

1 **Statement of Dr. Daithí Mac Síthigh, University of East Anglia**

2 **Introduction**

3 **(a) An introductory section setting out who you are, your current**
4 **position and a brief outline of your career to date.**

5 I am a full-time lecturer at the UEA Law School, University of East Anglia. I
6 took up this appointment in August 2008 and my duties include both teaching
7 and research. I am the director of the LLM Information Technology &
8 Intellectual Property, the convenor for media and technology law research in
9 the Law School, and the school's liaison with the media@uea interdisciplinary
10 research initiative. I am the convenor for media and communications law in
11 the Society of Legal Scholars.

12 I am the module organiser for three undergraduate modules: Media Law,
13 Media/Entertainment/Sports Law, and Internet Law, and also currently teach
14 or have taught at undergraduate and postgraduate level at UEA the following:
15 Constitutional & Administrative Law, Current Issues in Intellectual Property
16 Law, Internet Law & Governance, Commercial Aspects of Media Law, Media
17 & Society, and Media Regulation. The final two modules are primarily taken
18 by non-law students, e.g. MA Media, Culture & Society, BA Media Studies.

19 I am a graduate of Trinity College Dublin, where I received the degrees of LLB
20 (2004) and PhD (2010). My doctoral thesis, supervised by Prof. Eoin O'Dell,
21 was on 'Convergence and the right to communicate: assessing the application
22 of media law to the Internet'. I was a research associate and part-time tutor at
23 Trinity College Dublin from 2006-2008; I also taught Media Law & Ethics as a
24 part-time lecturer at Dublin Business School (to Journalism students) in 2008.
25 I have a small amount of (unpaid) experience in the media, including being
26 the first chair of the Dublin University Radio Society (Trinity FM) and its station
27 manager in 2001.

28 In Part A, I set out answers to the specific questions included in the section 21
29 notice. In Part B, I add further comments regarding Part 1 of the Inquiry.

30

30 **Part A**

31 **(b) An overview of the courses relevant to journalism which the**
32 **academic institution at which you work provide.**

33 **(c) Details of the training on standards and/or ethics which your**
34 **institution provides to students on courses for journalists or aspiring**
35 **journalists.**

36 *Within the UEA Law School, we provide the following.*

37 Media Law

38 This is available to final year students as an optional module. The syllabus
39 covers journalism and the law, broadcasting regulation, competition law,
40 defamation, and privacy. Much of this material is relevant to journalism. For
41 example, the block on journalism and the law covers the status of journalists,
42 the regulation of investigative journalism through criminal law, the NUJ and
43 PCC codes (focusing on clause 10 of the latter re 'subterfuge'), contempt of
44 court, access and reporting the courts, and the protection of sources.
45 Defamation and privacy are also looked at in detail, including consideration of
46 recent developments influenced by the ECHR and current proposals for
47 reform. A recent addition to the syllabus is the Leveson Inquiry itself, where
48 students are asked to consider the available evidence and reports and to
49 consider how they might respond to the Key Questions.

50 Media, Entertainment & Sports Law

51 This is available to final year students as an optional module and covers all
52 the material of Media Law, as well as entertainment and sports law.

53 Other Undergraduate

54 Within the School, issues relating to journalism are also considered in core
55 modules, e.g. constitutional and administrative law (Official Secrets Act,
56 freedom of expression) and the law of tort (defamation), and in optional
57 modules, e.g. Internet law (intermediary liability, data protection).

58 LLM Media Law, Policy and Practice

59 Students on this programme are required to take Media & Society (discussed
60 below), as well as at least two from: The Protection & Management of Privacy &
61 Reputation; Media Markets & Regulation; Copyright, Contract & the Creative
62 Industries; Internet Law & Governance

63 *Within the wider University, the following modules (to which I and Law*
64 *colleagues contribute) may be of interest.*

65 Media Regulation (School of Film & Television Studies)

66 "This module provides an introduction to the key debates over the regulation
67 of media. In addition to systems of censorship, the module will explore the

68 economic systems through which media are organised and controlled, the
69 legal systems through which they are managed and organised and the
70 political processes through which they are mobilised. Rather than simply
71 seeing such processes as repressive, the module will also seek to explore the
72 ways in which they productively shape content. The module will be taught by
73 lecture and seminar”

74 This is a required module for first year students on the BA Media Studies.
75 The legal section considers (in less detail than the Law School’s module)
76 defamation, privacy, regulatory bodies (PCC, Ofcom, etc), copyright, and
77 article 10 ECHR (through a case study of film classification).

