

Jenny Afia

Media & privacy lawyer

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Welcome to Media Masters, a series of one to one interviews with people at the top of the media game. Today I'm joined by Jenny Afia, a partner at Schillings. An award-winning solicitor, Jenny is a specialist in privacy and reputation defence, and has acted for some of the world's most famous artists, business leaders and brands including Adele, Kate Winslet and Sir Elton John. She writes regularly for The Huffington Post, where she advises on privacy, and has been featured in Management Today's 35 under 35.

Jenny, thank you for joining me.

Thank you for having me.

So, Jenny, you deal with a lot of public figures that quite rightly want a private life and one that kept private. How does it work?

For most of my clients, they know that a large part of their life is going to be lived in the public eye, and they welcome that and accept it. But they all have a zone of their private life that they want to keep out of the public domain. I just help them draw where that line is going to be, and then what information is going to go into the public arena and what's going to stay private.

And do you help advise them in terms of what case law has been discussed? Because some things, you know, you say, "Well unfortunately you just going to have to live with the fact that the press are going to intrude into that way." How does it work? Are you often reacting to press intrusion or do you get to be proactive? How does it actually work in terms of your day to day?

For new clients, it will be reactive. So they will typically come to me because they've had some kind of crisis, and I'll help them with that. Then, when they become an ongoing client, then we can start planning things more proactively. So for example they might be getting married. And I'll work with them so that the paparazzi don't intrude on the day, or they might be having a baby and we'll make a sort of publicity - natal plan for how we're going to deal with press intrusion around that. But you have to develop quite a close relationship with them to do that sort of forward planning.

And do you have quite a close relationship in a sense of with the press as well? Because like, you know, in a murder trial the barristers for the prosecution and the defence will kind of cooperate in a friendly way in the best interests of their own client. Do you engage constructively with the lawyers for the media?

I know them all, and I'd say there's healthy respect, but we're definitely not friends in that, you know, we're always on the other side of each other. So there's a lot of respect, because you can't lie to them. We both know the rules, and we're just trying to enforce them. But you come up against them time and time again so you have to sort of maintain credibility.

And how does it work? Is it often the press are just trying it on and their lawyers will know that, or does it ever get a little bit blurred in terms of the lines of what's acceptable? For example, if someone's a politician or a public figure, that might give people more of a right to their to intrude into their personal life, or does it not? Is everyone entitled to the same level of privacy?

I don't think everyone is entitled to the same level of privacy. I think two things. One, your job has an impact on how much privacy you're entitled to. So, Donald Trump is going to be entitled to less privacy than you and I are. I also think how you behave impacts on how much privacy you get. So if you're a Kardashian or a Katie Price, you're going to find it harder to enforce privacy than somebody who draws a very deliberate line around their family and their private life.

So that's interesting, that the courts will take into account a varying degree of reasonable privacy entitlement based on the behaviour of your client.

Yes, its all about what expectation you're reasonably entitled to, and if you've given away all elements of your private life then it can legitimately be said, "Well you're not reasonably entitled to keep much more private." But if, as most my clients have done, you've always sort of acted to draw a line around elements of your private life, then those elements will be respected.

So when you say 'respected', how does that work? For example, if you've got a Sunday tabloid newspaper with long lens photography of your client, what they're about to print is not factually untrue. So do they have that defence of truth or can you say that this is clearly in breach of our client's a reasonable expectation of privacy? What do even threaten the lawyers with?

If you're dealing with privacy then it would be a threat of an injunction, which no one ever wants. They're horrible for clients. They're really, really stressful. They're a really high stake solution to something, but they are the sort of ultimate nuclear threat. You're not concerned with whether something is true or false, because the point about private information is that it's your personal information. Privacy has to do with control; what information you choose to share with the public and what information you're legitimately entitled to keep private. So if you're having a relationship with somebody, it's sort of irrelevant whether the allegation is true or not, it's whether it's private information. If it's information about your medical affairs,

again, whether or not it's true is sort of irrelevant; it touches on an element of your private life, and that's what the courts would be looking at.

Would it work in terms of if there's an element of hypocrisy in a client's position? So for example if a footballer's single and has multiple girlfriends as has never denied it, then to me I don't care about that footballer's private life, that's up to him. But on the other hand, if there's a kind of well-established singer songwriter that says that he's totally monogamous and the press have evidence that he isn't, do they have the right to turn him or her over?

That type of hypocrisy argument probably would work in the courts. But in my experience, they're really rare. What happens much more is the press say, "Well, this couple have portrayed themselves as a brand," or, "This individual has painted themselves as so-and-so type of role model," and actually they haven't. The press have put that label on them, and that person just hasn't spoken about their private life. So I think it's an argument used by the press much more than is actually applicable.

And if it's not too obvious a question, when clients come to you, how stressed are they? I mean, because some people seem to delight in all types of attention and then others seem to get very, very upset about it. Presumably if they've gone to the trouble of consulting you, that's because they're quite distressed about the situation.

