

## Legal Regulation & Education: Doing the Right Thing?

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## Judge, Camera, Action! Legal education and the regulation of recording and broadcasting proceedings in court

In October 2013, Lord President Gill launched a consultation on the way in which broadcasting of Scottish court proceedings is regulated. Chaired by the judge Lady Dorrian, the group was given a wide remit, considering in addition to traditional broadcasts also the use of social media, including live, text-based communications such as twitter. The remit also covered all forms of court proceedings, civil, criminal and their respective appeal courts. In 1992, Lord President Hope had for the first time permitted cameras into the court room, provided consent of all parties could be obtained. While for civil and appeal courts, a decision had to be made on a case to case basis if filming was creating a danger to the administration of justice, criminal cases of first instance remained off limits for any form of filming.

For the review, the guiding principle was the compatibility of restrictions on broadcasting from court with the principle of open justice. Is it possible to determine some general rules on how to balance the administration of justice with the principle of open justice, what risks would be considered as unacceptable, and how can they be identified (and quantified).

For the purpose of the review, 'Open Justice' was defined as " the principle that proceedings ought to be open to the public. It is central to commanding public confidence in the legal system. The useful and often quoted tenet is that "Justice should not only be done, but should manifestly and undoubtedly be seen to be done."" Interestingly, the review noted that this requirements goes beyond the holding of trials in public and access to court documents. Crucially, so the review, it should be understood as including public education on the legal system and the operation of the courts.

Our paper takes this position as its starting point, and analyses the role, opportunities, benefits and risks of using broadcasts from court proceedings. It discusses what legal regulations, for instance in the field of copyright law, are likely to maximise any perceived benefits of court broadcasts for educational purposes. To facilitate the balancing between "open justice" and the 'pure, impartial and efficient administration of justice', it also analyses alternatives to live broadcasts (such as re-enactments, role

plays, transcripts), their respective educational advantages and disadvantages, and how in the light of this comparison, protection of legitimate interests of the parties in the trial process can be balanced against the interests of the educators. Finally, we draw on comparative legal experience with court based broadcasting and its use in education from Germany, the US and New Zealand to make suggestions on how court based broadcasting could be regulated to maximise its educational benefits. .