



Privacy and the Media: The UK Position

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Overview

- Statutory Position
- Position under Common Law
- How will things move from here?

Statutory Position

s.32 Data Protection Act 1988

Exempts processing “for special purposes”

“Special Purposes”: artistic, literary and journalistic (s.3)

Section 32

Data Protection Act (other than Security Principle) does not apply if

- processing is with a view to publication
- controller reasonably believes publication to be in the public interest
- controller reasonably believes that compliance is incompatible with special purposes

Data Protection (Processing of Sensitive Personal Data) Order 2000 allows processing of sensitive data for the special purposes

Naomi Campbell v. MGN Limited (Court of Appeal)

s.32 applies to both processing before publication and publication itself

Common Law Position

Naomi Campbell v. MGN Ltd (House of Lords)

Extended law of confidence to meet the growing need for a law of privacy

Essence is misuse of private information

Test:

- is the information private?
- if so, how do you balance the competing interests of Articles 8 and 10 of the Human Rights Act 1998?

The balancing is a matter of opinion (judges split 5 – 4 in favour of the right to publish, yet final decision was in favour of Campbell’s right to damages for the publication).

How Will Things Move From Here?

May 2003: Culture, Media and Sport Committee made firm recommendation for Government to bring in legislation to protect individuals from unwarranted intrusion - a privacy statute.

October 2003: Government rejected proposal. Prefer to leave to self regulation by Press Complaints Commission and courts striking the right balance “on a case by case basis”.

Neither judiciary nor legislature wants to grasp the nettle.

Hard cases will make bad law. But it will be interesting for us at the ringside to watch the law develop.



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