In a ruling today (10 May 2011) by the European Court of Human Rights (ECHR) Max Mosley lost his claim against the UK government that the media should be required to pre-notify the proposed publication of private information to give the subject the opportunity to object and seek an injunction.

The claim arose out of the publication in the News of The World newspaper and on its website of details of Mr Mosley’s sexual activities. Mr Mosley was refused an interim injunction to prevent further publication pending a full trial because of the extent of publication on the internet by the time the injunction hearing was held. However, Mr Mosley subsequently won his claim for breach of his right to respect for his private and confidential information at a full trial. The Judge recognised the gravity of the invasion of privacy by awarding Mr Mosley £60,000 and substantial legal costs running to hundreds of thousand of pounds.

Mr Mosley complained to the ECHR that the UK government should secure an individual’s right to privacy by imposing on the media a requirement that subjects should be warned before anything private is published. This would allow the subject the opportunity to prevent publication. This would avoid the situation that Mr Mosley faced where he was denied an interim injunction on the basis that the material had already entered the public domain to such an extent that the injunction was pointless.

The ECHR disagreed with Mr Mosley. While sympathetic with the facts of his case, they were reluctant to impose a blanket requirement for pre-publication notification. They doubted it would have any practical effect in any event, noting that there would need to be a carve out for “public interest” cases and that such arguments might have been raised by the News of the World in the Mosley case to justify no prior notification. They were also concerned that pre-notification would potentially have a chilling effect on freedom of expression, particularly if allied with substantial fines or other remedies for breach of any such rule.
The legal position therefore remains unaltered. The first indication of the circulation of private information within the media is therefore likely to continue to give rise to the subjects seeking urgent injunctions to prevent too much entering the public domain, part of the much debated “super injunctions” regime. The ruling is also not necessarily good news for the media because the ECHR again emphasised the distinction between “public interest” reporting (matters of political importance for example) and reporting matters “of interest to the public” (the “kiss and tell stories” beloved of the tabloid media), the latter attracting only a very narrow degree of protection as opposed to the former.

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