Yes, I think it's sort of a threshold test when you come to Schillings. Our clients typically do want to keep information private, personal information private, and they can be incredibly stressed. It's a really tense situation. Have you had that feeling where you've gone to send an email and you think you've sent it to the wrong person?

Or if you've sent someone an email saying they're a horrible person, you've accidentally sent it to that person.

Yes. And your stomach drops. From what I've heard from clients, it's that kind of feeling when you think that your privacy is about to be exposed by a national publication. It's that complete sucker punch, horrid feeling in my stomach; a lot of time it's completely sort of unlawful and unfair for the individual, so they are really stressed when they come to us.

And ultimately, all the newspapers are trying to do is sell newspapers. I'm not actually making excuses for them, but that is their primary motivation at that point. There isn't really a kind of public interest about exploring and revealing the sex lives of pop stars. I mean it really is none of our business; the only reason it's of interest to the public is gossip. It's salacious, isn't it?

That's true for loads of stories, but I also think large parts of the press do an amazing job. I mean, there are some brilliant exposés. I'm concerned by the decline in investigative journalism, I think it's incredibly important. My husband's a journalist; I really, really believe in free press and the amazing work that so many journalists do.

The more salacious end of a tabloid scale, there's hardly any public interest in those type of stories, but it would be wrong to sort of mischaracterise all the press as being of that salacious type, because they're not.

I appreciate you obviously can't name or even indirectly name clients, but has a client or potential client ever come to you where you've you felt you couldn't morally work for them, and you've had to politely decline and wish them well?

Yes.

And do you think that those people that you bring quite robust with and said, "We can't act for you," did they tend to go elsewhere or do you hope that they actually give up the fact that they're trying to take the press on? Because presumably if you were declining to work for them, you think that the press have got some merit in pursuing them over whatever it is.

Yes, that would often be why I would decline to act for somebody. I think they would probably try and go elsewhere. I don't know how successful they'd be with that, but I suppose like any industry there's good lawyers and bad lawyers and there's some lawyers who will take them on.

You've got your own reputation to consider, haven't you? You don't want to appear before a judge and argue for something that's going to reflect poorly on you, when the judge is secretly thinking to him or herself, "They shouldn't be acting for this."

Absolutely. Our reputation protects clients' reputations, and a large part of that is our credibility. So for instance, we never make a false threat to the press. If we say we're going to take legal action, we will take legal action because otherwise they won't trust us in the future.

You don't want to be the firm of lawyers that cried wolf, do you? Your threat has got to mean something.

Absolutely.

So what is a typical scenario then, if there is such a thing, in terms of are you often presumably called quite late on a Saturday afternoon or something, if it's a Sunday newspaper, and then you've got to act quickly? You could be at a family barbecue and you have to make yet another excuse to hear family to say, "I'm sorry I've got to draft this." How does it actually work?

It's exactly like that. It's always that the worst time. It will be a Friday evening by the time we get instructed, or a Saturday afternoon. It will be a newspaper threatening to publish private information, or untrue claims about an individual or a brand, and we are really well set up for it. We have a team on duty, we swing into action and we know exactly what we're doing. It's engaging with the legal department, we don't deal with the editorial side, but usually the PR teams for the clients will be speaking to them. And you just very quickly have to assess whether it's kind of a story that can

be stopped, whether on grounds of privacy or defamation, or whether it can just be toned down, or whether there is nothing that can be done at all in which case you hand it over to the PR teams.

And that's interesting actually that you alluded to that. Is there some element of negotiation in this that you're not going to get them to stop printing everything and they're not going to be able to have a story as strongly put as they want, and you kind of meet in the middle sometimes by negotiation?

Sometimes, definitely – and that's where you need the dual approach between legal and PR teams. So you can often get to a decent negotiated outcome.

And is the PR industry largely supportive – I declare an interest, I'm a PR person myself, but I actually do have a degree in law and I think that does help me sometimes in terms of what I advise the clients, but I would never stray into offering them actual legal advice because clearly I'm not a lawyer.

In my experience, we work really well with PR teams. The issue is that there is a slight sense if you bring in lawyers, somebody has messed up somewhere along the way, and it's not that at all. It's just that the press are really pushing and overstepping the mark as to what they're entitled to do. So I think the only reticence sometimes is, if we bring in lawyers, how will it come across, and does it look like someone internally has dropped the ball.

So does that ever backfire in a sense that your client's decision to bring in a lawyer actually baits the media even more than they were? That they think, "Wow, if they've called in the lawyers then there must be something to this," or do they normally just deal with it in quite a business-like manner?

