Last Thursday I blogged about superinjunctions (if you missed it, it's here) and the futility of trying to control publication via social media. Next thing you know the UK courts go one step further and attempt to refine the superinjunction. That very same day a new injunction was granted not only prohibiting publication of the matter the subject of the injunction but specifically naming Facebook and Twitter for the first time.

So that's fine then, they've sorted the problem. The difficulty was that the social media sites weren't named in the injunctions and now that they are nobody is going to publish any details. It is startling the extent to which the UK courts do not appear to get it when it comes to social media and the dissemination of information.

It is perhaps understandable that the law has to evolve in the rapidly changing environment that is information flow in a social media context. Laws and remedies that have existed for hundreds of years will have to take time to adjust to some of the issues thrown up by this mass participation phenomenon that didn't exist just a few years ago.

There is a legitimate debate concerning privacy and an individual's right to protect and maintain that privacy on the one hand and freedom of speech and the administration of justice in public on the other hand. Whatever position you take in this debate injunctions sought in good faith to protect an important right such as privacy have their place. We might argue about how effective they are and whether they should be granted in particular cases but it's not surprising that there's a period of transition while the law adapts.

What is surprising is the extent to which the UK courts appear to be allowing the currency of injunctions to be debased by tinkering with them in an effort to control what cannot be controlled. It seems to me utterly daft if when faced with the reality of Facebook and Twitter one feels that the difficulty with the order granted previously was that neither of those entities was mentioned by name in the injunction.

I suspect that the problem here is the way that you come to this question. Lawyers are approaching the problem as, well, lawyers when considering the efficiency of these types of court orders in terms of how they may be enforced technically before the courts that make them. An injunction is traditionally enforced by the remedy of attachment and committal for breach of the injunction, i.e. the ultimate sanction is that you can be sent to jail for refusing to obey the order of the court.

Taken from this perspective a lawyer looking at the problem might observe that an order granting an injunction is deficient because in seeking to restrain general publication which traditionally applied only to print and news media it does not take sufficient account of the fact that publication has now moved to blogging,

micro blogging and posting updates on what you had for breakfast or how your hangover is doing.

Such a careful and efficient lawyer might anticipate that the general public may not understand that seemingly innocuous posting on Facebook or Twitter by private individuals constitutes publication by each of those individuals. Rather than leave it open to interpretation or argument, far better to specifically mention what is prohibited in the order itself, i.e. specifically name Facebook and Twitter and state that anyone who publishes on those sites would be in breach of the order.

From a legal perspective, this is a much better order. It tells the individual who is subject to it exactly what he or she can't do and therefore if it has to be enforced the person who is being made subject to the order has one less thing to argue about, in that he can't say he didn't understand specifically what is was that he was supposed not to have done.

Therefore, it follows that the prospects for enforcement and committal for contempt are much better with this new and improved superinjunction. However, this increased legal efficiency is undermined by its practical ineffectiveness.

The fundamental problem of course is that this refinement of the injunction misses the point entirely. The prospect of being able to enforce an injunction such as this in the context of social networking involving millions and millions of users is just pointless. If any of these users are aware of these injunctions and if they are aware of the specific restriction on what they may or may not post on these social networking sites, they may as good citizens (if they are subject to the jurisdiction of the court in the first place) decide to obey the order. However they might just not and if they don't how on earth is anyone going to do anything about it in a meaningful way.

Traditional media involves dissemination from one to many. One large entity, such as a press organization publishes information via newspapers, television etc to many who consume it passively. Such an entity can be called to account; either held in contempt if it breaches court orders or found liable in damages if it harms the reputation or privacy of others.

Social media is many to many. There is no one central distribution point, each person logging on to Twitter or Facebook is a micro publisher churning out their views on the world and sharing what they find interesting from other users and from the internet generally. It can't be controlled by injunctions. That's not to say that it shouldn't be controlled but that in attempting to do it in this way the UK courts appear to be squandering one of their finest creations.