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Recent legal changes mean that securing permission to use celebrity images is getting more and more complicated. Thankfully, there are people who can help, says Sarah Saunders

Rights and Wrongs

Corbis' new image clearance service helped secure the use of their own shots of John Lennon (facing page) and Jamiroquai's Jay Kay (below) for a recent French Eurostar campaign by agency LeG, but the service will also clear rights for

non-Corbis images too, as well as those for brand names and logos

Was the Douglas-Zeta Jones marriage ceremony really a private affair? Are Posh and Becks entitled to keep their relationship problems to themselves? Do we care? These legal cases may provide fodder for yet more tabloid gossip, but celebrities' attempts to shore up their privacy in the courts are helping define the way UK law deals with the rights of the individual more generally, particularly over the use of images.

UK law provides less protection of individual privacy than countries like France and the US, where rights are fiercely protected. But things are changing in the UK too, as Charlie Swan, partner at media law firm the Simkins Partnership, explains. "In most countries, rights of privacy exist and celebrities have the right to control the commercial exploitation of their image," he says. "In the UK, there is no specific law protecting personalities. The main laws protecting the individual are the laws of Confidence, Passing Off and Defamation. Since Article 8 of the European Convention of Human Rights became UK law under the Human Rights Act, the law of Confidence has been developed to give individuals stronger privacy rights against the press."

Article 8, which entered UK law in October 2000, states that "everyone has the right to respect for his private and family life, his home and his correspondence." Many lawyers believe that the development of UK laws to comply with Article 8 has effectively introduced a right to privacy into UK law.

The law is a balancing act

between the right to privacy and the right to freedom of expression. In the UK, The Press Complaints Commission provides some protection to individuals, but this is seen by many people as an ineffectual form of self-regulation, which is operated by representatives from the major publishing groups and lacking remedies to hit the pockets of offenders. The Advertising Standards Authority also has a code of practice which reaches further than current law but, again, there is no legal remedy for those involved.

Recent legal cases including Naomi Campbell v Mirror Group Newspapers and Douglas and Zeta-Jones against Hello magazine have helped establish that celebrities have certain rights of privacy, notwithstanding their attempts on other occasions to gain publicity for their activities. The law of passing off – another significant protection – has been brought up to date with the case of Eddie Irvine v Talksport. Talksport used an image of F1 racing driver Eddie Irvine with the mobile phone he was using replaced by a radio displaying the words "Talk Radio". The courts ruled that this was a false suggestion of endorsement of a product by Talk Radio and as such contravened the English law of passing off.

The most recent and most worrying case for the UK image industry is that of Princess Caroline of Monaco, who brought her case to the European Court of Human Rights last year over photographs in France showing her doing everyday things like going shopping and picking up her

children from school. The German Courts, whose laws lie somewhere between the UK and France on privacy, had rejected her case, maintaining that, as Caroline was a public figure, the public had a legitimate interest in knowing how she behaves in public, even when not on an official engagement. The European Court however ruled that there was not a case for overriding her basic right to privacy, as there was no clear case of public interest to do so. This is a landmark judgement which may have far-reaching consequences, particularly for the tabloid press.

Celebrity photo agencies naturally have their own views on these developments. David Bealing, MD of London-based international celebrity agency, Landmark Media, believes that business will continue as usual. "Most of the people we photograph are on the street. Newspapers and magazines like this furtive style. They would rather have people ducking and diving – it gives the pictures more immediacy." Problems for the agency are rare, he says. He is cynical about celebrity privacy claims, pointing out that celebrities' own PR people often contribute to the media melee, instructing their clients how to behave to support their own image – most notably when divorce is in the air.

Paul Brown, stock content manager at news and features agency Rex Features, is more worried about reportage photography. Rex steers clear of long lens "intrusive" photography when dealing with celebrities, but strongly defends the right to photograph people on the street – including celebrities. Brown points out the drawbacks to a stronger privacy law: "Now there is a possibility that people might object if they are incidentally in a photograph, no matter that the intent was just to record an event," he argues. "A lot of photographers will find it difficult to find things to shoot any more. This will limit creativity as not everyone can afford to set up model-released shoots for everything."

Rights to privacy are becoming more tightly defined at a time when the use of celebrity pictures is increasing – not only to satisfy the British public's appetite for candid celebrity shots, but also in the advertising industry. Tom Hinde, art director for WWAV Rapp Collins says "People increasingly want to use the

values of an icon to promote a brand. It's a short cut to people's associations. Steve McQueen, for example is a perfect cool brand icon."

But how do you clear rights for personalities? While standard terms and conditions of picture libraries state that responsibility for clearing personality rights lies with the client, it is in everyone's interest that rights are cleared. Although it is generally believed that action will be taken against the publisher, all parties concerned can be affected, including photographer, picture agency, ad agency and client. Nicola Solomon from law firm Stephens Innocent says. "People will take action against the party with the deepest pockets. The concept of 'publisher' is a very wide one." No-one wants to be caught up in defending a legal action, even if they are protected by their contract.

Corbis has ridden into the breach with a new rights clearing service for creatives. Gary Shenk, global head of rights services, outlines the background: "There has always been rights clearance, but not by the people supplying the media." This new service gives Corbis a growth industry which is a logical extension of their current role. Clients pay substantial sums to clear celebrity rights, with typical fees amounting to ten times the copyright licence fee. The acquisition of the Roger Richman celebrity representation agency, places Corbis on both sides of the personality rights negotiating table. This may help Corbis customers but what about the rest of the world? "We clear anything," says Shenk, stressing that this includes images from other libraries as well. "More than 50 per cent of our clearances are from content which has nothing to do with Corbis." Corbis will also clear logos and brand names and any other rights in a picture.

While the lawyers slug it out in the courts, most people in the picture industry are taking a pragmatic approach. Phil O'Brien from Empics, part of the Press Association Group, says that understanding of the rights clearance process has improved enormously over the past few years, with staff and customers now more comfortable dealing with the issues, working together to find practical ways forward. "We had a recent case where a client wanted to use an image of a couple of football fans in a news ad.

Further reading:

Personality Case Law
www.simkins.com

More information on the legalities of using celebrity images can be obtained from the website of media law firm, Simkins Partnership

Their faces were painted with Man United colours. The client set aside some money to pay the fans if they got in contact."

One of the dangers is that so many images are now distributed internationally. Tom Hinde says, "Our lawyers advise us to err on the side of caution even with UK celebrities." Corbis does healthy business in the UK partly because, as Gary Shenk comments, "The expansion of globalisation and technology is making it harder to have a purely UK-based campaign. Rather than not sleeping at night, it's much better to be safe."

Many people are worried that the nature of photography will be changed for good if the law tightens up too much. The advice generally given is "get a model release" but as Nicola Solomon points out, it is a matter of risk assessment. "I advise people to be very careful photographing people on the street or on the beach. If an image is to be used editorially, you have to think about what the risk is, what the damages would be, and assess whether anyone would be offended by it."

Interestingly, now that Getty has taken on image partners in the editorial field, the agency is no longer insisting on model releases for all images. Getty has issued new flexible categories for release which includes what they call "low risk" categories which have no releases. Risk management is the name of the game if editorial markets are to survive. But as Charlie Swan says, "The UK's status as a privacy haven has probably gone for good". ■

Sarah Saunders runs image consultancy Electric Lane.

