[GB] Ofcom Decision on Privacy in ‘Fictional’ Drama

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In a decision published on 17 February 2014, the Office of Communications (Ofcom) upheld in part a complaint by an individual in which she claimed that her privacy had been breached through the broadcasting of a fictional drama by the broadcaster ITV that closely mirrored the circumstances of her father’s murder.

‘Mrs A’, as she is referred to in the decision to guard against further intrusions of her privacy, submitted the complaint to Ofcom in response to the airing on ITV of the television detective show “Scott & Bailey” on 22 May 2013. The plot of the episode in question was striking in its resemblance to the events of the death of Mrs A’s father, and she had had numerous conversations and encounters with people who had recognised this fact. ITV admitted that the plot details were based on real life crimes including those of the murder of Mrs A’s father but denied that this constituted a breach of the Broadcasting Code.

Ofcom deemed that the two sections of the Broadcasting Code engaged in this case were Practice 8.6 and Practice 8.19. Practice 8.6 requires broadcasters to obtain consent “(i)f the broadcast of a programme would infringe the privacy of a person or organisation...unless the infringement of privacy is warranted”.

And 8.19 states that potential distress should be reduced for surviving victims or relatives when examining past events, “(t)his applies to dramatic reconstructions and factual dramas, as well as factual programmes.” Emphasis is placed on informing such people in advance of broadcast.

Ofcom acknowledged the unique circumstances of the case in that the “Scott & Bailey” is intended to be a drama with some real life inspirations, but not a “dramatic reconstruction” in the strictest sense of Practice 8.19.

Ofcom held that Practice 8.6 was not violated because while ITV had not gained Mrs A’s permission the circumstances dictated that the infringement of her privacy was warranted as far as the Practice was concerned.

ITV in turn accepted that under Practice 8.1 a basic infringement of privacy had taken place but in response to Ofcom’s Initial Preliminary view argued that Practice 8.19 should not be applied to fictional dramas as the wording was clear and designed for dramatic reconstructions.

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In its Revised Preliminary View and, ultimately, its final Decision Ofcom upheld the complaint of Mrs A in part; while ITV was not required to seek permission under 8.6, it had not taken requisite action to mitigate the suffering of victims and families under 8.19. Ofcom noted again the unique circumstances of the case which involved some deliberate and some coincidental convergences between the events portrayed in the drama and the real life circumstances of Mrs A's father; they also emphasised the need to balance the editorial freedom of creative broadcasting with the privacy of others.

Decision of Ofcom, 17 February 2014

http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb248/obb248.pdf

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