

A woman v Loaded

Clauses noted: 3

A woman complained to the Press Complaints Commission that an article headlined "Wanted! The Epic Boobs girl!", published in the February 2010 edition of Loaded, intruded into her privacy in breach of Clause 3 (Privacy) of the Editors' Code of Practice.

The complaint was not upheld.

The article featured a number of photographs of the complainant - who was said to have the "best breasts on the block" - taken from the internet and offered readers of the magazine a reward of £500 for assistance in encouraging her to do a photo shoot with it. The complainant said that the article was intrusive: the magazine had published her name and the photographs, which had been uploaded to her Bebo site in December 2006 when she was 15 years old, had been taken from there and published without permission. Given the length of time which had elapsed, she could not remember whether her site had any privacy settings in place and did not know the circumstances in which the photographs had been removed. The publication of the article had caused her upset and embarrassment.

The magazine said that that it had not taken the photographs from the complainant's Bebo site; rather, they were widely available on the internet. The complainant's photograph, for example, came up in the top three in a Google image search on the word "boobs". At the time of complaint, there were 1,760,000 matches that related to her and 203,000 image matches of her as the "Epic Boobs" girl. Moreover, the complainant's name had been widely circulated and achieved over 100,000 Google hits, including over 8,000 photographs.

The complainant said that - until the article appeared in the magazine - she was not aware that the images had been widely disseminated, something which the magazine considered to be surprising.

Adjudication

This case raised the important principle of the extent to which newspapers and magazines are able to make use of information that is already freely available online. The Commission has previously published decisions about the use of material uploaded to social networking sites, which have gone towards establishing a set of principles in this area.

However, this complaint was different: the magazine had not taken the material from the complainant's Bebo site; rather it had published a piece commenting on something that had widespread circulation online (having been taken from the Bebo page some time ago by others) and was easily accessed by Google searches.

It was not a matter of dispute that images of the complainant had been freely available for some time (having been originally posted in 2006) or that she had been identified online as the person in the pictures. The Commission could quite understand that the complainant objected strongly to the context in which they appeared online: what were images of her and her friends in a social context had become proclaimed as "pin-up" material, the subject of innuendo and bawdy jokes.

It was, of course, within this context that the magazine article operated. This was an important point: the magazine had not accessed material from a personal site and then been responsible for an especially salacious means of presenting it; instead it had published a piece discussing the fact that this material was already being widely used in this way by others.

The Commission did not think it was possible for it to censure the magazine for commenting on material already given a wide circulation, and which had already been contextualised in the same

specific way, by many others. Although the Code imposes higher standards on the press than exist for material on unregulated sites, the Commission felt that the images were so widely established for it to be untenable for the Commission to rule that it was wrong for the magazine to use them.

That said, the Commission wished to make clear that it had some sympathy with the complainant. The fact that she was fifteen-years-old when the images were originally taken - although she is an adult now - only added to the questionable tastefulness of the article. However, issues of taste and offence - and any question of the legality of the material - could not be ruled upon by the Commission, which was compelled to consider only the terms of the Editors' Code. The Code does include references to children but the complainant was not a child at the time the article was published.

The test, therefore, was whether the publication intruded into the complainant's privacy, and the Code required the Commission to have regard to "the extent to which material is already in the public domain". In the Commission's view, the information, in the same form as published in the magazine, was widely available to such an extent that its republication did not raise a breach of the Code. The complaint was not upheld on that basis.

Adjudication issued 11/05/2010