The newspaper lawyers would sometimes run that with us. Sometimes they say. "We're surprised you're involved at all." But then nine times out of 10 they are pushing the boundaries legally, and they do tend to concede that. So I don't think it stokes interest where there wouldn't be interest otherwise; our clients are sufficiently high profile and prominent there's always an interest in them anyway, it's not like were bringing them to the newspaper's attention. So I don't think it stokes the flames. I think some publications might bear grudges more than others, I think the Mail is famously quite aggressive in its approach, but generally I think you're fuelling any flames that aren't already there.

Who do you tend to deal with? Is it always an orderly and civilised conversation with their lawyers, or do you ever get put through to the newsroom and you you're arguing with the news editor?

I've never had that. It's always for lawyers. And as I said, there's a professional respect for all of them. I said earlier I'm not friends of any of them. A couple of them actually, I remembered, I am friends with, and it's always courteous and respectful and we can normally cut to the chase quite quickly because we all know the area really well.

But it still is a bit of a negotiation, because obviously they're on their client's side or their employer's side, and you're on your client's side.

Absolutely. And there are competing interests, and sometimes you have to go to court to see which ones should win out.

You mentioned there about the Mail being aggressive, but how does it work in terms of the sheer plethora of social media sites and blogs? You know, I'm thinking of Guido Fawkes for example, that's deliberately published by a company incorporated in Belize, hosted by a company in Uzbekistan, and deliberately set up to avoid the clutches of people like your good self.

It's a real issue, and there's only so much it can be done, depressingly, with a lot of the online world.

Because you can't reason with someone who can't be reasoned with.

No. You can't reason with someone who doesn't care about British laws at all. That said, the British press is still really, really important and influential, and even if you can't control Google, being able to control what goes on the News at 10 or what's published on the front page of a newspaper so that anybody walking past a petrol station can see what's splashed on the front page, that is still really important to people in the public eye.

I don't do this any more because it's not even reliable. But there used to be the Sunday newspaper that can't name the celebrity for example, and then you just go on Twitter and within three or four searches you've basically got 300 tweets that says it's this person, and then you think it might be that person because you think, "300 separate tweeters can't be wrong," and it turns out there often are because they're only repeating what three or four people might have said, and then it just, you know, a lie can get halfway around the world before the truth has got its boots on. How do you even attack that really? That it's the worst of all worlds, that the Sunday newspaper says, "Okay, we won't name your client," but then it's all over Twitter the next day.

It's really difficult. I think a lot of the time you just have to ride out the storm, because people spend 24 hours speculating as to who they think the person is. But it's still not the same as properly entering the national consciousness.

You mentioned about the proactive strategy. So the clients come to you and you fix that in some way. Then you get to sit down with them and say, "Right, we're now going to start to be proactive." What does that kind of strategy involve?

What we do is we sit down, it's often round the kitchen table, and we go through all elements of their private life. We think there are five dimensions – financial privacy, digital, physical, social and commercial – and we plot out what's going on in each of

those aspects of your life. So if you take your digital life, firstly what's available about you online, secondly how secure is your technology.

So practical technological considerations.

Really practical.

Like do have a secure password on your phone.

As basic steps as that. We have ethical hackers in-house at Schillings, so we'll often send them round to the client's house, or even just do it remotely, and see if they can get into their technology. So for one client, for example, we tested his home and we found that his printer was wireless, like lots of them, didn't have a password, and our colleagues were able to print off from the office every single document he had been working on at home in the last two months.

So better that you benevolently hack into his network with this permission and find that out so it can be sorted, than an actual hacker do it.

Exactly. It's like having a burglar come around to your house.

A test burglar.

Yes.

So there were the five areas...

So that would be an example of digital privacy, how we would stop information getting out at source, which is so much easier and cheaper than trying to deal with a newspaper 12 months down the line.

Who then know the thing.

Absolutely. And then all the problems we were talking about in relation to policing matters online and so on. So that's an example of dealing with an issue at source really early on. We look at a person's commercial privacy, so who are they working with, what do they know about the people who they're employing, what could come up about them – we do really thorough due diligence on those people so that the clients can be forewarned of any issues. We check whether they have nondisclosure agreements with people who are privy to really personal information, so that would be something we would do for commercial privacy. And then if you take financial privacy, we would look at some clients where information about their finances is held, how secure it is, what could be said about their tax arrangements, and just feed it all back to the client, and if there's any issues of concern help them plug the gaps so that personal information won't enter the public domain.

Because traditionally if you hire a lawyer in the circumstances that you first mentioned, it's a distress purchase – an injunction either has to be had or not, they've got some unwelcome and unwarranted intrusion from the press. But this is something that's different; this is this is not merely legal advice, this is actually a kind of full audit of their online and offline life.

Absolutely. And it's a much nicer interaction than the sort of distress purchase on a Saturday afternoon. And it's really helping them take control of what's going to enter the public domain.

So you must be, and I certainly won't ask you to say anything, but you will be privy to all kinds of information that you've come across, because you have to know the thing that they don't want to be made public for you then to advise on it.

I think I do know everyone's deepest secrets.

