

The Leveson Inquiry

Witness Statement of Martin Clarke

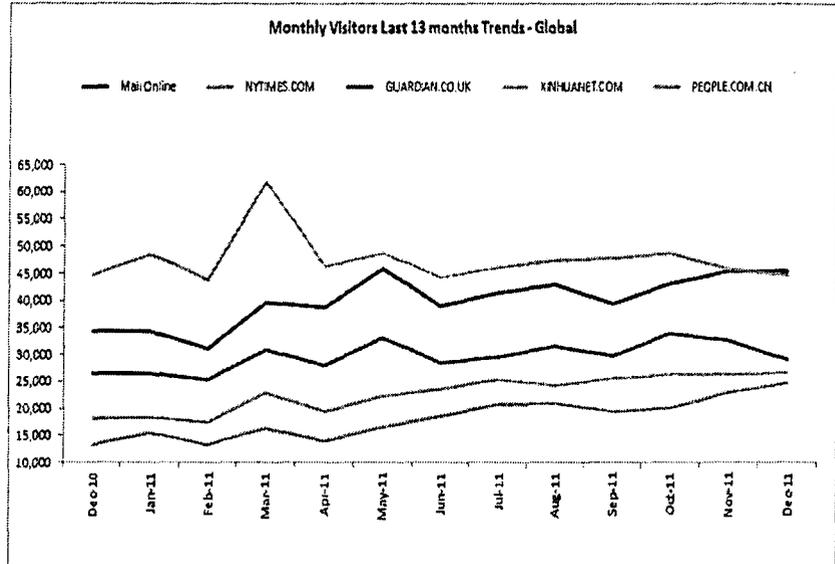
A. Background

1. My full name is Martin Peter Clarke. I am 47 years old. I have been employed by the Daily Mail since 1987, although not with unbroken service. In that time I have worked on the Picture, News and Feature desks. I was appointed Editor of the Scottish Daily Mail from 1995 to 1997.
2. I was also Editor of the Associated Newspapers-owned Ireland on Sunday from 2000-2004, Executive Editor of the Mail on Sunday from 2004-2005, the launch editor of both Live Magazine and London Lite and have been in charge of MailOnline editorial since 2006. I was appointed Publisher in 2010.
3. Away from Associated Newspapers I was news editor of the Daily Mirror in 1995, Editor of the Scotsman from 1997 to 1998 and Editor-in-Chief of the Scottish Daily Record and Sunday Mail from 1998 to 2000.

B. MailOnline metrics

4. MailOnline is now by far the biggest newspaper website in the UK and, according to Comscore, the most visited newspaper website in the world. It recorded over 99m unique browser visitors in January 2012, with 33.1m from the UK and 34.2m from the US. The respective daily figures are 5.6m a day globally with 2.2m from the UK and 1.7m from the US.

Rank	Media	Total Unique Visitors (000)
1	Mail Online	45,348
2	NYTIMES.COM	44,787
3	GUARDIAN.CO.UK	38,152
4	XINHUAJHET.COM	28,854
5	PEOPLE.COM.CN	24,832
6	WASHINGTONPOST.COM	22,466
7	WSJ.COM*	21,639
8	LATIMES.COM*	20,849
9	USATODAY.COM	20,317
10	CHOSUN.COM	15,184



5. At MailOnline we like to concentrate on the latter, daily number of visitors; in particular the number visiting directly – i.e. to one of a site’s main home or channel pages - because they are the people who consume the majority of our page impressions which determines our income.
6. For instance, of MailOnline’s 2.2m UK visitors a day around 60% arrive directly to one of our main landing pages. The comparable global numbers are 5.6m daily visitors of whom 2m a day arrive directly. They also visit more often and spend considerably longer on the site; in the Mail’s case a home page visitor spends around 12 minutes with us per visit and visits an average of 1.5 times a day.
7. In addition over 250,000 people a day use one of our mobile apps on iPad, iPhone or Android. They spend slightly longer per visit and each visit an average of twice a day. This number is growing at approximately 10% per month.

C. MailOnline content

8. MailOnline is the digital expression of the Daily Mail and Mail on Sunday newspapers, although I am editorially independent from both newspapers with a separate team of around 70 journalists a day, spread between, London, New York and Los Angeles. We have found this has been a key factor in our success.

