

## **An Unsavoury Business**

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Fear of libel actions and losing advertising revenue has persuaded most media organisations to leave well alone when it comes to exposing some of the more unsavoury aspects of the burger giant McDonalds.

Do you know that Helen Steel and Dave Morris, the McLibel Two, are scheduled to start their appeal on 12 January 1999? Did you realise that the trial judge ruled in the defendants' favour in the case of two-and-a-half of their seven groups of allegations against McDonald's and that these concerned cruelty to certain animals, exploitation of children via advertising and low pay? Were you actually aware of the trial throughout its record-breaking 314-day run? And finally, have you heard that both BBC and Channel 4 refuse to show the independently-produced documentary McLibel: Two Worlds Collide?

If your answer is 'no', it's not surprising. Although at the climax of this legal blockbuster the media were temporarily awash with 'David and Goliath' stories, all too often laced with unnecessary and patronising 'human interest' angles, the vast majority of this crucial libel trial received remarkably little coverage. As the McLibel Support Campaign state on their McSpotlight website:

You would've expected the entire media to line up behind the defence, if only out of pure self-interest. But the media seem to treat McDonald's either with awe and sycophancy, or else as daft and jokey, a well-loved service organisation.

It was, to quote Michael Mansfield QC, as if a '*cordon sanitaire*' had been placed around the whole subject. It is still in existence.

Admittedly, McDonald's is a potentially tricky media subject. Firstly, as the McLibel case itself proves, the company is notoriously litigious, or at least it was until this catastrophic legal own-goal. Secondly, McDonald's global advertising and marketing budget is colossal (US\$ 1,800m in 1995), and media that are financed even partly by advertising risk the company's wrath at their peril. It is alleged, for example, that when the Independent carried a front-page story about McDonald's secret attempts to negotiate a settlement after only six weeks of the case, the company withdrew over US\$120,000 of advertising from the Independent on Sunday. In 1989, Channel 4 was forced to apologise in court and pay McDonald's costs after showing Jungleburger, in which the sales director of one of McDonald's Costa Rican suppliers appeared to admit that beef he supplied to the company had been farmed on ranches created by deforestation.

But mystery surrounds another McDonald's film which was supposed to be shown on the channel but was never transmitted, One Every Mile. A persistent suggestion, however, is that C4 felt the filmmaker had been pushed into ceding too much editorial control to McDonald's.

Both these films are briefly quoted in Dennis Woolf's exemplary dramatisation of highlights of the trial, the three hour-plus McLibel, shown on C4 just before the verdict was announced. But even this has now run into problems, since

the channel is refusing to sell it to overseas buyers unless they indemnify it against possible libel action by McDonald's. Apparently at least one foreign sale has thus been lost.

All this is as nothing, however, compared to the problems faced by McLibel: Two Worlds Collide, although only the Guardian has seen fit to cover them. Franny Armstrong set up her company, One-Off Productions, specifically to make this film and was among a number of independent producers who tried during the trial to interest the broadcasters in it. ITV told her there was 'not enough action'; the BBC didn't feel 'sufficiently enthusiastic'; and Channel 4 decided to put its resources behind Dennis Woolf.

Nothing daunted, Armstrong carried on filming. She wrote to McDonald's witnesses, asking to interview them, but refusal letters came from the company's press office. So she persuaded Ken Loach to direct dramatised reconstructions of some of their courtroom evidence. She also interested Jane Balfour Films in the idea of distributing the film worldwide. Then, with media interest finally growing as the trial neared its climax, Armstrong struck lucky with the BBC's Heart of the Matter and, although no written contract was signed, the film was scheduled for 30 June 1997. The series editor, Anne Reevell, was clearly aware that the film posed certain problems: 60 minutes had to be reduced to 40; Helen Steel and Dave Morris' clandestine recording of McDonald's abortive settlement attempt almost certainly infringed BBC guidelines; the use of McDonald's advertisements raised copyright issues; and, last but not least, there was the question of libel. However, neither the

BBC's lawyers nor Alan Yentob seemed to think the problems intractable, and Armstrong and Reeve worked together to try, in the latter's words, 'To turn the film into something the BBC could transmit.' In the end, however, she had to admit that 'it proved impossible to broadcast'. According to Armstrong,

She kept having to send reports to Yentob and await his replies, it was all dragging out, the verdict was getting nearer and nearer and, when it was only ten days away, Anne felt that she just couldn't go on with it.'

When the trial finished, there was a brief but unproductive flurry of interest from Channel 5 and World in Action; then, two months later, Armstrong met Alan Hayling, commissioning editor for documentaries at Channel 4, at the Sheffield Documentary Festival, and interested him in seeing the film. Hayling says he thought it ' a strong piece of work for a first-time film-maker, and I wanted to be able to do something with it'. But he adds,

Right away I could see there were clear legal difficulties. The secretly recorded conversation with McDonald's lawyers was an obvious problem, but there was also the question of libel.

Anyway I showed it to our legal department and their decision was very clear: nothing resembling this programme could be broadcast in Britain because it was repeating allegations that had already been found to be defamatory in the High Court. If we showed it, McDonald's was highly likely to sue us and win. Under such circumstances nobody would insure the programme against libel, and every C4 programme has to be insured against that.

Dennis Woolf got round this problem by sticking rigidly to quoting verbatim courtroom testimony, but what appears to have swayed Channel 4's lawyers (more than the BBC's) is that certain allegations found libellous by the trial judge are repeated outside the courtroom context by some of the participants in the programme. What Armstrong calls Channel 4's 'absolute categorical

no' then put the wind up Jane Balfour, who regretfully decided that she couldn't sell Two Worlds Collide abroad in case foreign TV showings led to her being prosecuted by McDonald's under English libel law.

According to One-Off's legal adviser, Robin Lewis of Bindmans,

Franny has produced a film in which she has reduced the libel risk to the minimum that is compatible with the kind of programme she wanted to produce. But when you're trying to assess libel risk you have to take into account not only the wording of an item but also if it is about the sort of person or organisation likely to sue for libel.

On the first point, Lewis feels

the broadcasters seem to be arguing for a total elimination of all libel risk as opposed to eliminating the irreducible minimum compatible with a programme communicating what actually took place.

On the second, he says,

One has the distinct feeling that if the programme were not about McDonald's but Joe's Café, the broadcasters' editorial courage might return.

However, he also believes that the company is less litigation-prone given the consequences of its 'barely rational' decision to sue Steel and Morris. On the other hand, as long as broadcasters continue to show themselves to be intimidated by McDonald's fearsome past record, the company has little to fear. Meanwhile, it's just the audience, hungry for knowledge about a company whose global activities raise some of the most important issues of our time, that's the loser.