

Super Injunctions

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Jeremy Clarkson and Andrew Marr make unlikely bedfellows. And before either of them reach for their libel or privacy lawyers to injunct me, I speak not of any private relationship between the two but the legal issue that they have in common. Both applied for, and were granted, injunctions to protect aspects of their private life. But both 'voluntarily' gave up on those privacy injunctions.

Mr Clarkson told The Daily Mail the privacy injunction prohibiting the exposure by his first wife of aspects of his private life was rendered pointless by Twitter. While Andrew Marr confirmed in his written statement to the Joint Committee on Privacy, that while he had sought protection in the first instance to protect vulnerable others, he felt that injunctions should not last forever. 'I had never intended the injunction to be permanent. It was a useful emotional plaster at a very traumatic time, not permanent plastic surgery,' he wrote.

By falling on their private swords, do the actions of Messrs Clarkson and Marr invite us all now to give up on our privacy? Are court orders prohibiting unjustified invasions into private life really not worth the paper that they are written on as long as there is a blogger in a bed sit in Bognor or a Tweeter, in a townhouse in Tottenham on the scene? All of us are entitled to live some sort of private life, the blogger and the Tweeter, the private individual and the public figure. The fact that Mr Clarkson may have decided, albeit reluctantly, to declare open house on his former marital affairs doesn't herald a need for us all to move into a glass house against which the media can throw their stones.

The right to respect for our private and family life, our home and our correspondence is guaranteed by Article 8 of the European Convention on Human Rights. It is not, needless to say, an absolute right, and has to be balanced against other rights where they come in to play. In cases of media reporting, the Article 10 right of freedom of expression is naturally, the most likely opponent.

Privacy injunctions are not handed out by the judiciary like sweets to demanding children. They are only granted where the applicant can show a real risk of publication and that they are more likely than not to succeed at trial. The courts of England and Wales are experienced in balancing the competing rights of Articles 8 and 10, of weighing up the right to privacy against the right to free speech, and in granting orders preventing publication where to do otherwise would constitute what has been termed 'a sordid spying into private life' with no public interest or other justification for doing so.

Those who do not wish their private lives and business affairs to be exposed unilaterally by a disgruntled former spouse, a former business colleague or the subject of a fleeting flirtation are right to seek the assistance of the court. If there is good reason for the publication – over and above the mere titillation of those hungry for gossip – then the court will root that out and will not allow itself to be abused by an applicant trying to use the law to hide wrongdoing, hypocrisy or criminal acts. If there is no such justification, then the courts may prohibit publication on an interim or a permanent basis.

The phone hacking scandal served as a salutary reminder that the media, known as the watchdog and bloodhound of society, is not always man's best friend. It can be a sly and dangerous 'feral best'. But if it is scratching at the door, we do not need always to let it in; and when it is attacking us, we do not need to cower in the corner while our private lives are torn to shreds.

With seven billion people now on the planet, man needs more than ever some private space into which to retreat. Legislatures across the globe have understood our need for privacy and courts worldwide will defend our rights to protect it.

In the courts of England and Wales, privacy and breach of confidence actions, claims in harassment, trespass and under the Data Protection Act are the legal mechanisms by which privacy can be protected while at the same time the need of the public to be educated, informed and entertained, and the desire of the media to make commercial mileage out of fulfilling that need, may be serviced.

The fact that the media might be more aggressive than it ever was, and that modern media and communication tools have established new ways to seek to expose our private lives makes it more, not less important, that we should continue to seek to enforce our rights. But can we continue to do so? If we are not to fall into a Dystopian world where we do not regulate the media, but it rules us, then we have to continue to have faith in our laws – and to amend them where needed; in the ability of the courts to balance fairly the twin rights of privacy and free speech; and in the powers of the judiciary, the regulators and parliament to sanction those who disrespect and disregard the law and abuse individuals in the process.

What to do if you think your privacy might be about to be infringed

- Don't delay – As soon as you are put on notice, time is of the essence, so contact your lawyers; if you bury your head in the sand your story will not go away – it will be tomorrow's front page.
- Be honest – Trust your trusted advisers; your legal team needs what may be private but relevant information better to fight off

the media attack in court and to negotiate undertakings from the media to prevent publication.

- Injunctions can work – Twitter has not rendered your entire private life, public; the courts will grant an injunction to safeguard privacy and properly-granted injunctions of genuinely private information still persist.
- Advance planning – While we can act speedily in the face of urgent instructions, if you have particularly sensitive and private information to protect or fear exposure of entirely confidential matters in the future, consider alerting us in advance to enable us to provide the best protection in good time should the media come calling unexpectedly,
- Third parties – Regularly review the confidentiality obligations under which those who work with and for you and ensure that they understand fully and comply with their obligations.
- Self-awareness – Consider carefully what information is already in the public domain about you and what you might be intending to make public, and move to remove where private information is being published without your consent.
- Self preservation – Don't expose yourself to media scrutiny by opening up your own private life; talk to us about how you can help us to help you.

If you require any further information on super injunctions or have any privacy queries, please feel free to [contact the Media and Reputation team](#) for further information.

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