Are secrets relative? Is there something that one client wouldn't care that the public know about, and then others take that extremely privately? There's no kind of objective standard of what any one would consider to be of the utmost privacy and would prefer to keep that private but it's not the end of the world if it got out?

Really interesting, because privacy is a human right. But we probably all do have different ideas as to what we deem to be private, and even in different countries they have different notions of it. So in America, for example, privacy is much more to do with how much interference the government can have with your life. So in America, you can name your child whatever you want. If you want to call your little girl Honey Boo Boo Child, you can do that. But in European countries you can't – the government has a say. But American culture would typically see that as an intrusion into privacy, whereas we wouldn't, but they might consider topless sunbathing a privacy issue whereas other cultures wouldn't. So what privacy is does change from culture to culture and from generation to generation. But yet it remains this perennial human right.

But – and this might on a bland question at first – but the Internet has surely changed everything, because the whole concept of the nation state and all these independent jurisdictions that view things completely differently has to impact on your work as a lawyer. I mean, I was thinking for example that if you published a Holocaust denial website in America, any attempts to shut that down will be seen as an intrusion on your first amendment rights. Whereas in France and Germany, in my view, it's a criminal offence, Holocaust denial, and rightly so. But I can see that there's two very, very opposing viewpoints of the same website and the only thing that matters is that the different legal jurisdictions.

Absolutely. I don't have an issue with that, with the idea that different countries apply different laws. I know the press say it's farcical, but the way I see it is if you were introducing a new drug and you wanted to sell it in America as a Brit, you would have to abide by local American laws. So in the same way that if you wanted to publish

something in America, you would have to abide by American laws. For example, America has massively high damages awards – far, far greater than we do, hundreds of millions of dollars. So every country has different laws, and I don't find that strange.

Is there a kind of jurisdictional strategy in your advice to any of your clients? So if someone publishes something in Uganda and someone accesses it in Utah, is there this thing, you know, libel tourism, where someone will still bring an action in the UK courts because that website is available to UK browsers?

There used to be. Not as much as people claimed, but there did used to be libel tourism. But there was a Ministry of Justice select committee I think that looked into it and found that a) it wasn't as widespread as had been reported, and b) introduced some new thresholds to make it even harder. So I think libel tourism is pretty dead now.

Do you think the regulatory framework of the UK media in particular is working? I mean, we used to have the Press Complaints Commission, then we had Leveson and all these kind of things, now we've got IPSO... do you think it's largely working in terms of policing itself?

No. I think IPSO is really good if you're being harassed by the paparazzi. I think they're really effective in helping individuals deal with people doorstepping them. I wouldn't recommend it in most cases for clients as a means of stopping the press from publishing something, or getting redress after false or untrue information's been published; I still don't think it has enough teeth. But I think the laws are strong and provide sufficient protection for people.

How do you think that IPSO should toughen up, then? I mean, clearly it's a self-regulatory body, so it's always going to try and be as light touch as possible in the interests of its own members.

I think so, and I don't think it's properly independent still. So I think it has a reputation problem in that it's not perceived as being able to deliver fairness for victims of false or intrusive stories.

I know that IPSO open to everyone, but if you're going to go down the court route then clearly you're going to exclude most people in normal jobs, the man on the Clapham omnibus, who simply can't afford that.

It's true. It is an issue, the cost of legal fees. It's an issue in all walks of life, sadly, because litigation is expensive. With media law, it does tend to be the rich and famous who are focussed on by the press because they're the ones that they want to report about. But it is a concern that the sort of non-famous person, so say if I was ever to be targeted. It's an issue.

Do you think there should be tougher laws with the press? I mean, because Ian Hislop, for example, in his evidence to Leveson, said, "Actually we don't need

any new laws, we just need the current laws that we've got to be actually enforced by the police."

I agree we don't need any new laws. I definitely don't think we need to have them enforced by the police. I think the idea of criminal libel is abhorrent, because free speech is so important, that unless we're in the territory of malicious communications, or things...

I was thinking more of the phone hacking actually, when I asked the question. But in terms of what they were trying to do with the Royal Charter backed Impress, you know, I know they've been dropped now by the government, but at one point there was going to be these very draconian penalties that in the media or in the newspaper industry's view would mean that they would have to settle even legitimate claims that they had a defence to.

Yes, I found that very troubling. It seemed to go against the whole principle of justice that you might have to pay the legal costs of the claim, even if you are proved to be right. I think it's really, really troubling.

Let's go back to this family barbecue, the one where you're called at the eleventh hour. Do you get friends and family asking you for advice that normal people can use in terms of protecting their privacy, how to deal with rumours on social media, all of that kind of thing? Or is your advice more practical than legal?

Not really rumours on social media. I think my friends are either bit too old or a bit too boring – with no disrespect to any of them –

I'm also boring.

I don't believe that! But what I do get asked about increasingly, as all of our children grow up, is social media and what their kids should be doing online and what the parents should be doing to help them online.