9. Around 70% of MailOnline's content is produced specifically for the site. That isn't to say the paper might not produce another version of the same story later in the day. But the only content that is really produced for the paper first is exclusive news and features, embargoed press release stories and columns etc.
10. And as a rolling news service we - like TV or radio - are happy to report, providing it is legally safe and with proper attribution - what other reputable news organisations are saying while we try to confirm it ourselves.
11. MailOnline has succeeded because we have produced a new product for a new media rather than trying to shoe-horn our existing product and its editorial legacies into a new template, whether it fits or not.
12. The internet is a force for democratisation. Organisations which ignore what people want in the digital world are doomed. The content of MailOnline is informed by the fact that we have data which tells us what people visiting our home page actually read rather than what we think they should read. Having said that, we don't follow the raw data slavishly. That's where the journalistic skill comes in!
13. It has been pointed out that we carry more celebrity content than the paper, which we do. But, because we are not limited by physical space, we also produce more of everything, including political comment, foreign news and science. In any case showbiz only accounts for about a third of our page views.

D. MailOnline's commercial strategy

14. We have no doubt that digital content is going to become more and more important to our company's future. With the best will in the world, print circulations have been in long-term decline for years, in fact since well before the advent of the internet.
15. What is new is that more and more advertising pounds are moving away from print and into digital. If anything this process is accelerating. We have to follow the money.
16. Only news organisations which make an honest profit can be truly free. Otherwise they are always in hock to somebody, be it a 'sugar daddy' proprietor, the demands of

charitable trust or a government subsidy. To ensure its continued independence and ability to produce high quality journalism, the Mail must make money from digital journalism.

17. However, online advertising yields are not only much lower than in print but we must now also compete for revenue against giant online-only players like Facebook and Google who are chasing exactly the same money.
18. We are also up against an environment where editorial principles are not part of the companies' DNA.
19. Small wonder then that Sir Martin Sorrell of WPP advertising group recently said that traditional media owners had to learn how to 'develop content with us to match their (advertisers') needs. Not pre-packaged content but unique, developed content for their opportunities and their challenges.'
20. These commercial pressures have already forced some newspapers into breaching what we at the Mail consider to be the impermeable wall between journalism and paid content or advertising.
21. The Times recently advertised for a Commercial Editor who will be 'responsible for all editorial output from commercially funded editorial partnerships', one of whose key qualities will be an 'open mind'.
22. Similarly the Daily Telegraph has been taken to task both by the ASA and industry observers for making advertorial almost indistinguishable from editorial.
23. Newspapers have been presented with a choice, they can either remain small players online and erect a pay wall - as have the FT, Times and Wall Street Journal; or they can choose to meet the digital challenge head-on and compete on a global stage.
24. In favour of this strategy is the fact that we now have access to a much bigger market - the entire English speaking world.

25. Britain has always exported its creativity, be it our literature or film stars or pop music. These days we also sell our TV dramas and reality show formats around the world. Likewise individual British journalists have always been in demand abroad. But the cost of entry to local newspaper markets has always been so high that we have been unable to export our actual journalism. Digital changes all that. British news organisations can now deliver their products to consumers anywhere in the world for next to nothing. And, as MailOnline has proved, there is a big demand out there for British journalism thanks to its uniquely vibrant culture.
26. Fleet Street's intense competitiveness may have led some publishers down a murky path in recent years for which there can be no excuse. But I believe that those abuses and criminality were largely confined to one newspaper group. The failings there should not obscure the fact that the same competition within Fleet St has also given us the best newspapers in the world.
27. That notwithstanding, British newspapers face an immense challenge. The press is only a tiny part of the internet. Even MailOnline accounts for just 5.98% of daily news traffic in the UK and just 0.47% of overall UK traffic. And while it is gratifying to overtake the likes of the New York Times, we are still a small player in online news generally and face intense competition from global competitors, all of whom are based in the United States. And that does not even take into account the challenge from social media companies like Twitter and Facebook who are also in the business of providing news to their users. Because it is entirely wrong to try and divide the internet up into a number of separate entities. Most people consume and use it as a continuous spectrum, starting with what they and their friends are saying on Facebook, through Twitterers – amateur and professional – they may follow and onto bigger entities like bloggers and news sites.
28. Indeed newspapers themselves are only a minority part of the online UK news market. The big players are the internet portals like MSN and Yahoo and the BBC. Meanwhile, wherever they see news, members of the public are constantly commenting on and spreading further what they read.
29. If we don't allow UK newspapers to compete effectively in this online world then we aren't going to have much of an industry left to regulate.

