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Article

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Children and the media
quicksand

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With a missing child dominating the headlines this summer, and reports that their obesity means our children may not outlive their parents, the question of protecting the next generation is high on the news agenda. But it is not only the physical health and well-being of children that is at stake in our modern society. The public's appetite for news - serious or gossip - and photographic evidence of both, together with the media's preparedness to feed this hunger, is putting our children at risk of media over-exposure.

The European Convention on Human Rights guarantees the right to life, the prohibition of torture and the right to liberty and security. Parents cannot waive these rights on behalf of their children. If parents fail to fulfil their duties, the police, social services and the courts will intervene. But the Convention also guarantees the right to respect for private and family life, also known colloquially as privacy. Even for those for whom a child may be an attractive accessory, like a Mulberry handbag or a pair of Miu Miu, is it for the parent to decide if and when a youngster should come out from under the wraps and be paraded for the world to see? Whose responsibility is the privacy of our children - government, the courts, parents? Or the media?

The regulators that oversee the print and broadcast media had to grapple with this issue in two complaints heard last summer. The results were somewhat surprising, with one apparently laying responsibility firmly at the feet of the parent and the other finding the media wanting. Every aspect of the trial of Ian Huntley for the murder of Soham schoolgirls Jessica Chapman and Holly Wells, and the subsequent incarceration of his girlfriend Maxine Carr for conspiring to pervert the course of justice, was widely reported. When an injunction prevented the identification of Carr following her release from prison, it was unsurprising that media attention turned towards the sentencing of Carr's mother, Shirley Capp, convicted of intimidating a witness during her daughter's trial. Hayley Hodgson, another of Mrs Capp's daughters, attended her mother's sentencing hearing with her husband and their children, aged two and five. She complained to broadcast regulator Ofcom that ITV Yorkshire news footage showing them leaving court had invaded their privacy. ITV countered that, being in a public place, they could have no reasonable expectation of privacy; there was nothing intrinsically private about the scene; the case was one of significant public interest; the inclusion of the children was incidental and the parents had made no attempt to hide them. The apparent common sense of ITV's argument was at first vindicated, with the regulator rejecting the complaint. But on review, the decision was overturned by the Fairness Committee - Ofcom's senior decision-making sub-committee on the subject - which found that the inclusion of footage of the children had invaded their privacy. Significantly the committee said that "the broadcaster's prime concern should have been the vulnerability of these young children".

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British Journalism Review



Who's Prime
Mission: Gerhard
Brewer signalled
he was ready to
abandon some of
the most corrupt
Hitler methods of
media control.
New Westminster
reporting facts
clearer. Spin is
diminishing. And
honest political
journalism is
making a
reappearance.

■ Kenneth Surin ■ Andrew Marr ■ Simon ■ Martin ■ ...
... from issue, page 11

Parents shouldn't be surprised

But isn't a news broadcaster's prime concern to broadcast news, and that of parents to protect their children? When Victoria Beckham takes her sons to watch their father play football, she knows that the eyes of the media will be not only on what David does on the pitch, but also what she, Brooklyn, Romeo and Cruz are doing in the stand. It is not unreasonable to argue that if a parent would object to their child being seen in the media in a particular situation, it is their responsibility not to put them in that position in the first place. A parent who lets their child poke their fingers through the bars of a cage can hardly be surprised if the "feral beast" takes a little bite.

In contrast, *Zoo* magazine - a title appropriate to my analogy - was not censored by the press voluntary regulator, the PCC, over a complaint by Paschal Quigley about an article headlined: "Just like Dad". Illustrated with a photograph of Mr Quigley with his 10-year-old daughter at an Old Trafford football match, the story was about "terrace bigotry" and the pair was shown making offensive gestures. The father complained that this ridiculed his daughter and that she should not have been identified.