Great question that you've just asked yourself, so please answer it. You know, what should they be doing?

I think as parents we need to be ensuring that we understand the technology and the online world. We don't just let our children learn how to cross a street by themselves. We hold their hands, and we look after them until they're old enough to look after themselves. I think the key thing to remember is the child is a child until they're an adult, not till they pick up a smartphone. But because they have these fast thumbs and can fix our iPads when they break, we sort of somehow think that they understand what's going on with the Internet, and of course they can't because they're still children. So I think that's the key thing, is remembering that they're children until they become adults, and trying to, as parents, understand what's going on in their online worlds.

It is difficult though, because my niece is 11 and she has an Instagram, but she also has a private Instagram that I didn't know anything about and I don't have access to that one. And you don't want to intrude into their privacy, but on the other hand you have to make sure that they're not being groomed or that anything inappropriate is going on, because they are children, aren't they? They're naive.

Absolutely. And privacy is a fundamental human right. But it is a qualified human right. So in the same way with free speech, you can't shout fire in a crowded building. With privacy, you have the right to a private life unless health and safety is at risk, for want of a better term, or the rights and freedoms of others are at risk. So it's a qualified right. And as parents, I don't think we should be too concerned about intruding on our children's privacy if it's done to try to protect their safety.

When a client comes to you, do you ever have to tell them that the press do have a right to go further than they would like, and even if it is unpalatable you have to be the bearer of bad news?

Absolutely. Quite often. And it makes for an uncomfortable discussion, but it's better they hear it straight.

It's not your fault, is it?

No.

You're the bearer of the bad news, literally.

Yes. It's disappointing when you can't wave a magic wand and fix something for a client, but they tend to be fairly savvy and know where the line is.

Do you feel sorry for people like Prince Harry and Meghan Markle – I know you blogged about them recently – in terms of the boundary between where the public's right to know is and their ability to just keep prying eyes away and have a genuine relationship of two young people that are seeing where their feelings take them?

Massively sorry for them, particularly if you're born into a position you haven't sorted out. I think it must be awful living in a sort of Truman Show style world where everything you do is on display. You remember the Duchess's photos of her topless on a private holiday, and they were published a few years ago, it's so intrusive.

Taken with long lenses from like a mile and a half away or something.

Yes, it's ridiculous.

I didn't even think that was it physically possible.

No, I didn't until that case came out. I've had a client who was on holiday, I think in France, and photos were taken of her and her children by the private pool in the villa

she had rented, and the lens – we went afterwards to recce the property to try and work out how they got the photos because they was so intrusive – and we saw that there was a hole in the fence that was about three centimetres wide that, from really far off distance, a photographer would have been able to get their shot through. So I think it's really sad when people take steps to try to protect their privacy and their family's privacy, and they're doing absolutely nothing wrong at all but just try and have some private family time, and that gets intruded upon by the media.

Do you have a particular contempt for the paparazzi?

I really dislike a lot of the paparazzi – as do many photographers, who think that they bring their profession into disrepute. Yes, and I am concerned about their criminal records, and the methods that they use. They've become cleverer over the years because they know... there was a spate of injunctions against pap photographers, and they've sort of wised up to what they can and can't do to get away with it. But I have a massive contempt for most of them.

I remember reading something up Princess Diana a year or two ago, and they would wind the window down of her car, call her a bitch and then take pictures of her – because of course you would naturally scowl if someone had just opened your car door and started shouting horrible names at you. And of course, that's what they were looking for, that immediate reaction – it was more even more manipulative than people realise.

Absolutely. They called out insults, I've had one case where a pap kicked my client, and then you see the next day the caption 'miserable so-and-so' or 'looking glum and alone'. And when they're with children that's the absolute worst in my books.

I mean Mail Online, for example, has the sidebar of shame. I mean the Daily Mail years ago said they wouldn't buy paparazzi pictures, that they also wouldn't, you know, they would always pixilate images of children, and as Private Eye rightly points out all the time, they never do that still. Is there a path to this where they are doing it because they know that people want to read that, and you know, we're creating the demand for what they do by going on the sidebar of shame?

Absolutely. We are all culpable, every time you go on to the Mail's website or you buy one of those type of magazines. I wish we would all do a lot more to reduce the market for those images. I also get really a bit disheartened when people in public don't realise how much they can do to stop photos, because I often hear, particularly with American figures, who think, "Well, there's nothing that can be done so I may as well just let the paps photograph my child," when in fact there's a lot that can be done for sites that are publishing in England.

So isn't the solution then, if not a regulatory or a legal one, it's actually a consumer awareness thing, that we ought to stop buying things that are poisoning the well of society and actually reducing us all to memes? It just seems grossly unfair really for everyone, including the reader.

I don't know if it's unfair for the reader, but it definitely if there was more awareness about the process behind these photos for people who don't want to be photographed. I'm sure there enough z-list celebrities who do want to appear on the pages, but for those who don't it's a horrid process, and it would be great if there was more awareness around it.