78 Media and Society

79 “This module is intended to provide all students studying media related
80 postgraduate degrees with a broad, current and inter-disciplinary
81 understanding of the media today. The guiding philosophy informing this
82 module is the belief that in order properly to understand the media, whether
83 as a lawyer, economist, development studies professional, media studies
84 specialist or political scientist, it is essential to have a wide-ranging and multi-
85 disciplinary understanding of the modern media. What we shall be doing over
86 the year therefore is looking at the structure of the media industry today in the
87 UK and globally. We will consider, from several different academic
88 perspectives, how media content is constructed, what factors and influences
89 go to shape content and how content may be controlled and even censored.
90 We will also look at the media industry, examining how it is currently
91 organised and managed, what factors influence its current organisation and
92 consider how it might develop. We will also examine how media affects
93 people and society and consider also the assumptions that are made about
94 the impact of the media. Finally, we will seek to draw together key aspects of
95 modern media.”

96 This is a core module for Masters students on the LLM Media Law, Policy &
97 Practice, MA Media, Culture & Society, and MA Media & International
98 Development. It is also available to other students as an option. It is co-
99 taught by five schools (Law; Political, Social & International Studies; Film &
100 Television Studies; Economics; International Development). The relevant
101 topics include defamation, privacy, copyright, new media (user generated
102 content, changes in the news industry, etc), and the ‘future of reputation’.

103 Broadcast Journalism

104 “Broadcast Journalism provides students with an overview of modern
105 journalism practices and related production processes. The module will
106 enable students to contextualise academic study and criticism of news
107 gathering and presentation processes. Students will collaborate in producing
108 short, broadcast-style news reports, which will be compiled into a magazine
109 format programme (see, for example, BBC's The One Show). First, students
110 will be trained in the 'art' of journalism; the techniques and practices that are
111 used to create reports. Second, students will be introduced to production skills
112 including cameras, sound and editing. Students will be taught by highly

113 experienced production and news journalists and use broadcast quality
114 equipment. The practical teaching will be reinforced by instruction on the
115 packaging and presentation of news and factual material for broadcasting
116 purposes”

117 This is a postgraduate module (on the MA Broadcast Journalism: Theory and
118 Practice) and it will run for the first time in 2011/12. The legal section of the
119 syllabus will include defamation, privacy, data protection, the Ofcom
120 Broadcasting Code, and court reporting (including restrictions and proposals
121 re audio/photo/video/electronic coverage of court and tribunal proceedings).
122 We are considering a standalone ‘law for journalists’ module in future
123 iterations of this degree.

124 *Finally, the following modules are offered by other Schools in the University*
125 *without the involvement of my School. Please note that I have consulted the*
126 *co-directors of media@uea in preparing this section.*

127 **Undergraduate Modules**

128 **School of Literature & Creative Writing:** The writing of journalism (level 2)

129 **School of Economics:** Economics of Film and Television (level 2)

130 **School of Film & Television Studies:** Professional video production (level
131 3); Video project (level 3)

132 **School of Language & Communication Studies:** The construction of news
133 (level 2)

134 **School of Political, Social & Int’l Studies:** Media culture, media power
135 (level 1); Politics and Mass Media (level 2); New media and society (level 2);
136 Analysing Media Discourses (level 3); Political Communication (level 3)

137 **Postgraduate Modules**

138 **School of Economics:** Economics of Mass Media

139 **School of Political, Social & International Studies:** Online Journalism;
140 Analysing Media Discourses; Politics and Mass Media; New Media and
141 Society

142 **(d) A summary of any published research undertaken within the last**
143 **decade which is relevant to the terms of reference for Part 1 of the**
144 **Inquiry.**

145 I am assuming that this question is about my personal research rather than
146 that of the University as a whole.

147 During 2011/12 I am carrying out a project (funded by the British Academy
148 Small Grants Scheme) entitled ‘Complaints, content regulation and media
149 convergence in the UK’. The main objective of the project is to investigate the
150 decisions of regulatory in a structured and detailed fashion, and it is in its

151 early stages. I will write to the Inquiry with a number of updates on this
152 project.

153 I am the sole author of the following relevant publications.

154 • 'Ireland' in Mullis & Doley (eds), *Carter-Ruck on Libel & Privacy*. This is
155 one of a series of reports on national legal systems. *My contribution*
156 *discusses the Defamation Act 2009, the new Press Council of Ireland, and*
157 *proposals for a Privacy Bill.*

158 • "‘I’d tell you everything if you’d pick up that telephone’: political expression
159 and data protection" [2011] *European Human Rights Law Review* 166.
160 *Here, I investigate the impact of data protection law on freedom of*
161 *expression, critiquing Information Commissioner decisions and including*
162 *comparative perspectives on political communication.*

163 • "Co-regulation, video-on-demand, and the legal status of audio-visual
164 media" (2011) 2(1) *International Journal of Digital Television* 51. *This*
165 *paper makes two key arguments: the first is on the diverse forms of*
166 *regulation that apply to audiovisual content, and the second is a case*
167 *study of the creation of the Authority for Television on Demand.*

