Assignment 2

Case of Privacy, Defamation and Copy Right

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1. Concepts of Privacy, Defamation and Copyright

The current case has highlighted three issues including: privacy, copyright and defamation. The privacy refers to protection of personal information of an individual or any entity. The personal information or opinion are not necessarily true whether they are in the form of recorded material or not, but are associated with an identifiable person (Gross & Acquisti, 2005). The Privacy Act of 1988 of Australia provides the in depth regulations for holding, handling, access and usage of personal information of an individual (Privacy Act, 1988). The general privacy regulations provide that the person whose privacy is being breached has the right to file case on the privacy breaching person or organization. Followed by this, the copyright refers to the protection of person’s property based on the innovative or artistic skills of the person (Campidoglio, Frattolillo & Landolfi, 2009). The copyright helps in securing the property of person, as if the pictures taken by a person are subjected to copyright then no one is authorized to use it without permission of owning entity.

Finally, the defamation is associated with the false statements that are being communicated about the person through any mean such as newspaper, magazine and through other persons (Collins, 2011). The defamation is characterized as harming the reputation of focal individual and it has been extensively addressed by the state legislations. There are two broad categories of defamation including slander and libel (Walker, 1993). The slander defamation occurs when defaming statements are being conveyed about the person and in this case the evidences are hard to obtain for proving defamation. On the other hand, the libel defamation is associated with the publishing or broadcasting of defamatory statements and pictures in media (Parkes et al., 2013). Finally, the defamation is not necessarily the publication of defamatory statement to wider audience, however, exposing defamatory statement to single individual also has the potential to legal charges.

2. Privacy Perspectives for Underlying Case

In current case the issues of privacy has arisen and the personal information of the persons has been breached. The privacy breaching can be viewed in the light of Privacy Act that includes thirteen Australian Privacy Principles (APPs) (Office of the Australian Information Commissioner, 2010). These privacy principles are considered as highly applicable for Government as well as private organizations and entities. In current case, the privacy of Jeff star was breached by the reported of channel XYZ by exposing information related to his personal life on media in front of wider audience. It has been mentioned by the Australian Law reform Commission that there is available statutory cause of action that can enacted by the
victim in case of privacy invasion. The Supreme Court of Victoria has upheld in 2008 that damages should be made available for the distress which is being caused through the invasion of privacy (Office of the Australian Information Commissioner, 2010). Given this regulation, it can be argued that Jeff Star can claim legal actions against the channel XYZ for breaching of his privacy by offering the statement against him that “main cause of poor performance of Jeff is his likeness for pies and cigarettes.” The CII Reports (Commissioner Initiated Investigation) provides that Australian information commissioner has the legal power to initiate investigations regarding the privacy invasion in a situation when there are some evidences of privacy breach (Office of the Australian Information Commissioner, 2010). Therefore, the CII Reports can be applied for the privacy breach of Jeff Star who has made uncomfortable by the channel XYZ by publishing his personal information.

The Jeff has maintained that Reported Jock of channel XYZ has presented lame information to harm his reputation. However, it has been proved later by the channel that information was accurate, yet it was exposed without the consent of Jeff and it can be considered as invasion of his privacy. It can be clarified by the instance of Jennifer Lawrence who is a famous actress and has claimed to be harassed by Paparazzi through continual invasion of her privacy. The actress seek help from regulations to protect her privacy. Along with this, the invasion of privacy of celebrities’ children’s has also been considered an important issue and has been regarded as unethical. The current case has demonstrated that channel XYZ has spotted and filmed the nine years old daughter of Jeff while she was having lunch with her friends. The channel targeted her to ask question about her father and then published the report on media. It is considered as significant issue in law to obtain any kind of information from children without the consent of their parents or guardians. The channel XYZ can be charged with legal actions by the parents of nine years old girl under the statutory clauses of Australian privacy act 1988 (Privacy Act 1988). Furthermore, the Office of Australian Information Commissioner (OAIC) provides under the privacy principles guidelines that if the child has not enough understanding or capacity to consent of what is being proposed by them, then the consent of guardian or parent is needed on behalf of the young one (Office of the Australian Information Commissioner, 2015). Therefore, the media can be held liable for privacy invasion of Jeff’s nine years old daughter in the light of Privacy Act of 1988 and privacy principle guidelines of Office of Australian Information Commission (OAIC) (Office of the Australian Information Commissioner, 2015).
3. Defamation Perspectives for Underlying Case