Clause 6 of the Editor's Code provides that "a child under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents". The PCC accepted that the article could indeed be seen to concern the child's welfare, but the child's "anti-social gesture and her proximity to her father who was simultaneously giving a Nazi salute... marked this photograph as different from a more innocuous face-in-the-crowd picture". Taking a pragmatic view, the PCC said that the father and daughter were at a sporting event where both could easily be pictured by many photographers and television cameras along with tens of thousands of other people. Moreover, it was "not unreasonable for some in the media to assume that the complainant was unconcerned about the publication of pictures of him and his daughter using such gestures and that consent had therefore been implied". The main responsibility for a child before it is born lies with the mother who carries it. The very existence of a child in the early stages of pregnancy is a private matter for the mother alone. That might seem obvious - at least until the lady's expanding waistline bursts the privacy bubble. But the PCC was required to remind the press of this quite categorically in two recent complaints. In September 2006 the PCC found that *The Independent* had committed "a serious intrusion into her private life" by disclosing an early pregnancy without consent. The commission said that "as a matter of common sense, newspapers and magazines should not reveal news of an individual's pregnancy without consent before the 12-week scan, unless the information is known to such an extent that it would be perverse not to refer to it. This is because of the possibility of complications or miscarriage - something that was sadly a feature in this case - and because it should be down to the individual when to share the news with her family and friends in the early phase of a pregnancy".

The singer Charlotte Church - who gave birth to a baby girl at the end of

September - doubtless had this warning in mind when she lodged a complaint against *The Sun* to the PCC during the initial stages of her pregnancy. On hearing rumours of the potential patter of tiny rugby boots, the newspaper had approached Ms Church's PR agents for confirmation. They replied that the matter was private, that she was "not more than 12 weeks pregnant" and that if she were pregnant, there would be no official statement until after the 12-week scan or until advised by a doctor that it would be safe to tell friends and family. *The Sun* then published an article which speculated on, although did not confirm, the pregnancy. Wrapping up the story as reporting on speculation did not enable the newspaper to circumvent the provisions of the code or ignore the PCC's earlier warning. The PCC said: "This was not acceptable within the spirit of the Code."

Unwanted media attention may also profoundly affect families who are not usually in the public eye, and who don't have the protection of managers, agents and entourages. The case of Madeleine McCann has captured the public interest and resulted in column yards rather than column inches of reports. Initially embracing the media to publicise the disappearance of their daughter, Kate and Gerry McCann have of late sought to limit the media focus on their two-year-old twins so as to achieve some degree of normality and privacy for them and the family. The story has been through various chapters - shock, sympathy, suspicion - and media interest remains high. Were the McCanns to complain over press intrusion into their children's lives, would they receive a rebuttal, as did Mr Quigley from the PCC, for having put their children in the media spotlight, or would they receive a more sympathetic hearing, as did the Hodgsons, from Ofcom?

Running the media gauntlet

This level of media attention is usually reserved for the children of celebrities who run the media gauntlet every day. The author J K Rowling is celebrated as the creator of the hugely successful series of Harry Potter children's books, but in her role as wife and mother she guards the privacy of her family fiercely. She took a knock this summer, unsuccessfully claiming invasion of privacy or breach of confidence and a breach of the Data Protection Act over the publication of unauthorised photographs of her son David. Under her married name, Murray, and as litigation friend for her son, she complained over photographs of him, at two years old, being perambulated by mum and dad down an Edinburgh street. A claim against the *Sunday Express*, which published the photograph, was settled, but the defendant photographic agency Big Pictures Limited (BPL) successfully applied to strike out the claim that continued against it.

That claim was brought against the backdrop of Naomi Campbell's success in the House of Lords over the publication of photographs of her outside Narcotics Anonymous. While a 3:2 majority in the Lords ultimately found in her favour, the court emphasised that had the photographs not concerned her quasi-medical treatment at NA, but had shown for example, her popping down to the shops for a bottle of milk, it would have been another story. On these principles, J K Rowling's claim was bound to fail as her son was in

public, could be seen by passers-by and was doing nothing intrinsically private. He had not been harassed and neither he nor his parents knew that he had been photographed until the picture was published. But a legal spanner in the works came in the form of the post-*Campbell* decision of the European Court of Human Rights in the *Von Hannover v Germany* case. Princess Caroline of Monaco successfully argued that her privacy had been invaded by the publication of nothing more innocuous than photographs of her shopping and skiing. They showed her in public and were not embarrassing, but they related solely to her non-official life and accordingly were private and publication invaded her privacy. Little baby David (Rowling) has no official function, he is not a public figure and his mother J K Rowling has tried to keep him out of the public eye, so on *Von Hannover* principles it would be a slam dunk.

