



Not just the paparazzi

Media invasions of privacy

Fellini's *La Dolce Vita* may have given birth to the tag 'paparazzi', but concern about media invasions of privacy is not new, even if the problem is now more acute.

In the late nineteenth century, American lawyer Samuel Warren and Louis Brandeis co-wrote a law journal article lamenting that 'instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life' and calling for the expansion of the law to protect privacy. Warren's interest in exploring the scope of the common law to provide legal protection for privacy was in part due to his own experience of media intrusion – a press report 'in lurid detail' of his family's social activities. The article is frequently described as the most influential law journal article ever written because it was instrumental in the development of the American tort of privacy.

Much of the current debate focusses on invasion of privacy by photographers, particularly freelancers working for photographic agencies. However, the problem of media invasion of privacy is more complex and multi-faceted than this. It is important to recognise that the media can breach different aspects of privacy while both gathering news and publishing it.

Situations which may give rise to complaints about infringement of privacy by the media include publishing personal information; depicting reactions to news of death or tragedy; interviews following these events; insensitive reporting of tragedies; coverage of funerals; interviews with victims of crime or their families; 'outing' the sexual orientation of in-

dividuals; taking photographs, filming from a distance and using hidden cameras; and publishing private documents such as letters and diaries.

The media need to be particularly sensitive to privacy issues when reporting on tragic and traumatic events. Often the individuals who find themselves caught up in such newsworthy circumstances have not previously sought or experienced media attention. Their lack of familiarity with dealing with media people can be disempowering, making them more vulnerable to intrusive reporting.

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The Calcutt Committee, which in 1990 reported on the issue of privacy and the press in England, observed that 'the people whose privacy we consider most needs protecting should they, for example, become the victims of a crime or a disaster, or suffer from some disfiguring illness, are precisely those who hold no office, play no prominent role in society, have no publicity agent and also probably lack the means to sue'.

Two Australian examples illustrate invasions of privacy that further compounded the suffering of ordinary people caught up in tragic circumstances, without any compelling public interest justification.

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a shark attack in Tasmanian waters, the event was described and re-enacted in graphic detail by various media, particularly television, with little regard for the sensibility of her bereaved relatives. Later, her husband described publicly how his grief had been exploited and invaded by the media and how this had magnified the extent of his suffering.

When David Wilson was held hostage and eventually killed in Cambodia, his family's home was besieged by journalists seeking interviews, one of whom climbed on the roof. Members of the Wilson family went public to draw attention to the unethical conduct of the journalists concerned and to describe the effect of the invasion of privacy at a time when they were experiencing extreme anxiety about their relative's fate.

There are divergent views among journalists about the ethics of interviewing victims of tragedy and about the privacy of grief.

Some journalists see their role as therapeutic, giving victims the opportunity to tell their story and grieving relatives a chance to pay tribute to a loved one. They say that their intrusions, or 'death knocks' as they are called, allow people to share their emotions and the public to identify with them.

Other journalists are deeply troubled by the practice, seeing it as insensitive, exploitative and unnecessary, driven by the pressure of competition. They point to the imbalance that exists between the journalists and victims, who, in a state of shock and with their defences down, may consent to be interviewed when otherwise they might not. Victims may be overwhelmed by the authoritative presence of the journalist and not



realise that it is their choice whether to speak or not.

The Northern Territory Police Media Unit has responded to this issue in a practical way by preparing an information brochure for victims of crime and tragedy. It explains what to expect in terms of media attention, presents reasons for and against talking to the media and offers suggestions on how to deal with the media.

Journalists point to the difficulty of refusing to conduct intrusions when pressured to do so by executives. Clause 9 of the current code of ethics of the Australian Journalists Association section of the Media, Entertainment and Arts Alliance was designed to address this problem when introduced in 1984. It reads: 'They shall respect private grief and personal privacy and shall have the right to resist compulsion to intrude on them'.

The Ethics Review Committee, chaired by Father Frank Brennan, which recently reviewed the MEAA code of ethics, recommended that the code should address privacy and grief separately, because privacy is a much wider concept. The Committee proposed a new clause about grief: 'At times of grief or trauma,

always act with sensitivity and discretion. Never harass. Never exploit a person's vulnerability or ignorance of media practice. Interview only with informed consent'.

The Committee said that in the



particular circumstances of each case, journalists should exercise a choice whether to undertake work that involves intrusions, and endorsed submissions that urged that 'employers should recognise and respect the journalist's right to make a conscientious objection'. However, the Committee decided not to recommend that the code attempt to ban intrusions, be-

cause 'stories of suffering are part of reflecting society to itself'.

A similar point was made by a number of commentators in relation to the debate about media reporting of the landslide at Thredbo. While the media played an important role in informing the public about the landslide at Thredbo, the resulting loss of life and the rescue effort, accusations of insensitivity and intrusion on private grief were levelled against some journalists.

Michael Gawenda, now editor at the *Age*, argued that 'surely no one who thinks about it seriously doubts that such disasters ought to be extensively covered'. Even if journalists behave ethically and sensitively in such circumstances, it is inevitable that some will accuse them of intruding on private grief and exploiting the suffering of others for ratings or circulation.

It is important to recognise that media invasions of privacy result from a complex interplay of factors, including competition, changing news cultures, technology and lack of training. Recognition of this complexity suggests that there is no fast or simple solution to the problem.

Paul Chadwick and Jenny Mullaly

Against the backdrop of the renewed debate about privacy and the media prompted by the death of Princess Diana, the Communications Law Centre will launch its latest research paper, *Privacy and the Media* by Paul Chadwick and Jenny Mullaly, on 23 October at the city campus of Victoria University of Technology, in Melbourne.

The race for ratings and circulation, fascination with suffering and with gossip and the right to know are just some of the ingredients in the vexed issue of media and privacy. The paper examines concepts of privacy, free speech and public interest; journalism ethics and self-regulation in Australia; legal protection of privacy and international responses to the issue of media behaviour and privacy.

Privacy and the Media, Paul Chadwick and Jenny Mullaly, \$35 from the Communications Law Centre (02) 9663 0551 or (03) 9248 1278.