E. MailOnline and regulation

30. We abide by exactly the same rules as UK newspapers: i.e. we follow the PCC code and UK laws of contempt, libel etc. Privacy issues are weighed by the editors and lawyers on a minute-to-minute basis.
31. We have a dedicated lawyer working with us throughout the day and legally contentious or sensitive stories are drawn to the lawyer's attention even before we write a word and obviously again afterwards.
32. There is an extra risk that the online agenda moves so fast that there is a danger of not always being in full possession of the facts. But that is no different from the worlds of 24-hour rolling TV and radio. On the other hand, we have the advantage that, when we do get something wrong, we can correct it very quickly.
33. MailOnline publishes 4-500 stories a day yet from the thousands and thousands we have published over the past three years we have received only 205 legal complaints, 35 of which were for privacy issues and of those privacy complaints we paid relatively modest amounts of money out on just three.
34. Two payments were to German sports personalities and one was to a UK celebrity because we inadvertently published information that could have identified their house – but only if a user right-clicked on a picture – i.e. 99.9% of people would have been utterly oblivious.
35. We have had just six privacy complaints via the PCC, all of which were resolved without a negative adjudication.
36. I think the fact that despite our massive output we receive relatively few legal complaints is down to the ability and willingness – if we DO make a mistake – to simply correct it.

F. MailOnline and a level regulatory paying field

37. If we accept that MailOnline is no longer just competing with other British newspapers working to the same regulatory code then it is clear that it is at some disadvantage against three important competitors.

(A) Domestic bloggers

38. While we are all subject to the law of the land, unlike newspapers, bloggers are not bound by the PCC code. People are also less likely to sue them because they haven't got enough money to make it worth the plaintiffs' while.

39. The key question is: at the end of the day how do you compel people to join a scheme? There may be benefits of belonging to the PCC – or whatever replaces it – which act as a carrot but if regulation also restricts what a blogger can publish then what is the stick? A blogger might not see the advantages of regulation as being worth the time or the effort. And are we going to start licensing bloggers and news sites? Where do we draw the line?

40. Most of the smaller bloggers are hosted by third party blog companies or umbrella sites like our own. These would most probably cooperate in removing material that was in breach of libel, contempt or copyright law. But again, it is difficult to see them censoring material that simply breached the PCC.

41. Larger bloggers, like Guido Fawkes, have their own websites, with their own URL web address. Again, so long as they live in the UK, they are subject to the law of the land and can be arrested and sued for criminal or civil breaches. But they can ignore the PCC completely (in fact Guido's servers are sited in the US in order to avail himself of the First Amendment protections available there). They can I suppose, be invited to sign up for press regulation, but why should they? Guido Fawkes, has already said point blank that he won't and that he does not believe in privacy full-stop (see Q352 and Q393 of the uncorrected transcript of oral evidence to the Joint Committee on Privacy and Injunctions on 14 November 2011).

42. Underpinning any press regulator as a statutory body effectively gives the state the power to licence newspapers and penalise ones that either do not join the body or ignore its rules. The only way to force bloggers to sign up as well would be to give that statutory

body the same power to shut down blogs. If licensing newspapers is a severe restriction on free speech, this would be positively North Korean and the subject of mass internet protest. But even if we could get a law through, is it enforceable? Are we really going to drag Guido Fawkes off to the tower like his famous namesake for not joining the PCC?

43. Alternatively the government might try to attack 'rogue' bloggers via a technical route, none of which really works. There are four main ways they could do this:

43.1 Ask UK Internet Service Providers (ISPs like Virgin, Orange etc) to block access to a blog, as they currently do for child porn. However, in this instance, they would almost certainly only comply when forced by a court order. This would have the advantage of blocking /filtering content in the UK even if it were hosted from abroad although, as the pornographers and their customers have proved, the technical blocks are easily evaded.

43.2 Alternatively the authorities could ask the Internet Service Provider actually hosting the website (as opposed to delivering it) to suspend its service. Again, every case would have to be fought in court. And the government would stand little chance of winning cases against sites hosted by foreign ISPs – particularly in the US.

43.3 Another way of attacking bloggers would be to strip them of their web-addresses. In this country all ".uk" domain names are run by Nominet (a private, not-for-profit company) and Nominet could easily block or remove UK domains as requested but at the moment they are only concerned with the actual name breaching copyright etc rather than the site's content.

Even if Nominet was forced, by law, to remove domain names from a user - or temporarily prevent their use - the site could counter such action by getting users to simply type or paste in the in the actual server number rather than the name. If a user bookmarks this, they only have to it once. OR the site could simply change name ie www.mailonline.co.uk becomes www.mailonline2.co.uk

Moreover, all non-UK domains such as .COM or .NET would still be accessible and do not fall under UK law. In the US they are administered by Verisign a much more commercial operation than Nominet, with greater responsibilities that

extend to network infrastructure. Again, it is difficult to see what legal action the UK government could take in the US to get them to help.

