

## The Media and Privacy: Friend, Foe or Folly?

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The media has been the greatest proponent of freedom of information, freedom of expression and freedom of speech. However, the media has also been one of the worst violators of privacy rights through the activities of the “Paparazzi” and various so-called “investigative” tabloid journalists.

In a free and democratic society, it is vital that the public to have access to information and that the media have the right to inform the public – through print, radio, television or other electronic means such as Web sites. However, these rights cannot be left wholly unfettered as they are not absolute rights, absent of any limits or controls. Yet it is the nature and degree of these controls that are a source of great debate in jurisdictions around the world. This panel will examine the issues surrounding the role of the media and privacy. Specifically, it will examine legislative and self-regulatory models governing the behavior of the press.

The Aspen Institute’s Catto Conference on Journalism and Society has addressed, in part, this important issue. Keynote addresses given by Robert MacNeil (former co-host of *The MacNeil-Lehrer NewsHour*) and Max Frankel (former Executive Editor of *The New York Times*) both noted that the new market realities of journalism have transformed the craft, for good and for bad. The growing plethora of news format and increasing media concentration (highlighted most recently by AmericaOnline’s purchase of TimeWarner) is dramatically altering the world of journalism. Is news becoming just another packaged entertainment commodity? How will serious journalists regain “editorial sovereignty?” In a recent example of the lines blurring between journalism and business, the publisher of the Los Angeles Times devoted a special issue of its Sunday magazine to L.A.’s new Staples sports arena and secretly shared in the advertising revenues from the magazine in exchange for sponsorship rights. If this sort of activity can happen in traditional, highly respected media organizations, what does the future hold for the new realm of online journalism which is seeking to carve out its own niche and gain respectability?

The importance of balancing the public’s “right to know” with an individual news subject’s “right to privacy” is being recognized in journalism and media literary courses covering privacy and the press. Furthermore, there have been renewed calls for the promotion of (or return to) journalistic standards. But how exactly should these standards, or codes of conduct be formalized?

At the first Catto Conference, David Bollier outlined a few possible examples in his paper, *News*

*Values in the New Multimedia Environment: The Case of Privacy.* Mr. Bollier outlines a number of means to “bolster public trust in journalism” and to promote a “new transparency” in the media. There a number of ways to develop and enforce journalistic standards. One of these was the creation of a national news council. One idea that was not raised, not unsurprisingly given the American context, was the implementation of private sector privacy legislation. Many jurisdictions have such legislation (the European Union, Hong Kong, New Zealand) but even when there are privacy laws, the exemptions for “journalistic, artistic or literary purposes” – to cite Canada’s pending privacy legislation Bill C-6 – can undermine any stated protections. Hence the need for a combination of legislation with independent oversight, self-regulation and a governing moral conscience.

Yet is free speech, by necessity, the opposite of privacy? In attempting to “balance” between these two fundamentally important democratic rights, the concept of compelling interests appears to govern whether speech can be legally and appropriately restricted or privacy violated. However, is the strength of our presumption of privacy equal to the forces promoting freedom of speech? Are there far more “compelling” reasons to breach one’s right of privacy than there reasons to curtail one’s speech or expression? A valid harms test might well be applied, however so often, the damage is done and the only recourse, if it can be viewed as such, is *post facto* through the courts.

It is often argued that the news media plays the role of watchdog over government operations. Therefore, any attempts by the government to regulate the freedom of the press are by their very nature suspect and likely rife with conflict of interest. This is of course ludicrous, since government has lived with independent oversight of its activities in a number of areas, such as freedom of information. Critics would argue that any government intervention in the media marketplace in an attempt to protect privacy is an unwarranted intrusion on the freedom of press. However, if the government cannot be “trusted” to regulate the press, why should anyone believe that the press will do a better job of showing self-restraint and exercising higher moral and ethical judgement, especially in light of increasing market competition? The media is quick to jump on privacy horror stories, often to exploit them for commercial gain, however, to their credit, they often play a valuable role in educating and informing the public about issues of concern such as identity theft.

It is arguable that modern technologies (e.g., audio and video surveillance, data-mining, profiling and Web-based publishing) have added a new dimension to the issue of privacy. Given the significantly intrusive potential of such technologies, it is understandable that there are an increasing number of privacy-enhancing initiatives being advocated – from laws to technologies – given how easily one’s privacy can be violated. If every aspect of one’s life can be monitored, does that fundamentally change the nature of balance between free speech and privacy?

Media intrusions into the private world of an individual should have to be justified on some legitimate grounds involving true public interest, and not just because it’s a “good story.” Privacy protections are not inimical to a free society and to the free expression of an individual or a media organization. If the media is allowed to abuse the privacy rights of an individual out of commercial interest – to increase market share – then why would anyone else need a better reason to invade someone’s privacy? Ultimately, the issue is about standards, who sets them and who enforces them.

## Sources and sites:

The 1997 Catto Report on Journalism and Society

<<http://www.fieldus.org/dir/polpro/CSP/Catto/cattoreport97.html>>

A Report of the Second Annual Catto Conference on Journalism and Society

<<http://www.fieldus.org/dir/polpro/CSP/Catto/catto99.html>>