

WIPO Conversation on IP and Frontier Technologies

# **PERSONALITY RIGHTS**

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# Personality rights

- Generally considered non-patrimonial rights safeguarding an individual's dignity, identity, and personal attributes like image, name, and voice.
- Common heritage of civil law systems, virtually unknown as such in the common law tradition (the closest functional is the notion of 'privacy')
- Different from the right of publicity which is primarily a property right focused on the commercial value and exploitation of a persona

# Image rights

- Protect the individual's interest against having their likeness disseminated or publicly displayed.
- Aspect of the intimacy of private life, honour and reputation which are deemed primary values of the individual.
- Explicitly codified in law provisions (Constitution, civil code, etc.) or evolved through common law torts
- Indirect protection in Art. 12 UDHR, Art. 8 ECHR, GDPR and Art. 7 and 8 CFR

# Image rights: legal provisions

- Art. 12 UDHR:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

- Art. 8 ECHR

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

# Freedom of expression: legal provisions

- Art. 19 UDHR:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

- Art. 10 ECHR

1. Everyone has the right to freedom of expression.
2. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

# Interests to balance

- Public interest in information, arts, and culture (often protected by constitutional guarantees of freedom of expression).
  - Public figures generally have a reduced expectation of privacy and control, especially regarding matters of public interest.
  - Consent generally not required if the person is an accessory figure in a photo of a public event or landscape
  - Personality rights are stronger against the publication of false statements of fact or unauthorized commercial use.

## EDU Court 2012: Von Hannover v. Germany

- Relevant criteria for the balancing:
  - Contribution to a debate of general interest
  - How well known is the person concerned and what is the subject of the report
  - Prior conduct of the person concerned
  - Content, form and consequences of the publication
  - Circumstances in which the photos were taken

## CJEU 2014: Google Spain

- The activity of search engines (which also index images) constitutes the processing of personal data
- The citizens have the right to request that a search engine operator remove links that direct to webpages (including photographs) that are no longer relevant, adequate, or excessive in relation to the purposes of their original publication, especially if the publication infringes upon the data subject's fundamental rights.

# Synthetic Media

- Enable highly realistic and often malicious misappropriation of identity
- Often created without using a person's actual image, making traditional claims difficult to fit.
- Harm: reputational/dignity; erosion of autonomy; false endorsement
- Exploring new legal solutions:
  - applying torts remedies ?
  - statutory reform ?