

INTERNATIONAL MEDIA LAW, POLICY & PRACTICE

Moot court 2015

1. @LoudTownCrier is the name of, and eponymous Twitter handle for, a weekly programme on the *London Mix* community television channel. It is a magazine/discussion programme and it prides itself on “shouting the week’s headlines out loud and provoking discussion among London’s ethnic communities”. In response to the *Charlie Hebdo* murders, @LoudTownCrier organised a free speech protest in Speakers’ Corner in Hyde Park, London, on 10 January 2015. The event was called “Jam and Slam for Free Speech”. Jam is a reference to musical jam sessions, involving improvised playing,¹ while slam is a reference to public reading of original poetry.²

2. @LoudTownCrier posted a series of Tweets announcing the event, including the following:

Jam & Slam for Free Speech. Use anger and creativity to fight for right to offend.
Speakers’ Corner, Hyde Park, 3pm, 10/01. #JamSlamFredex

Jam & Slam for Free Speech. Join us. Sing, shout, scream for right to offend.
Speakers’ Corner, Hyde Park, 3pm, 10/01. #JamSlamFredex

Jam & Slam for Free Speech. Play music, read poetry, paint pictures of our
freedom. Speakers’ Corner, Hyde Park, 3pm, 10/01. #JamSlamFredex

3. As word of the event spread and the organisation gathered speed, it became clear that besides the singing and poetry, a significant part of the event would involve improvised painting on the themes of JamSlamFredex. Cartoonists and graffiti artists were actively encouraged by @LoudTownCrier via Twitter to participate in the event.

4. An estimated 100 people attended the event, with some participating more actively than others. The renowned graffiti artist, Banksy, attended and painted the following picture on a large canvas:



¹ See further: http://en.wikipedia.org/wiki/Jam_session

² See further: http://en.wikipedia.org/wiki/Poetry_slam

5. Shortly after the painting was completed, an unidentified man wearing a hoodie, a baseball cap and sunglasses, defaced Banksy's work by spraying "Now!" after the words "Go Back To Africa". He also sprayed "UKIP" under the pigeons.³ The man slipped away into the crowd before the defacement was noticed by most of those present. When it was noticed, however, heated words were exchanged between sections of the crowd who felt gravely offended and threatened by the graffiti and other sections of the crowd who vociferously defended the graffiti on free speech grounds. Scuffles broke out when the latter section of the crowd started chanting the slogans written on the canvas. The police were called and they made eight arrests in relation to public order offences under the Public Order Act 1986.

6. A number of participants had also been distributing two-sided flyers at the event. One side of the flyer showed the Banksy work and the other side showed an announcement from an official Home Office campaign promoting the repatriation of illegal immigrants in the United Kingdom:



7. Some participants made complaints to the police about the flyers and the police sought – unsuccessfully – to ascertain the identity of the persons who had been distributing them.

8. Jack and Jill Hill were present at, and filmed, JamSlamFredex. Jack and Jill are the founding directors of Tumbledown Productions, an activist civil liberties organisation specialising in multimedia productions. Tumbledown's central aim is to "cause headaches for the ruling elite and cause orthodoxies to tumble". Its working method is to challenge the narratives of the mainstream media, provide alternative worldviews and disrupt the status quo.

9. With their two video cameras, Jack and Jill recorded nine hours of footage – including the build-up to the event and its winding down. The footage included interviews with various participants. On the evening of 10 January, @Tumbledown posted 10 Vines of footage from JamSlamFredex on Twitter, including the defacing of the Banksy work and the distribution of the flyers (which did not show the faces of the persons distributing the flyers). Those particular

³ UKIP is the conventional abbreviation for the UK Independence Party, led by Nigel Farage.

Vines/Tweets went viral and sparked enormous controversy that played out in the mainstream and social media.

10. Jack and Jill were charged with improper use of a public electronic communications network, pursuant to s.127 of the Communications Act 2003. They were found guilty of the charge for having deliberately spread hateful or inciteful content likely to breach public order, thereby ensuring that the impugned content reached a wide audience that it would otherwise have been denied. Jack and Jill appealed the conviction but their appeal was rejected.

11. The Crown Prosecution Service (CPS)⁴ swiftly began to prepare a case against Banksy, the graffiti artist who defaced Banksy's work and the maker(s) and distributors of the flyers. The case concerns the offences of incitement to and/or stirring up racial hatred (Part III of the Public Order Act 1986, as amended) and/or causing intentional harassment, alarm or distress (s.4A of the Act).⁵ In order to prosecute, the CPS must first establish the identity of all relevant parties. Moreover, the Home Office, on learning of the flyers, decided to take legal action against the participants who distributed the flyers that misleadingly and without authorisation associated Banksy's work with the official "Go Home" campaign. The Home Office believes that the association erroneously gives the impression that its campaign – offering administrative assistance to illegal migrants – is xenophobic.

12. To that end, the CPS, joined by the Home Office, secured a court order mandating Jack and Jill to hand over all of their original video footage of the JamSlamFredex event. Jack and Jill subsequently destroyed the footage and were therefore no longer in a position to hand it over to the police. They were prosecuted for contempt of court and found guilty. They were each fined 500 GBP and given suspended sentences of 12 months in prison. The judge noted, *obiter dictum*, that the penalties would have been more severe if Jack and Jill had been professional journalists and therefore would have been expected to have been familiar with the law surrounding contempt of court.

13. The CPS, joined by the Home Office, secured a similar court order against @LoudTownCrier, which had also been filming the event, with a view to including a report on the event in its next programme the following week. @LoudTownCrier complied with the court order following a phone-call from the Home Office's legal team during which it was warned that failure to comply could constitute a breach of the terms of *London Mix*'s community broadcasting licence. After @Tumbledown's Vines/Tweets went viral, the CPS obtained an injunction against @LoudTownCrier, preventing it from broadcasting any footage of Banksy's work and the flyers.

14. Jack was also one of the eight arrestees at JamSlamFredex. He was in the thick of the scuffles – not actively participating in the fighting, but filming the unfolding violence (at that point with his mobile phone) – and he refused to comply with the police's orders to disperse. When he was arrested, he protested that he was a journalist and was only doing his job. The police demanded to see his press identification card, but Jack did not have one as he is neither a professional journalist nor a member of the National Union of Journalists (NUJ). Jack has

⁴ The CPS is the principal prosecuting authority for England and Wales, acting independently in criminal cases investigated by the police and others.

⁵ For the text of relevant legislative provisions, see: <http://www.legislation.gov.uk/ukpga/1986/64/contents>.

never actually trained as a journalist. He was given a further fine of 100 GBP for breach of public order.

The @LoudTownCrier team (supported by *London Mix*) and Jack and Jill Hill believe that their rights to freedom of expression has been violated by the above. Their legal teams have therefore lodged a joint application with the European Court of Human Rights. Assume, for the purposes of this moot court case, that the admissibility requirements have been met.