Mr Justice Patten, aware that the case could extend the boundaries of current UK law, described it as "seen by the claimant's parents as something of a test case designed to establish the right of persons in the public eye... to protection from intrusion into parts of their private or family life even when they consist of activities conducted in a public place". The defendants countered that "the English courts have refused to recognise the right to an individual not to be photographed in a public place". Mr Justice Patten referred in his judgment to the 2004 case of *Hosking v Runtig*, in which photographs taken by Simon Runtig of TV presenter Mike Hosking's 18-month-old twins in a pram on a public street in Auckland were found by the New Zealand Court of Appeal not to "disclose anything more than could have been observed by any member of the public on that particular day", and to last year's case, *John v Associated Newspaper*, in which Mr Justice Eady found that photographs of a tracksuit wearing Elton John outside his home on a London street were innocuous (though some might disagree with the judicial inference that there is nothing embarrassing about wearing a tracksuit). The photograph of baby David, said the judge, had been taken on "the most innocent and ordinary of occasions and was not capable of protection. There is no press-free zone for [celebrities'] children in respect of absolutely everything they choose to do".

Has this clarified the position or muddied the waters? Mr Justice Patten drew a distinction "between a child (or an adult) engaged in family and sporting activities and something as simple as a walk down a street or a visit to the grocers to buy the milk". "Routine acts", in which he included a visit to the shop or a ride on the bus, "should not attract any reasonable expectation of privacy." But hang on; does this mean that it is acceptable for photographers to snap away at children walking down the street or on the bus *on the way* to the park, but unacceptable for the snapper to continue to shoot once they arrive? If a picnic in the park is a family activity, is also eating a sandwich? What if the sandwich is being eaten by the child not in the park, but walking down a street? What if the child is on his or her own and not with the family, either on the road or in the park? What a legal quagmire for photographers, publishers and lawyers to get sucked into, and one can only hope a helping hand may soon be proffered to pull us from the quicksand - because this decision is under appeal.

It is undeniable that growing up in a society with a powerful media presence

such as ours can raise its own particular issues. One is the need to protect our children, the responsibility for which must first lie with the parents who are morally and legally charged with their welfare. Government, with a responsibility to society, legislates to ensure that certain standards are maintained and the courts step in to ensure that rights are protected. The media have their own responsibility to comply with voluntary or statutory codes, and at times also appear to take a collective moral stance over and above their obligations at law. The most obvious recent example was, after the death of their mother, the press voluntarily agreed to lay off the princes, William and Harry, even if all bets were off after the boys came of age.

Media organisations are commercial entities with a responsibility to their owners and shareholders. They educate, inform and entertain, but they do so in order to make money. The Faustian pact between the media and those celebrities whose presence sells publications may persuade some in the industry to take a commercial, rather than moral, decision not to incur the wrath of a celebrated parent by filming or photographing his or her offspring. To do otherwise would risk exclusion from lucrative photo-shoots and the drying-up of juicy, authorised titbits. Certainly it would be naive to think that any restraint by the media when it comes to children is born out of a belief in an overriding moral duty to protect them. It is far more likely - if you will permit the mixture of anatomical metaphors - that by exercising a degree of self-censorship, the media are ensuring their ability in the future to carry on their formal role as eyes and ears of the public, while at the same time ensuring they don't put their foot in it with the celebrity hands that feed. So who is looking after the children: parents, courts, government or the media? For their own very different reasons, they all must.

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