



# True lies

**Brian Winston argues against further regulation for factual programme makers**

It was the *Daily Mail* splash on 5 February that finally did it: "Can we believe anything we see on tv?". This was the week when the Foreign Office recalled that paper's inglorious role in publishing the faked Zinoviev Telegram: an incident that helped destroy the first Labour Government and, at least in some circles, bestowed the soubriquet *Forgers' Gazette* on Rothermere's blat forever.

But, surely, there is something pretty awry with a media system before whose sanctions not all citizens stand equal. A *Forgers' Gazette* can forge away with impunity as long as it doesn't damage anybody while others, broadcasters unfortunate enough to work for channels controlled by the ITC for instance, can have the book thrown at them.

There's something smelly about a media system which has, beyond general and universal legal constraints, its own special sanctions on content.

The ITC, pretending it is enforcing the terms of its licences, in fact invents a new offence called, it appears, 'abuse of public trust'. This is unknown in law and can only be committed by those the ITC can get its hands on. These do not include *Forgers' Gazettes*, of course, nor, curiously, other broadcasters – an arbitrary situation of itself offensive to natural justice.

The 'offence' of 'abuse of public trust' is of itself somewhat odoriferous in that one can be found guilty without any damage to any specific person being proved. Indeed, 'abuse of public trust' requires no scintilla of evidence of damage be produced – a chilling departure from the norms of our legal culture.

The culture of freedom in this country is so attenuated that the Press, for its own short-term advantage, seems perfectly happy to live with, and indeed exploit, a situation deeply offensive to the basic principles of free speech in a democracy. The broadcasters appear to be supine and, indeed, to agree with the general thrust of the attack. Nevertheless, the current witch-hunt about truth and lies on tv is at least as disgraceful as the programmes being exposed. Instead, in a grown-up society, as well as dealing with a commercialised and casualised tv industry where sensationalism has become all and honesty is an unaffordable luxury, there also ought to be a seri-

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ous debate about the intrusive and unfair nature of content regulation.

The point about free speech is, exactly, that it defends horrid opinions and embraces, without prior constraint, a right to lie in public. Our system assumes that in the market place of ideas horrid opinions will be overcome and public lies exposed; and, if any damage – or even potential damage – can be proved, sanctions will be imposed. But we do not have a right to insist that if we are told something in public which does not in any way damage us that it be what it represents itself to be.

Note, by contrast, this is not what is going on with the requirement for truth in advertising exactly because in that context any misrepresentation could

**C4's Riddle of the Skies: how true can a documentary about UFOs be?**

indeed cause identifiable damage to specific identifiable consumers.

If we create a more general right not to be lied, to surely political discourse, for starters, grinds to a complete halt? All the norms of documentary production (as opposed to journalism), about which journalists pretend such naive outrage, would be banned. And the hacks themselves would also be in trouble, for they would now have to tell the truth – glossed as anything not obviously a fraud – even where there was no damage done. For many, these might be a very desirable outcomes but they are not what the long centuries of unfinished struggle for liberty of expression envisaged.

This is not, of course, to exonerate television from moral culpability. That too many tv folk display the ethical sensibilities of skunks goes without saying. What I am questioning is whether or not such moral turpitude justifies quasi-judicial proceedings and large fines?

The ITC go well beyond common law fraud where damage must be proved. But, to take the example which began this particularly running story, what damage could any one of Carlton's audience prove? That they acted to their disadvantage in seeking to buy the heroin which *The Connection* mendaciously alleged was now being passed into Britain by a new route? That the balance of their mind had been disturbed because two air journeys taken several months apart had been represented as one?

Moreover, not only is the £2 million fine a real blow against the principle of free expression, it also has at least one powerful side effect. The fine in effect suggests that, by implication, there can be no subterfuge or misrepresentation in the vast majority of the programmes on commercial television – why else are they not investigated and punished?

So when *Riddle of the Skies* tells me there could be alien space ships about, I ought to believe them. After all, those programme makers haven't been fined £2m. I have to say that this is an outcome which perpetrates a fraud on the public every bit as damaging as the putative fraud perpetrated by the 'faked' shows.

If television professionals are stupid enough to debase the currency of their product by mendacity, then by all means they should be exposed; but in a mature society that should be all. There can be no excuse, in a world of multiple television channels for further invasive regulation. That, like the hereditary principle in Parliament, should be consigned to the dustbin of history. ■

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