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## The grey areas in a glossy realm

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Article 10 of the Human Rights Act 1998 declares that "everyone has the right to freedom of expression". Article 8, however, asserts that "everyone has the right to respect for his private and family life". The conflict between these two rights is the subject of Joshua Rozenberg's timely survey, which should be essential reading for anyone concerned with the law or the media - and anyone who enjoys the spectacle of eminent legal brains seeking to reconcile the apparently irreconcilable. "Privacy is one of the most interesting legal topics around at the moment," Rozenberg writes, "if only because nobody knows where the law is going."

The point is confirmed by a judgment made since he finished the book. Last June, the European Court of Human Rights ruled unanimously in favour of Princess Caroline of Monaco, who claimed that the German Government had breached her right to a private life by failing to stop newspapers printing paparazzi photographs of her. Though most of the pictures were taken in public places, the Strasbourg judges held that they "made no contribution to a debate of public interest" and were therefore indefensible. Since British courts are obliged to heed this ruling, our tabloids and gossip magazines may soon be unable to run any more photos of Gwyneth Paltrow doing her shopping or Geri Halliwell emerging from a showbiz party.

No great loss, you might think. But where do you draw the line? In March 2002, Naomi Campbell won a case against the *Daily Mirror*, which had revealed her attendance at meetings of Narcotics Anonymous. In the absence of a privacy law, Mr Justice Morland used the old breach-of-confidence law as a kind of proxy, arguing that the undisclosed source of the story - whether a fellow NA member or one of her friends - owed Campbell "an obligation of confidence". Although Morland accepted that the *Daily Mirror* was "fully entitled" to reveal that she was receiving drug therapy, because Campbell had boasted that she did not take drugs, he maintained that it had no right to print details of that therapy or a photo of her leaving an NA meeting.

The Court of Appeal overturned this decision, arguing that to publish the story without any background detail "would have bordered on the absurd".

However, Campbell then persuaded the law lords (by a three-two majority) that Morland had been correct after all. Lord Hope said he would have found in favour of the *Daily Mirror* but for the publication of the photograph.

Yet there was nothing intrinsically distressing about the image, which showed the neatly dressed supermodel smiling as she walked along the street. Had it been used to illustrate any other story about her, she would not have had a case.

The problem with our evolving, judge-made privacy law is that it derives largely from the vanity of celebrities. Rozenberg gives an entertaining account of the action brought by Michael Douglas and Catherine Zeta-Jones against *Hello!* magazine, which printed unauthorised photographs of their wedding, thus spoiling their exclusive £1 million deal with *OK!* The case may have established several important precedents, but what use are they to ordinary citizens who find themselves subjected to unwelcome media attention?

The obvious alternative, advocated most loudly by Gerald Kaufman MP, is for Parliament itself to pass a

Privacy Act - a prospect from which Rozenberg recoils. His book is stuffed with examples of judicial eccentricity, such as when the law lords banned newspapers from reporting Peter Wright's allegations in *Spycatcher* while thousands of copies of the US edition were available in British bookshops. ("Though logically impeccable," the author observes, "Lord Brandon's judgment was complete nonsense.") Yet he insists that "if freedom of expression is at stake, I would rather take my chances with one of Her Majesty's judges than one of Her Majesty's ministers".

Besides, any such legislation would be framed in the most general terms and would have to include a broad public-interest defence, so judges would still decide what is in the public interest and what is merely interesting to the public.

Rozenberg's guide through the maze of case law is admirably clear, even to the non-specialist; and although he never hides his own prejudices ("privacy good; free press better"), his account is judiciously balanced throughout. It made me wish he were a judge himself. If freedom of expression is at stake, I would far rather take my chances with Joshua Rozenberg than with Gerald Kaufman.

Francis Wheen's latest book is *How Mumbo-Jumbo Conquered the World: A Short History of Modern Delusions*.

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