



Children's rights to privacy in an age  
of digital media: a comparison  
between press codes from around  
the world.

IAMCR pre-conference

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<http://www.impress.press>

# Children in media images



- What sort of exploitation is involved when children, the most powerless group in society, are pictured for the pleasure and delight of adults, who potentially have total control over them?' (Patricia Holland, *Picturing Childhood*, 2004: xii) ...
- 'Childhood lends itself both to spectacular presentation and to the sort of comforting and engaging routine imagery that attracts readers to a newspaper . . .' (Holland, *ibid*, pp1-2)
- 'With photography and film, there always is a real child with a real life behind this image and . . . this person should not be forgotten. This person has agency, and should have some control over the use of his or her representation.' (Máire Messenger Davies, *Children, Media and Culture*, Milton Keynes: Open University Press, 2010: xx)
- See also *Consenting children?* By M. M. Davies & Nick Mosdell, a report for the Broadcasting Standards Commission,

# The Weller Case

- Hannah Weller, 2014 - 2015:  
<http://www.theguardian.com/media/2015/jan/03/paul-weller-hannah-weller-battle-for-privacy-children>
- Campaign for children's privacy:
- <http://www.childrensprivacy.co.uk>
- <http://www.parliament.uk/business/committees/committees-a-z/commons-select/culture-media-and-sport-committee/news/dealing-with-complaints-against-the-press/>

# Court ruling: Weller

- the relevant attributes of the Claimants which are identified in this case are the images of each of their faces, showing a range of emotions and engagement as the children are on a shopping and café trip with their father. The photographs are published with the children's surnames. The authorities have established that a person's image constitutes one of the chief attributes of his or her personality. This is because it reveals the person's unique characteristics and distinguishes the person from his or her peers.
- **Conclusion**
- For the reasons given above I find that there was a misuse of private information in the publication, from 21 to 22 October 2012, by Mail Online of photographs showing the faces of the Claimants on a family outing with their father. There was also a breach of the Data Protection Act. I have made awards of damages. The undertaking not to publish the photographs again should be offered to the Court to provide clarity for the parties

# The UK Editors' Code of Practice

From the Editors' Code: [http://www.editorscode.org.uk/the\\_code.php](http://www.editorscode.org.uk/the_code.php)

## **6. \*Children**

- i) Young people should be free to complete their time at school without unnecessary intrusion.
- ii) 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.
- iii) Pupils must not be approached or photographed at school without the permission of the school authorities.
- iv) Minors must not be paid for material involving children's welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.
- v) Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life.

## **7. \*Children in sex cases**

1. The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.
  - 2. In any press report of a case involving a sexual offence against a child –
    - i) The child must not be identified.
    - ii) The adult may be identified.
    - iii) The word "incest" must not be used where a child victim might be identified.
    - iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

# UN Convention on the Rights of the Child, 1989

‘Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance’,  
54 articles of children’s rights

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

# UN Convention: children's rights to privacy and to agency

- Article 16. 1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
- Article 40. 1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society....

(vii) To have his or her privacy fully respected at all stages of the proceedings.

And where media are concerned:

- Article 12: 'the right of the child to express an opinion and to have that opinion taken into account, in any matter or procedure affecting the child

# Children's right to privacy: a notorious recent case

- <http://www.pressgazette.co.uk/lawyer-injunction-stopping-sun-revealing-celebrity-threesome-means-famous-can-now-use-children-stop>



# Supreme court ruling, May 18<sup>th</sup> 2016

- It is important to consider the medium and form of the previous publication: **there is a qualitative difference in intrusiveness and distress between the disclosures on the internet which have occurred and the media storm which would follow from publication by the English media in hard copy, together with unrestricted internet coverage of the story [35][63].**
- • Publication in this form is **contrary to the interests of PJS's children and in breach of the requirement to show an exceptional public interest for the intrusion set out in the *Editors' Code of Practice* to which NGN has subscribed [36].** Lady Hale's judgment discusses this consideration further, partly in redacted form to prevent identification **[72-78]**
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- <https://www.supremecourt.uk/cases/docs/uksc-2016-0080-press-summary.pdf>
- 
- full ruling at <http://supremecourt.uk/decided-cases/index.html>

# European Convention on Human Rights (ECHR)

**Article 8** provides that "*everyone has the right to respect for his private and family life, his home and his correspondence*".

**Must be balanced with:**

**Article 10** provides that "*everyone has the right to freedom of expression*".

Convention rights are part of English law under section 6(1) of the *Human Rights Act 1998* .

## Reasonable expectation of privacy for children?

In *Murray v Express Newspapers plc*, the Court of Appeal noted that while children do not have a 'guarantee' of privacy, the 'attributes of a claimant' including their vulnerability on account of age, should be considered by a court [58].