- 43.4 Lastly the government could seek to change the underlying manner in which the internet works by forcing sites to have a technical licence mandated by some central authority. Browsers would have to block sites that didn't have the right electronic certificate. However, this would entirely change the ethos of the internet, need an international approach and be circumvented by hackers who would provide 'unlocked' browsers in about five minutes.
44. A second's consideration shows that none of the possible ways of forcing bloggers to comply with the PCC is at all practical or politically acceptable in a democracy. The public in the UK, let alone the US courts would not consider their draconian nature appropriate to the damage done by revealing the existence of Andrew Marr's lovechild or a Max Mosley orgy.
45. In any case, there would still be nothing to stop a blogger transferring his entire output to Facebook where he could present his content just as effectively as on a blog. Facebook is positively encouraging content providers to use Facebook as an alternative to the web itself. And so long as he (or the nominal account holder) was resident in the US he would be untouchable. Moreover, Facebook can also be used as a private network – you might invite 3m friends to be within your circle, but it's not public. And beyond Facebook, content can still be shared by email, text or Blackberry instant message.

(B) Foreign English-language websites

46. This brings us to another conundrum which needs to be considered which utterly dwarfs the issue of domestic bloggers.
47. The internet has no borders. It is called the worldwide web for good reason. Two thirds of MailOnline monthly users are outside the UK. Equally our biggest competitors; Yahoo, MSN, Huffington Post etc either are already or have ambitions to become global news providers, as do we.

48. And the centre of that global news business is not the UK; it is the US, where our main competitors are all based and who all enjoy a significant advantage: the right of unfettered free speech enshrined in the US constitution under the First Amendment (the first, note, not the second, third, fourth or fifth). That right trumps almost every other consideration, meaning newspapers in the US can publish unproven allegations that would result here in an expensive libel trial or print prejudicial information about a criminally accused that would see a British editor locked up for contempt of court.
49. For instance, a key component of MailOnline is its reader comments, of which we receive 120,000 a week. We try to leave these comments unmoderated on as many of our stories as we can. This is to allow as many of our readers as possible to have their say without having to wait for a moderator to decide if their opinions are fit to print. It would in any case be uneconomic to moderate every story. We would need more moderators than journalists to vet them all.
50. In these instances we rely on the reader community to be self-policing with offensive opinions being reported by the abuse button. At that point the comment is automatically removed until a moderator can assess it. However we do pre-moderate comments some stories where we consider there is a real risk of racism, contempt or libel etc. A story we knew was related to an injunction would automatically be moderated, if we allowed comments at all. If one of our commenters breached an injunction, we would of course remove the comment immediately. Equally we disable comments on live criminal cases as a matter of routine.
51. Again this is not something our American competitors do. Most of them would not dream of censoring their readers.
52. And, of course, comments on Facebook or YouTube etc are almost entirely unmoderated.
53. Meanwhile, on the celebrity front, our US competitors already have an even bigger advantage over us in that they are not bound by the PCC code.
54. Because so many British celebrities have succeeded abroad there is a massive overlap between the US and UK showbusiness agenda. The vast majority of our celebrity

content does not concern private lives per se - except in so far as that may be what the celebrity is famous for anyway as in the case of a Katie Price or a Kim Kardashian. It is centred around TV and film content and official or semi-official events where the celebrity is promoting something. And not always just their art. Even A list celebrities spend as much time today promoting either their own-branded or third party products like perfume, underwear, watches, video games, nightclubs, mobile phones and coffee as they do their movies or music. Even pictures which may appear to have been taken unawares by the so-called paparazzi are frequently taken by formal arrangement - with the picture fees sometimes even shared with the celebrity!

55. This all makes for a world where the rules change literally by the hour.
56. For instance the other month a US website broke the news of Sienna Miller's pregnancy which was swiftly followed by all our American rivals but not by us because we don't report pregnancies unless confirmed by the subject. This wasn't forthcoming for several hours until Sienna's sister invaded her own sibling's privacy by Tweeting her congratulations!
57. Similarly the inquiry has already heard that we receive several hundred pictures a day of Pippa Middleton going about her private business, none of which we use because UK papers have agreed to only run pictures when she is at public events. What wasn't considered was why these pictures keep getting taken if we aren't using them. The answer is that the pictures do appear daily on websites in the US where Miss Middleton is considered a major celebrity - which may go some way to explain why a publisher recently agreed to pay her a £400,000 advance to write a book about party planning.
58. And one more example, again from just the past few weeks. Daniel Craig rang to complain that we had published a general view of an anonymous Soho New York street which he said identified a new apartment he'd purchased. We disputed that it did anything of the sort. But what Mr Craig didn't realise until then was that one of the New York papers had not just published the name of the street - which we hadn't - but the number of the building! And there is no PCC code or law in the US under which he can complain.

