

STANDING ORDERS COMMITTEE REVIEW OF USE OF PARLIAMENT TV COVERAGE

Introduction

The Standing Orders Committee is considering the rules for how people can use coverage of the House provided by Parliament TV (PTV).

The Speaker's recent ruling on the National Party's use of edited television footage from the House has highlighted the inadequacy of the current ***Standing Orders Part B of Appendix D: Rules for filming and conditions for use of official television coverage*** to deal with its use in social media messaging.

This submission recommends that the rules be clarified to allow political parties to use edited footage of the House for political advertising purposes.

I am a Professor of Communication Design at Massey University and have been New Zealand's foremost academic expert on political advertising for the past 20 years. I have recently published a book on the history of political advertising in New Zealand: *Promises Promises: 80 years of wooing New Zealand voters*.

Background

The current rules date back to the introduction of televised coverage of Parliament in 1990, when it was felt rules were needed to protect the privacy of members who didn't want to be filmed asleep, picking their nose or engaged in otherwise inattentive and unparliamentary activities. This is covered by the phrase 'member's actions and interactions that are unrelated to proceedings' in Part A, Appendix D.

Not only was using these images in political advertising and election campaigning considered to be a breach of personal privacy, but back then the concern of the House was that if members were seen engaging in unrelated actions and inactions, this could lower the House in the esteem of the public and compromise its ability to function effectively. Breach of the conditions for use of official television coverage was accordingly couched in terms of contempt of parliament.

Importantly, the establishment of these rules in 1990 effectively determined what was in and out of bounds to the television camera, and created a distinction between the private image/personal space and the political image/public space. The private/personal was the out of bounds 'backroom' space in which MPs were not seen speaking. The political/public was the in-bounds 'frontroom' — the space in which a member was seen on camera speaking (including the space occupied by members adjacent to a speaker).

Members have consented to their frontroom/public speaking image being shown on television and in the public domain for the past 29 years.

Question Today

The question in front of the Standing Orders Committee is NOT concerned with breaches of personal/backroom privacy that the rules were designed to protect. Parties appear to be largely respectful of that rule.

Rather the question is whether the Part B rules are sufficiently clear to apply to a form of communication that wasn't anticipated back in 1990. That new form of communication is broadly covered by the term (internet) **meme**. Memes are short snippets of edited and sometimes altered digital video or still images/graphics that are turned into humorous or satirical content. They are designed and created to spread rapidly through social media. They are very common throughout the internet.

In asking parties to remove their videos using official Parliament TV footage on 26 September, the Speaker's concern centered on the **editing** of that footage: *"What I am saying is that they [parties] cannot edit them. At the point that they edit them there is a danger of them becoming an advertisement, and, until we've considered this matter, that's not to continue."*... He further explained *"It is when it is shortened, and things are taken out of it that I consider that an edit."*

It is important to note, for the record, that when the Speaker refers to editing he is referring to the selection of shortened or 'cut and paste' excerpts from longer televised footage. Other forms of editing such as altering, doctoring, adding elements, removing things from within the image frame, or adjusting the audio track, all of which could be considered creating false and misleading content, are not the subject of this review, and should remain prohibited.

But is the Speaker right? Does shortening/editing turn television footage into ads? No. Editing by shortening, per se, does not automatically turn television footage of the house into political advertising. For example, news media organisations edit television footage on a daily basis. No-one considers their selection of shortened footage to constitute political advertising or, for that matter, breaching the rules by publishing a false or misleading account of proceedings before the House or a committee.

When political parties edit/shorten footage, it is to create memes. Just as editing is intrinsic to news coverage, editing is also intrinsic to the creation of a meme. They could not spread easily around social media if they were cumbersome, megabyte heavy, digital movie files.

Are memes ads? In answering this question, it is necessary to distinguish memes as *a form of political communication* from the *the message* contained in a meme. As an example, a billboard is a form of communication. It isn't until a party political message is posted on it that it becomes a political ad. Similarly, a meme containing edited parliamentary footage is a form of communication. It isn't until it is assigned a persuasive message by a political party that it becomes an ad.