In *Spelman v Express Newspapers*, the High Court made clear that the effect of a child's age and circumstances will have different effects in different cases [77].

# International code provisions

- Vulnerability of children, e.g. 'show care and sensitivity'
- 'Best interests' of the child
- Requirement for parental consent for interviews or photographs
- Human rights discourse
- Court reporting restrictions involving children

# What's missing here?

- A lack of reference to children's own agency
- A lack of attention to the use of images (of children and created by children)
- A lack of reference to social media and the difficulty of protecting privacy on the internet

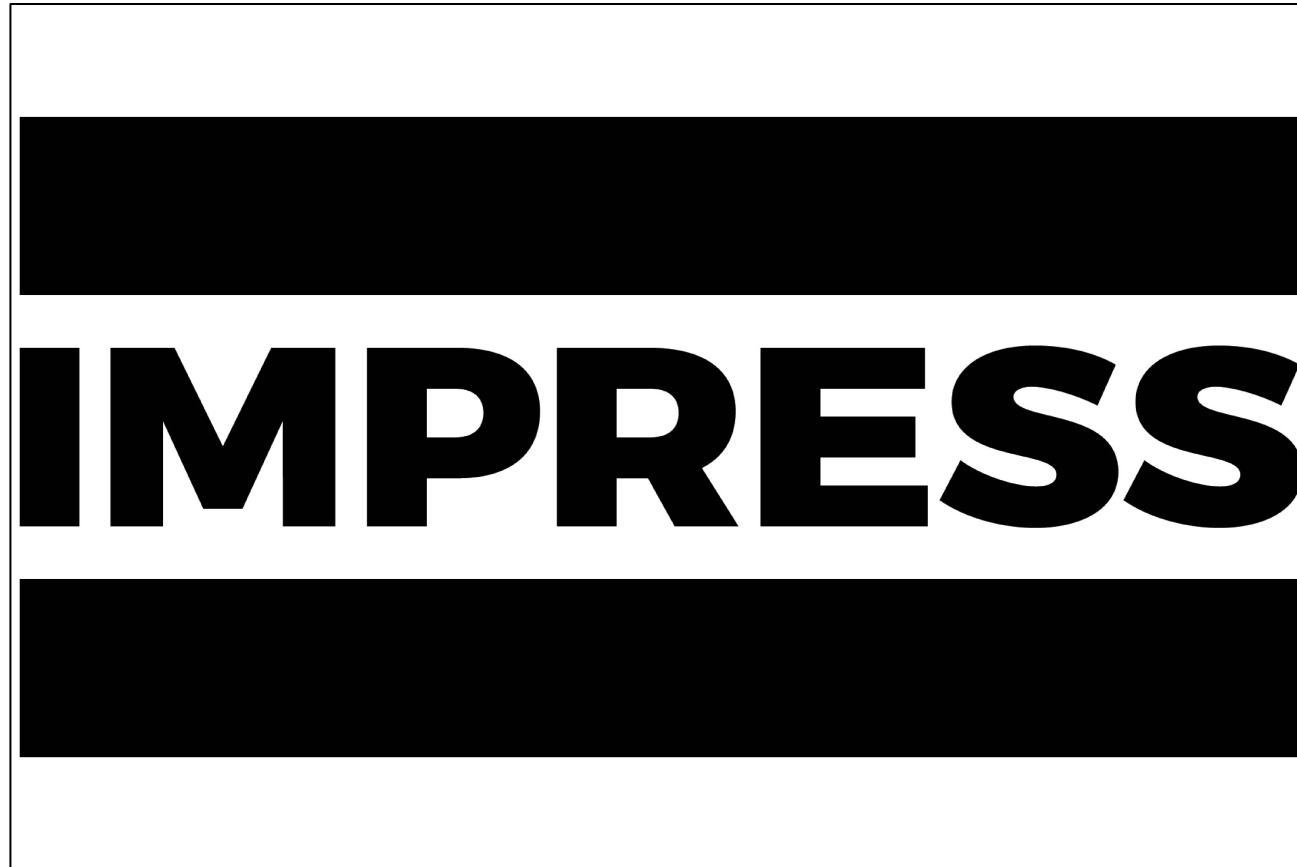
# Next steps

## **Recommendations**

- Involve children in code drafting and code guidance.
- Institute different age levels for different parts of a standards code
- Make specific provisions for social media

## **Next steps in the UK:**

IMPRESS is conducting a consultation to develop a new Standards Code because developing ways to maintain ethical journalism is key to a healthy and robust media. One of the critical issues for our code consultation is how best to protect children from intrusive press practices or pejorative references to children and young people.



<http://www.impress.press/news/support-for-standards-code.html>