168 • "Datafin to Virgin Killer: Self-Regulation and Public Law" [2009] *Norwich*
169 *Law School Working Paper 09/02. An assessment of the status of various*
170 *regulatory bodies (including a range of media and Internet institutions)*
171 *from the point of view of amenability to judicial review.*

172 • "The mass age of Internet law" (2008) 17(2) *Information &*
173 *Communications Technology Law* 79. *This paper considers the regulatory*
174 *role played by Internet intermediaries (web hosts, etc) and the*
175 *responsibilities that such bodies may be expected to fulfil.*

176 I have also written or presented my research in other formats, which are not
177 yet available in final form but have been disseminated e.g. through
178 recordings, draft papers. Some recent examples are:

179 The UEA London Lecture (Autumn 2011), 'Tweeteasy? Social media and the
180 rule of law'. This lecture considered the challenge of social networking and
181 user-generated content to existing forms of media regulation (civil and
182 criminal).

183 Visiting seminar, The City Law School, 'The first four years of the Audiovisual
184 Media Services Directive', November 2011. This presentation is a detailed
185 study of the Authority for Television on Demand (ATVOD), a new regulatory
186 body for on-demand services designated by Ofcom under the amended
187 Communications Act.

188 **(e) The gist of any feedback which you have received from alumni who**
189 **have worked as journalists in relation to standards and ethics within the**
190 **media in practice.**

191 I regret that I do not have any evidence in response to this question, other
192 than the observation that there appears to be a high demand for law
193 graduates with knowledge of media and technology law.

194

194 **Part B**195 **Other comments in response to the Part 1 terms of reference**

196 The greater part of the current Key Questions under this heading seek
 197 evidence from those who are working or have worked in the media, and I do
 198 not have anything to say there. However I would note that, in relation to
 199 question six on ethical training, that as someone who spend a significant part
 200 of my time teaching media law, I propose that the current legal provisions are
 201 not as clear as they could be, for the reasons set out here. I follow this with
 202 some comments on regulation and on computer law, and conclude with a
 203 personal observation on teaching media law and ethics.

204 *Clarity*

205 1. The Human Rights Act has had a significant impact on a whole range of
 206 questions of media law (not just regarding privacy but also on freedom of
 207 expression and fair trial issues). Key provisions (e.g. Contempt of Court Act
 208 1981 s 10, Official Secrets Act 1989 ss 2-5) are now read in a way that is
 209 consistent with the ECHR and have been the subject of significant judicial
 210 treatment, and as is well known, there is a developing civil remedy in relation
 211 to privacy. The impact of this is that the statutory provisions (even in areas
 212 that are primarily statutory in nature) do not provide an adequate guide to
 213 what the current law is.

214 2. There is no clear understanding under English law of the status of
 215 journalists. Although there is of course no licensing or registration system,
 216 there are a range of statutory provisions referring to closely related concepts,
 217 e.g. 'information contained in a publication' (s 10 CCA), 'publication of ...
 218 journalistic, literary or artistic material' (Data Protection Act 1998 s 32),
 219 'material acquired or created for the purposes of journalism' (Police & Criminal
 220 Evidence Act 1984 s 12), as well as 'representatives of newspapers or news
 221 agencies' (Magistrates Court Act 1980 s 69; Children & Young Persons Act
 222 1933 s 37). (This is an incomplete list I prepared for teaching purposes). The
 223 (non-statutory) UK Press Card Authority also has a definition of an 'eligible
 224 newsgatherer' which is important given (a) the recognition by ACPO and
 225 ACPO(S) of the card and (b) its use for other purposes e.g. court admission.

226 3. The position of intermediaries (particularly Internet intermediaries) remains
 227 unsatisfactory. This has been addressed in part through the Electronic
 228 Commerce Directive (transposed in the Regulations) but there is a lot of detail
 229 missing (e.g. on what constitutes 'notice' for the purpose of article 14 re web
 230 hosts) and there are also issues of doubt (e.g. the impact of 'post-moderation'
 231 on liability). In one area (Terrorism Act) the general regime has been
 232 replaced by a specific one, and the use of injunctions in copyright law another
 233 has also affected the impact of the Directive. I am preparing a note on this
 234 matter (because of its relevance to the current discussion of a Defamation
 235 Bill) and will provide the Inquiry with a copy in due course.

236 4. The status of the PCC under public law is not clear. Is it amenable to
 237 judicial review? There are a number of forms of co-regulation which are

238 functioning even in media areas, which demonstrate that the choice is not
 239 between State regulation and self-regulation, but one of a series of options
 240 (work by Jonathan Cave & Chris Marsden identified around 12 different types
 241 of self- and co-regulation). The Inquiry might also wish to consider the
 242 models such as that adopted in Ireland under the Defamation Act 2009, where
 243 a press council can be recognised by the relevant Minister if it meets the
 244 statutory criteria (as the Press Council of Ireland is), and certain defences in
 245 defamation law take into account the membership (or otherwise) of a
 246 publication in the recognised council – e.g. section 26 of the Act regarding
 247 'responsible journalism' (similar to *Reynolds* qualified privilege).