59. We are even now defending actions in the French courts, under French privacy laws against French celebrities who object to pictures of them that were taken perfectly legally within the US (and widely published there) being published in Britain even though they breach no article of the PCC code. Similarly, some US celebrities are beginning to use UK privacy law to suppress in the UK pictures that they can do nothing to stop in the United States.
60. So are we going to hamstring what is probably UK newspapers' best chance of survival - their internet operations - by handicapping them even further against their international competition? Because it is not just a question of preventing us from competing on the global stage. If we are stopped from running UK stories that the rest of the world can, then US publishers will move quickly to satisfy the demand in the UK. The Huffington Post is already trying. It isn't 1936 anymore. Then US newspapers were reporting the details of Edward VIII's affair with Mrs Simpson while UK newspapers kept their ordinary readers in ignorance. Now that information is a just a click away.
61. Or are we going to end up with the ludicrous situation where to compete globally but comply with UK regulation and law MailOnline has to block some stories about British subjects from ONLY its British readers while American websites CAN serve them in Britain?

(C) Social media

62. In any case, what is the point of regulating bloggers and websites if ordinary people can still Tweet and spread via Facebook whatever facts and opinions like, as we found during the super-injunctions controversy? For it is simply wrong to say that social media is different from blogging or traditional mainstream media.
63. And I am afraid it is a glib self-deception to say it is analogous to 'people chatting down the pub' and that Twitterers don't have a 'kitemark' or trust. This pub contains millions on millions upon millions of people and it is possible to address all of them at once.
64. Some celebrity Twitterers have bigger followings than newspapers. Stephen Fry has 3.8m, Ashton Kutcher 9.3m, Bill Gates 5.3m - even Chris Moyles has 2m. And is Stephen Fry not trusted my millions? Are his Tweets not taken seriously?

65. It is even possible for an unknown Twitterer to reach millions of people with one Tweet if his message is taken up virally and re-tweeted (i.e. passed on) by other users to their followers and who pass it on to their followers etc, etc, etc, exponentially.
66. The same is true of Facebook messages, which can be propagated by the same method.
67. And this is not just a matter of people spreading gossip and trivia. Social media was one of the key drivers of the Arab Spring as protesters swapped ideas, tactics and intelligence on Facebook and Twitter.
68. Twitter controversially announced recently that they were prepared to start censoring Tweets on a country-by-country basis to abide by local laws. This raises the prospect of the British public unable to view content that was freely available in the rest of the world. Yet, in practice, policing social networks is almost impossible. There is not much Twitter could do if a significant part of their user-base decided to commit Mass Digital Disobedience by Twittering the contents of a court order they held in contempt. Similarly it seems highly unlikely that Twitter would extend this censorship to stories that were merely in breach of the PCC code or its successor rather than breaking the law of the land.

G. Conclusions

69. None of this will be welcome news.
70. This inquiry is focussing on just one part of digital media because it happens to have a print history while conveniently ignoring the fact that the existence of the internet questions the entire relevance of regulation.
71. But if the mainstream media is unable to address facts that are freely available elsewhere then it and the legal bodies that regulate it will look increasingly irrelevant, particularly to younger people.

72. The internet has not just disrupted the business models of industries like newspapers, publishers, music and movies, it has also destroyed the ability of governments, companies and individuals to control the flow of information to the public. And just as business has had to adapt to the internet, rather than try to fight it, it may be that politicians and the judiciary will also have to recognise the new reality: they can no longer control what people are allowed to know.
73. The right of foreign websites, bloggers, Twitterers and Facebook users to say what they want is beyond the law's control unless it actually breaks the law in a way for which that person can be prosecuted criminally or sued in the UK civil courts (and courts in the foreign jurisdiction where the website's servers or authors are based are willing to enforce the decision of the UK court).
74. Rather than looking at how to handcuff the press while the rest of web grows unchecked we would be better employed exploring how we as a country can live with the new reality rather than try and deny it. We cannot say: 'Stop the internet, we want to get off'. Britain can no longer wall itself off from the world, even if it wanted to.
75. Like it or not, the values and culture of the internet are American. And in America, free speech trumps all. Mark Zuckerberg has said that people no longer expect privacy in the internet age. That may be overstating it but the internet certainly makes it impossible to enforce without paying an unsustainable price in free speech.

Signed



Date

1/3/12