

Going public

Publishers and parents alike should take particular care before releasing details of a child's private life to avert potentially damaging consequences for the families concerned, says Barbara Hewson

SHOULD LITERARY PARENTS write about their children? And how should parents exploit their gifted children? These are difficult ethical questions, and can have serious personal repercussions for the families concerned. They also pose practical legal dilemmas for those in the creative industries.



Destroyed relationships

Nearly a century ago, A. A. Milne's books about his boy, Christopher Robin, ended up blighting Milne's own literary career, and ultimately destroyed their relationship. Julie Myerson's recent book, *The Lost Child: A True Story*, caused controversy by detailing her teenage son Jake's problems with skunk, a potent form of cannabis, which led to his eviction from the family home.

After she finished it, Myerson paid her son £1,000 to use some of his poems, though the book does not contain the usual acknowledgement of Jake's moral rights in his literary work (s.77 Copyright Designs & Patents Act 1988). To make matters messier, Jake then denied that he had authorised her to write about his private life, and the pair traded claim and counterclaim through the media for weeks.

In the landmark case of *McKennitt v Ash* [2005] EWHC 3003 (QB), Mr Justice Eady said at para.77:

"If a person wishes to reveal publicly information about aspects of his or her relations with other people, which would attract the *prima facie* protection of privacy rights, any such revelation should be crafted, so far as possible, to protect the other person's privacy."

And he went on at para.137:

"..... the right to 'respect' for one's privacy at home would cover not merely the physical descriptions of the building or contents but also conversations, communications or disagreements taking place in the home environment. People feel, and are entitled to feel, free in their homes to speak unguardedly and with less inhibition than in public places."

If a parent chose to write about a minor

Breaking the bond: parents releasing details of their children's lives can be in breach of the law

child's behaviour, health problems, or adolescent forays into sexual relations, these aspects of the child's private life would attract Art.8 protection. A child under 18, even if they purported to consent to such relations, would be subject to the parent's presumed undue influence. Even a child of 18 or over might object, retrospectively, if the transaction constituted an unconscionable bargain, or there was actual undue influence.

Responsible publishing

A responsible publisher might decide not to publish at all, or else to insist that proper measures were taken to demonstrate that all necessary assignments or releases were obtained. They might wish to insure against the risk that the deal could unravel in future. There might be other ways in which privacy could be protected, as Eady J requires, such as portraying events as fiction, or, possibly, anonymity. The latter might not be effective if parties are otherwise identifiable.

A really prudent publisher would probably want to ensure that the child got independent legal advice, assuming the child was old enough to instruct lawyers. This would entail the risk that the child might withhold consent, or negotiate over terms such as fees, publicity, and the like. The underlying problem is that, unless the contract was for the minor's benefit, it would not bind him anyway (*Chaplin v Frewin* [1963] 3 All ER 764).

And what about a very young child? Parents are generally treated as legal proxies for their children, unless it appears that they are

acting in a way which is not in the child's best interests. A publisher would need to think carefully about the nature of the revelation; whether both parents agreed, what the justification was, and what steps could be taken to protect the child's privacy. Tabloid revelations about a putative twelve-year old father, for example, seem indefensible by any standard.

Conscientious parenting

But what about parents of, for example, a disabled child, who want to raise public awareness about the needs of those with his condition or raise funds for treatment? They might also want to draw attention to their child's achievements, such as participating in a sports event open to the public. Most parents would do this with their child's best interests at heart. So how does one strike the balance between protection of the child and the rights of others to give and receive information under Art.10?

A conscientious parent would want to ensure that publicity did not get out of hand or be overwhelming for the child or other siblings. This could entail seeking advice from a public relations expert, as well as from professionals involved in the child's care. They could set limits about what information is released into the public domain, such as where the child goes to school. But they have to face the risk that such information may still get out – if journalists were to start door-stepping neighbours.

What if a parent manages a gifted child's career? Such arrangements can go pear-shaped, as Charlotte Church's mother found when her 16-year old daughter gave her the sack. Again, there is no substitute for careful forward planning when such relationships are created, with a properly drawn agreement which provides for fair and reasonable remuneration for the parent, protects the child's earnings and IP rights, and contains suitable termination provisions.

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