution to the debates currently surrounding the C&C Bill amendments, and that the government should take steps to ensure that the protections of the new regulatory scheme are made available to all.