248 5. Powers to extend the sentencing powers of the court under Data Protection
 249 Act s 55 are available by way of statutory instrument, but the consultation
 250 paper (Ministry of Justice 22/09) on this matter has not been followed up on.
 251 Meanwhile the Directive on which the Act is based is itself in the process of
 252 being reviewed.

253 *Media Regulation*

254 The distinctions between platforms are important. My research has
 255 considered the position of content that does not fall into obvious regulatory
 256 categories. Examples include live relays to cinema premises (outside of the
 257 Communications Act and the Licensing Act (and therefore neither Ofcom nor
 258 the BBFC have jurisdiction)), and audiovisual material on newspaper websites
 259 (determined by ATVOD to be subject to the on-demand provisions of the
 260 Communications Act but currently under appeal to Ofcom). Other provisions
 261 distinguish (in effect) between online and 'offline' material: Communications
 262 Act 2003 section 127 is a particularly significant example. A very significant
 263 step (but one not yet widely recognised) is the ParentPort website for
 264 complaints about a range of media content. Although the framing here is not
 265 necessarily appropriate (why only parents?), the idea of assisting the public to
 266 identify the correct regulator (based on plain-English questions about what the
 267 program/story was and where it was seen) is welcome.

268 The example of ATVOD could be of particular interest. It is a new regulator,
 269 recognised by statute (and subject to comprehensive criteria that must be met
 270 before recognition can happen) but with strong involvement from industry. It
 271 can refer matters for enforcement action by Ofcom (along the same lines as
 272 the ASA's functions in respect of broadcasting). Yet although its substantive
 273 regulatory powers are very limited (effectively confined to incitement to hatred
 274 and the protection of under 18s), it has encountered a number of problems.
 275 One is that of objections to 'notifying' ATVOD of the provision of the service –
 276 newspapers (who provide a good deal of AV material on their websites) have
 277 been particularly critical and not one has acceded to notification to date,
 278 although a number of cases are under appeal. There is ambiguity here as the
 279 Directive refers (in a recital) to the exclusion of 'electronic versions of
 280 newspapers' but it is clearly the principle of regulation that is being objected
 281 too. Others objected to the fee, which was in the first year a flat fee of just
 282 under £3000 (this has now been replaced by a sliding scale). The lesson
 283 here is that regulatory design is important, but that each scheme is different.

284 *Computer law*

285 It is increasingly apparent that the events considered by the Inquiry may see
286 the application of various laws on computer misuse and data protection.
287 Although I understand that this may be the concern of a later phase, it is to
288 me a reminder of two points. The first is that the current focus by Government
289 on developing a 'cybercrime strategy' regarding critical infrastructure and
290 international affairs should also consider the fitness for purpose of the existing
291 Computer Misuse Act. Attention should be paid to foreign law, particularly in
292 those states that have ratified the 2001 Cybercrime Convention, on issues
293 such as the inclusion of 'data' in criminal damage law (expressly excluded in
294 the UK). The second is the many ways in which, for example, computer
295 security can be enhanced; when I teach Internet law, we invariably start by
296 considering the theoretical writings on how law and technology relate to one
297 another and how this can affect the regulation of user behaviour (e.g. through
298 default settings). I will write to the Inquiry about this issue when it considers
299 these issues.

300 *Teaching*

301 Teaching and research regarding the law and ethics of the media is often
302 divided between that happening in journalism schools and that happening in
303 law schools. My experience in teaching suggests to me that there is room for
304 improvement on this. Even at the level of textbooks, there is a clear division
305 between those books aimed at trainee journalists (e.g. the venerable
306 *Essential Law for Journalists*, now in its 20th edition) and those more
307 appropriate for law students (e.g. Robertson & Nicol's *Media Law*). The NCTJ
308 syllabus (which UEA does not offer) is in practice entirely cut off from what
309 happens in law schools. Moves towards interdisciplinary media research and
310 teaching, as we have taken at UEA (and see also initiatives like City
311 University's Centre for Law, Justice and Journalism), present opportunities for
312 understanding legal, economic, cultural, political and ethical influences in a
313 more holistic fashion. Furthermore, in the light of the current work of the
314 Inquiry, I might suggest that there is a great focus (within legal research and
315 teaching) on defamation law, with much less attention to the PCC and to the
316 criminal law. It is not unusual for popular textbooks to have multiple chapters
317 on defamation (and now on civil privacy) but very little consideration of data
318 protection or computer crime law.