Why do you think it will go though? Do you think there will be some kind of, ultimately, some kind of register of celebrities that agree to do certain things and refrain from certain things as long as there's no paps and that, you know, breaching, taking a pap picture of a celebrity on that list is a breach of the criminal law? I mean, is there is there anything that's going to happen in this or is it just going to continue to be as it is?

I think it will continue. I don't think you need a sort of a criminal register. I don't think that would be proportionate. But I think the newspapers already know who is going to take legal action and make life difficult for them – rightly so – and who won't. So it's just about letting them know who should be on which list. But not in a criminal way.

Last question on the paparazzis then. You do read in some stories like Private Eye that people have deliberately negotiated with the paparazzi to allow them to take a certain amount of pictures, or that they've contrived the whole thing, that they've gone on the beach so that they can be papped. Is there an element of that within the celebrity world, and how much of paparazzi style pictures is genuinely kind of unwanted attention, and how much of it is mitigated in some way with some level of cooperation?

I think there's a lot of it in the celebrity world, and by celebrity world I sort of mean people who are famous because they want to be famous. I think in the entertainment world, the people who are in the public eye because they really have great talent, in my experience they don't want the paparazzi attention, and definitely not when they're with their family or when they're sort of off duty, just not working.

Because the only the kind of negotiated solution that I can think of that springs to mind is, you know, every year when the royals go skiing there's always that token shot of them at the beginning of their holiday where they kind of present themselves to be photographed, and then Prince Charles will mutter something about Nicholas Witchell under his breath as he famously did, and then the kind of the agreement is, "Right, you've had you pictures, now will you let us enjoy our holiday in peace?" Is there are a lot of that going on, or is that something that is quite unique to them?

No, that does happen. So, for example, we would have these discussions with clients when they're getting married or when they're having a baby, as to whether they should release one photograph just to satisfy public curiosity and then ask for the press to back off and leave them alone. And it is a very legitimate strategy that the courts recognise doesn't mean that you're undermining your privacy rights. You're actually just creating more privacy for yourself.

How does it work in terms of online harassment? Do you get involved in that? I know you warned recently that the new Doctor Who, Jodie Whittaker, might... will need online harassment laws that are going to have to be enforced against these vicious trolls. I mean, I only blog about three or four different issues, but I sometimes get quite a lot of quite nasty people on Twitter. You know, but only ever about five or six at once and I just block them, but other people obviously get hundreds of them. I mean, first of all, that's a pretty sad state of affairs, isn't it? Do you get involved in helping clients that are being harassed and bullied online?

I've had a few clients. Because of who my clients are, they tend to be fairly robust. I'd be more concerned about normal Joe Public, or particularly with children. With my clients, it sort of comes with the territory. But I've had some really serious levels of harassment, and it's not huge numbers but quite scary targeted threats – and that's when you bring in law enforcement.

So presumably you exercise judgment and there's a threshold where you think, "Right, that's it – time to call the police." There's a line and they've crossed it.

Absolutely, yes.

You've said that fake news on Facebook threatens to undermine democratic freedoms as well as personal reputations. Why do you think that's such a threat?

Because... I guess because the right reputation is really important, and the right to look for the truth to be known about you when you, say when you go for a job interview or when you're meeting your partner's parents for first time and they might do a quick check on Google. It can be really devastating if there's false information available about you online, so I think it's that freedom I was concerned about, and that right. The right to a proper reputation.

They say Googling yourself is like walking into a room where everyone already hates you, isn't it? Because it's the nature of human nature that it's always the negative aspects and salacious elements of people's reputation that's going to be more widely shared, and therefore that's going to boost Google's algorithm. Because if you Google anyone, unless they're incredibly famous it tends to be the fact that they have been in trouble here, or that you know... the good stuff that they came first in a race or got some kind of career bonus, that's usually buried on page six, isn't it, whereas the negative stuff is on page one.

Yes. And sort of negative reviews on TripAdvisor or about restaurants and so on. It's human nature. You go and read the bad reviews first, don't you? But there's also a reason that bad stuff rises online. Daily Mail is one of the best sites in terms of Google ranking, and if the Mail tends to write nasty stuff about you that's the article that's going to appear at the top of your Google search results. And it's not to do with the content, it's just because the Mail ranks so highly because it's such a successful website.

So there is there is an element of the Internet enabling the worst aspects of human nature isn't it? Salaciousness, sharing gossip, all of this kind of thing. Unfortunately that's inevitably going to be on page one.

Yes. But then you read all these amazing stories on things that are achieved online as well, and you feel better. So there was a campaign a few weeks ago to help the child... I mean, almost weekly there are lovely heart-warming stories and ways that social media is used to help people, so...