The determinant of whether the National Party memes are political ads is contained in section 3A of the *Electoral Act 1993*. If they may reasonably be regarded as encouraging or persuading voters to vote, or not to vote for a party or candidate then they conform to the definition of election advertisement.

Importantly, ads do not need to explicitly state: vote for us and not them. I use the 'duck test' to test whether something is a political ad: if it looks like an ad, works like an ad, is circulated like an ad, then it probably is an ad.

In the context of the memes that have precipitated this review, a reasonable reading of National's messages suggests that they are seeking to make the Labour Party look flaky and by contrast promote the National Party as superior. It is this that makes them political ads.

But this doesn't make them inherently in breach of the rules. Outside the House, all parties are frequently using edited images and memes to attack and parody each other to make their competition look untrustworthy, flaky or stupid. Attacking the political competition is a time-honoured method of political persuasion, which is a central aim of political interaction.

So, if not in their editing/shortening, or their attack messaging, what makes these National party memes a potential breach of the rules? The way the rules are written, it appears to come down to a question of whether they are made with the permission of all the members shown. National not seeking or receiving the permission of members appears to be what has ultimately led to the Labour Whip's complaint and the Speaker's 26 September ruling.

And here we arrive at the heart of the problem at hand.

Permission

Any reasonable interpretation of the concept of **permission** must take into account **the space** the alleged breach is taking place in. Is the alleged breach occurring in the backroom/private/personal space that the rule was originally established to protect? No.

Is the alleged breach taking place in the frontroom/public domain that has been open to public review and critique for the past 29 years? Yes.

And here we must ask why that public footage of members speaking has to have an extra layer of protection and permission assigned to it once it is already in the public domain?

In today's data-speak, this public space is open government data. It is designed to provide transparency and illustrate the performance of New Zealand's political representatives. It is broadcast by a government agency, publicly funded and free for anyone to access in the interests of an informed citizenry.

My view is that any parliamentary television footage that is legitimately in the public domain, and conforming to the rules in Part A of Appendix D protecting the privacy of members who are not in the speaking frame, should be freely available for political parties to critique, criticize, or parody in their political ads as much as they like, without the need for permission from the members speaking in the footage, whom the rules were never designed to protect in the first place.

I believe the Speaker was acting outside the intent of the original rules when he made his ruling banning party use of televised footage in political advertising. However, his action was understandable, given the rules are not clear on how footage in the public domain may be used in the context of these new forms of political advertising.

Recommendation

To clarify the context of use of this footage, I recommend that Part B of Appendix D: Rules for filming and conditions for use of official television coverage be amended as highlighted in red in column B:

| Column A — Current rule: | Column B — Recommended change |
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| <p>PART B: CONDITIONS FOR USE OF OFFICIAL TELEVISION COVERAGE</p> <p>(1) Official television coverage of the House is made available on the following conditions:</p> <ol style="list-style-type: none"> 1. Any broadcast or rebroadcast of coverage must comply with the broadcaster’s legal obligations. 2. Coverage of proceedings must not be used in any medium for— <ol style="list-style-type: none"> (a) political advertising or election campaigning (except with the permission of all members shown): (b) commercial sponsorship or commercial advertising. 3. Reports that use extracts of coverage of proceedings and purport to be summaries must be fair and accurate. <p>(2) Breach of these conditions may result in a loss of access to official television coverage, and may be</p> | <p>PART B: CONDITIONS FOR USE OF OFFICIAL TELEVISION COVERAGE</p> <p>(1) Official television coverage of the House is made available on the following conditions:</p> <ol style="list-style-type: none"> 1. Any broadcast or rebroadcast of coverage must comply with the broadcaster’s legal obligations. 2. Coverage of proceedings must not be used in any medium for commercial sponsorship or commercial advertising. 3. Televised footage may be edited for length for use in news coverage and party political advertising and critique, but it may not be otherwise altered. <p>(2) Breach of these conditions may result in a loss of access to official television coverage, and may be treated as a contempt and proceeded against accordingly.</p> |

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