The defamation has been evinced in case of Jeff’s controversy. There are different aspects of defamation that are being highlighted in present case. Firstly, claim of Jeff has reflected that the reporter Jock Grub of channel XYZ has provided defamatory statement about him stating that “In my view, Jeff likes his pies and his cigarettes too much and is out of condition and lazy in training”. The above statement was refused by the Jeff in front of media and it could offer that statement comes under the defamation category. However, further exploration through the case has indicated that the statement was based on the fact, therefore, there is no evidence of defamation. As it has been highlighted in the exceptions from defamation that fair comment that is based on accurate facts do not come under the category of defamation (Legal Resources, N.D). It can be justified by a significant instance from history. The John Peter Zenger, who was working in New York Weekly Journal was held responsible for defamation of William Cosby who was the British Royal Governor (Kenyon, 2004). The Zenger was accused for defamation as he published an article of the person who has criticized William Cosby (Post, 1986). The Zenger was returned as not guilty based on the fact that all of the statements published were proven true and were based on solid facts (Samson, 2012). Therefore, in the light of this example it can be argued that Jock’s statement about Jeff was not impending under the category of defamation. Therefore, the Jeff Star has not any right to legally sue the channel XYZ or the Reporter Jock under the terms of defamation.

Followed by this, the case of defamation which has been witnessed by underlying scenario is the defamatory statement that was communicated by Jeff about the Gourmet. The statement of Jeff is as follows: “I’m going to sue Jock Grub about what he said about me last night. Jock has a disgusting reputation for telling lies – in fact, he’s almost as disgusting as the food in this restaurant”. The defamation of Gourmet comes under the category of libel as the defamatory statement was broadcasted on media (Walker, 1993). The defamatory statement has significantly harmed the image of Gourmet as it was belittle in front of public and negative reputation has caused harm to the existence of Gourmet. The libel defamation has led to the closure of Gourmet and the owner has to face huge financial loss. This defamation falls under the Tort law and the victim can offer lawsuits for damages (Marjoribanks & Kenyon, 2003). The Australian Broadcasting Association (1927), limits the speech of defamatory nature. The uniform defamation laws were introduced in Australia during 2005 which have gained recognition under Australian common laws in 2006 (Lawyers and Consultants, N.D). The uniform defamation laws provide that person who is being defamed has the right to file legal
charges against defenses. The defamation regulations were significantly applied in Australia that can be seen by the instance of Dow Jones versus Gutnick (Chan, 2003). The case was heard by the Australian High Court on 10 December 2002, in which an article was published by the Dow Jones and it was claimed by the Gutnick that information in article has defamed him (Rolph, 2002; Chan, 2003). The case of defamation was proved and the Dow Jones was charge to pay for damages of Gutnick.

4. Copy Right perspectives in Underlying Case
The underlying scenario has provide evidence of copy right issues that can be investigated further in the light of regulations and sanctions. The case has provided that picture which has posted by the sponsors of football club on Facebook of the Jeff was taken and featured by the Channel XYZ with an aim of creating a story about Jeff Star. The incident was related with preceding events to which Jeff was accused of loving cigarettes and pies to the extent that his performance in football was declining. The Jeff has refused the statement and has claimed to sue the reporter for offering false statement about him. However, the picture was captured at the time when Jeff Star was smoking and it was used by the channel XYZ to justify their earlier acts. The issue of copy right arisen when the channel XYZ was contacted by the sponsor that they were not authorized to use the photo of Jeff Star. In the light of Australian Copyright Act of 1968, it can be argued that under the protection of artistic work, the photographs are subject to copyright protection and cannot be copied and used by any third party for belittling the reputation of any person (Attorney’s-General Department, N.D). The legal charges from Australian Copyright Act of 1968 can be applied by the sponsor’s on channel XYZ for gaining the unauthorized access to photograph and using it in controversial way against Jeff Star.

Furthermore, the Australian copyright Act (1968) provides that artists own the copyright work, which is the bundle of certain regulations regarding the copying or communication of one’s work to public. Along with this, presentation of one's work in new forms is also subject to copyright regulations which provides right to sue the person who use other’s work. The Australian copyright Act (1968) further provides that in order to publish the copy right material online, it is compulsory for the site to seek permission of the owner (Attorney’s-General Department, N.D). In current case, although the picture has already been uploaded by the owner on social media site, yet the channel cannot use the picture in newer way for their own benefit, without the permission of owner. Therefore, it can be maintained that in current case, the channel XYZ has violated the copyright regulations and it can be subject to legal actions in the light of Australian copyright Act (1968).
References