Do you think we're still evolving as a society in terms of how we deal with these kind of things? So for example you mentioned TripAdvisor. I've been to lots of restaurants where I've had a good time, and I just can't be bothered to write a positive review, but if I'm treated particularly badly I'm motivated to note that. But I also do take that into consideration, like if I'm considering a holiday venue I know before I even go on that holiday's entry on TripAdvisor, that 90% of it will be negative, and you can almost read past that because you can just tell by the tone that these people are obviously quite bitter. And I think, "Well, my review is not of the venue, it's of you, and you seem quite a horrible person. You know, the towels weren't fresh on day two and yet you've written two sides of A4! But we've learnt to deal with that, haven't we? It's the same when Facebook came out, sort of 10, 15 years ago, people said you can never put pictures of you drunk on a night out for example because your future employer will see that. Well, I employ 20-odd people, I'd be worried if there wasn't pictures of people having a night out. And also I'm not interested in searching people on Facebook to find out whether they've had a night out. I think the business world and society is potentially evolving alongside the technology.

Yes. Online reputation management has grown as an industry, and I think we are becoming more savvy. I do get a bit concerned though, that we're one step behind the technology, particularly when it comes to children. So it's been said that we are putting our generation, or the younger generation, through the biggest social experiment ever known to humanity. And I have a slight concern we're just sort of sleepwalking through the process and letting technology lead the way with what is possible online, as opposed to what should be possible online.

Does it worry you?

It really worries me that we're giving so much power to corporations – I'm reading that really good book at the moment about how everyone lies on the Internet, and if you just think how much Google know about us all. Imagine if your Google search results just over the last week were made public to everybody. How would you feel about that most personal information? And so it does worry me, the idea that we just I think the vast majority of us don't know how much data is being held about us, what it's being used for, what can be done in the future with all of our personal information. I think we're just, as I say, I think which is sleepwalking through all of this technology.

There's a very funny meme on the Internet that I saw a few months ago, and it's a court room scene, and there's a man on trial for murder and the first thing it says is, you know, how do you plead, and he says not guilty, and then the prosecution says, "Evidence one is we'd like to introduce to the court the defendant's Internet search history," and then the next frame is he's saying to the judge, "I'd like to change my plea to guilty please," anything to avoid the Internet search history coming on. You sit on the Children's Commissioner's Internet Task Force. What is that doing? What's the work involve?

It's looking at what it's like for children and young people growing up in today's digital age. And the children's commissioner just put out some new guidelines about how parents can help manage their children's social media use. So she's recommended a five-a-day programme where you're just not letting your children become too addicted to social media, but in the same way you don't just feed them junk food the whole time but try and give them – we still have five portions of fruit and vegetables a day – try and have five portions of Internet use per day or something along those lines.

Because you do see in restaurants where there are families on the next table and all of them are on their smartphones and not exchanging a word with one another.

Yes. I mean each to their own. Were trying not to... I've only got young kids, but were trying to put down boundaries from quite early on that at least during meal times the adults won't have their phones out. Do you think as parents we have a big role model issue, and how we act with technology and our phones is obviously going to impact how our children do.

But parents have different parenting styles when it comes to their own children's privacy. So for example, on some of my Facebook friends, my feed is completely full of pictures of their children, you know, toddler's first steps and babies born and the first day school and all that, and its a bit dull if I am honest – I'm not interested in it. I wish them well, but I don't need to know everything. I also have friends that literally crop their children out of their pictures or even pixilate them. I've got two or three friends where they'll put their family pictures up of a holiday and pixelate the faces of their children. That seems odd as well, if I'm honest. How do you strike the right balance between the two extremes?

Yes, that does seem weird. If they're not famous.

They would say, "It's not for me to decide whether my children as adults need to have pictures of their childhood plastered all over the Internet." That would be their view.

Yes... and I'm probably more... my views are more in keeping with theirs than the sort of overshare-anting parents who stick everything on, partly because it's boring, as you say, partly because you're right, it is their privacy, and arguably they need to have the ability to decide what goes online about them. I think privacy is just sort of in my DNA, and I don't share anything about my children. That might be because they also normally look really messy and aren't necessarily the best credit for me!

How do the Children’s Commissioner get in contact with you? How did you come to be involved with them?

Schillings were involved with and are involved with a civil society initiative called 5Rights, which is about helping children access the internet fearlessly, creatively and knowledgably. We produced a big report for 5Rights on all of the relevant laws and whether they needed strengthening to protect children online, and the children’s commissioner came to one of our events to launch that report, and we struck up a relationship, and then I was invited to join her taskforce.

And how’s it going so far?

It’s fantastic. One of the big projects we did was to rewrite terms and conditions for Instagram. So we took those as an example of one of the most popular social media sites – I love Instagram – and we went through their 17 pages of terms and conditions and, with the Children’s Commissioner, we reduced them to one page of A4 and wrote them into just plain language, and then the Children’s Commissioner took them out to various schools and got the kids’ input on the two versions, the really convoluted legal jargon and then our simple one page, and it gave them a really different view on what they were signing up to. So that was a great project to be involved with.

What are people signing up to? I mean, I’m on Instagram. I was in Cornwall last week on holiday, put on five or six pictures. Should I not have bothered?

No, you can you, you still actually do own the copyright in those photos, so you could have them taken down. I think people were surprised to know that social media companies tend to be tracking you the whole time, even when you’re not on Instagram, just when your phone is on in your pocket, it will know where you are. It will obviously be able to read all your messages, it will follow you around the Internet and just be aware of what else you’re looking at. There’s a lot of information about you that companies like that have.

It’s incredible, isn’t it?

Yes.

I remember I was once talking with someone quite senior at Wonga a couple of years ago, the payday loan company, and they were saying they only have five or six questions, one of which is, “Do you have a criminal record?” and they genuinely don’t care about whether the answer is yes or no, but what they do care about is the dwell time on that question compared to the dwell time against all the others. So if you’ve taken longer to answer that question then you have the others, which are also yes and no questions, then they will reject you anyway, no matter whether your answer is yes or no, because it shows that you have put some thought into whether you might lie. That’s very

interesting to me, is the behavioural algorithm that's analysing how you answer the questions rather than what your answers are.

That's fascinating. And to me it just goes to the point that all these companies, they can do so much more online than we know about – and given they can do so much, I think they should do more to protect children online. Because for example, most of the social media companies terms say you have to be over 13 to use them.

And they all know.

They know. If they if they can work out really clever things like how long you're spending to answer a question, they can know through someone's friends and what they're looking at whether they're over 13 or not.

Well, my 11-year-old niece is on Instagram and she has 400 friends at her school, and they're all 11. They must be able to work out from the algorithm that they're all 11. They must do.

Of course they can.

But that puts them on the back foot, doesn't it, in terms of if ultimately something did come to court, they'd have to say, "Well, we might not know whether that person is 11 but we ought reasonably to have known that they were 11, and we have the tools to tell us whether that person was 11," and therefore they're going to be on the back foot.

Absolutely.

But is that going to be a big forthcoming case in social media generally, where something is going to go wrong in a few years, and that is going to be the test in terms of how complicit or how reckless some social media companies are in allowing underage kids to access their platform?

Well, I sort of hope not, because I hope no one goes through any form of pain or suffering. But yes, I think the idea that they can just sort of turn a blind eye to what's going on on their platforms will be challenged at some point quite soon.

Last question then is how did you get into this line of work and what advice would you give to someone else who finds it fascinating and wants to kind of follow in your footsteps?

I got into it because I am really shallow. I used to do corporate litigation and all my colleagues were taking the FT in the morning and I'd be reading Heat magazine.

An excellent choice. Much missed.

Yes. I loved... it's a bit too trashy for me now, but... so I've always loved the entertainment world, and was very interested in the corporate world. Then I found out there was this much more fascinating area of law. I left the city, took a bit of a

pay cut initially, and just followed an area I was really interested in. The tension between privacy and free speech, mixed in with the celebrity sort of glamorous world, I just found it really, really interesting and couldn't believe that I got to spend my time working for people who I really admire on really interesting issues. So my advice would be to just find an area that you're really genuinely interested in and then get yourself into that area.

The old adage though, is never meet your heroes. I mean, I think you mentioned recently that you shared a table with Madonna, for example, at the Brits. How does that work in terms of exchanging small talk with people like that, because they are from such a different world? And has it ever happened where you've met someone that you've previously admired and then you think, "Actually they're not like that in public." How does it actually work, or do you try and steel yourself against that?

One of the things that's so amazing about my job is that when I meet people it's not normally in social situations. When I meet these really successful people, it's normally because they need help at that point. So even if, five minutes before the meeting, I might be quite nervous, the minute you go into the room it's almost – I mean, nowhere near as serious or important – but it's almost like you're a doctor who has the answer to their problems.

You have to try and put them at ease.

Absolutely. That is exactly what I'm doing. And I've never actually realised what a weird scenario that is until now. But it is weird, and you sort of get the confidence from knowing that you can help them through their situation. So I guess I don't really have the normal kind of interaction with them that other people do.

Have you started to potentially generalise about the kind of clients that you work with? So for example, one of our clients is a Hollywood producer and he says there's a general rule of thumb. Those that play baddies in films are the nicest people off-screen, and those that play the virtuous person that's the hero actually tend to be the wrong 'uns, as it were.

I don't know. The thing I've seen is they all work extremely hard. It looks like this privileged, fantastic life, and having the opportunity to be backstage and just get a proper insight into their world, I've just seen how hard they work and how it is definitely a profession. I mean, much, much harder than anybody I ever saw in the city work.

Well, Jenny, that's been an absolutely fascinating walk through the practicalities and the legalities of protecting privacy. I've learnt a huge amount. Thank you ever so much for your time.

Thank you very much.