

**Answers to the Questionnaire
on the legal protection of a person's image**

1)	Does your jurisdiction, apart from copyright and/or related right protection of the creator/producer of a photograph, provide for a (personality) right to control the use of one's image (cf. other personality rights: right to one's name, right to honour, right to one's voice, ...)?	Gewährt Deine Rechtsordnung, abgesehen vom Urheberrecht und/oder verwandten Schutzrecht des Schöpfers/Herstellers eines Lichtbild(werk)es, ein (Persönlichkeits-) Recht am eigenen Bild (vgl. andere Persönlichkeitsrechte: Namensrecht, Recht auf Ehre, Recht an der eigenen Stimme, ...)?
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AT Yes

BE Yes

CH Ja. Das (Persönlichkeits-)Recht am eigenen Bild wird von Lehre und Rechtsprechung einhellig anerkannt als Teilgehalt des Rechts auf Privatsphäre. Sein häufigster Anwendungsbereich ist das daraus hervorgehende grundsätzliche Verbot, ohne Einwilligung einer Person eine Fotografie von dieser zu erstellen oder eine bestehende Photographie zu veröffentlichen. Die Einwilligung, fotografiert zu werden und/oder zur Veröffentlichung einer Fotografie, kann ausdrücklich oder stillschweigend (implizit) erfolgen. So ist bei Personen des öffentlichen Interesses, die sich willentlich in dieser Position befinden, regelmäßig von einer impliziten Einwilligung auszugehen, jedenfalls bei öffentlichen Auftritten. Im letzteren Falle ist die Veröffentlichung nicht nur wegen der impliziten Zustimmung erlaubt, sondern auch deshalb, weil bei der Fotografie anlässlich eines öffentlichen Auftritts gar nicht von einem Eingriff in die Privatsphäre ausgegangen werden kann. Es könnten in diesem Falle allenfalls rein finanzielle Interessen im Zusammenhang mit einer Weiterverbreitung des Bildes betroffen sein, diese sind aber nicht Teil des Schutzbereichs des Persönlichkeitsrechts auf Privatsphäre.

DE Yes

DK There is no law clause giving such a right. But out of court practice one can conclude, that a certain amount of protection exists.

FI Yes

FR Yes

GR Yes

IT Yes

PT Yes

SE To a very narrow extent. In commercial advertisement: Yes, but in other uses: No, unless the situation is considered to be a defamation.

In Sweden there is a very broad freedom of expression in printed media and in radio/television and for some on-line-services – a part from commercial advertisements – which makes it very difficult to claim damages for defamation (the Swedish constitution; Tryckfrihetsförordningen). There have been cases when film sequences containing intercourses, which have filmed illegally, and then been published on a private web site on Internet, have led to a ruling from a court in which the publishing has been considered as a defamation. If the website had been protected by the constitution may the result had been different.

SK In Slovak system of law apart from right protection related to intellectual property is personality right protection provided in several legal rules. In particular it is personality right protection in sense of civil and legal protection, in commercial law it is protection against abuse of one's name and surname as commercial name as well as personal data use or infringement upon the rights of other persons without prior approval of person in advertisement or criminal-law protection of some rights proximate to personality right or copy-right.

Apart from stated personality rights protection there is legal arrangement of civil and constitution rights with the character of human and political rights and liberties (e. g. personal and privacy immunity, right to one's dignity, right to honour, right to reputation, right to one's name protection, personal data protection as well as right to one's voice, freedom of speech, right to be informed etc.)

2)	Please cite the legal basis of such protection (e. g. § 78 of the Austrian Copyright Act).	Nenne bitte die Rechtsgrundlage dieses Schutzes (z. B. § 78 des österreichischen Urheberrechtsgesetzes).
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AT The legal basis is § 78 of the Austrian Copyright Act (Urheberrechtsgesetz). It is beyond controversy though that this provision is not a copyright but a personality right provision.

BE Article 10 of the Belgian Copyright Act of 30 June 1994.

CH Art. 28 bis 28f ZGB (Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907, SR 210, <http://www.admin.ch/ch/d/sr/2/210.de.pdf>), basierend auf Art. 13 BV (Bundesverfassung der Schweizerischen Eidgenossenschaft vom 18. April 1999)

Zitat Art. 28 ZGB:

Wer in seiner Persönlichkeit widerrechtlich verletzt wird, kann zu seinem Schutz gegen jeden, der an der Verletzung mitwirkt, das Gericht anrufen.

Eine Verletzung ist widerrechtlich, wenn sie nicht durch Einwilligung des Verletzten, durch ein überwiegendes privates oder öffentliches Interesse oder durch Gesetz gerechtfertigt ist.

In den Art. 28a bis 28f folgen Bestimmungen über Inhalt der Klage, vorsorgliche Maßnahmen, Vollstreckung, Schadenersatz.

DE Art. 1 Art. 2 GG; §§ 22,23 KUG; § 823 BGB; § 201, 3 201a StGB

DK The legal basis is a combination of rights according to the Marketing law (liability for damages for infringements of personal market value) and the right of damages for tort in § 26 in the Liability for Damages Act.

FI In Finnish legal system (Penal Code, Chapter 24 (Offences against privacy, public peace and personal reputation) Section 8 (Invasion of personal reputation): A person who unlawfully

1) through the use of the mass media, or

2) in another manner publicity spreads information, an insinuation or an image of a private life of another person, so that the act is conducive to causing that person damage or suffering, or objecting that person to contempt, shall be sentenced for an invasion of personal reputation to a fine or imprisonment for at most two years. The spreading of information, an insinuation or an image of the private life person in politics, business, public office or public position, or in a comparable position, does not constitute an invasion of personal reputation, if it may affect the evaluation of that person's activities in the position in question and if necessary for purposes of dealing with a matter with importance to society.

FR Art. 9 of Civil Code

GR Articles 57, 58 and 59 of Greece's Civil Code (Law 2250/1940) provide for personality protection, as well as for the right to one's name, where of the offended party is entitled to claim pecuniary compensation for injury. Furthermore, pursuant to Law 2121/1993 pertaining to "copyright" the creator of a photograph is protected by law, should the said photograph be original work and is presented in a new form "to wit it is wholly different in form and expression from other works."

As indicated in the above response, the aforementioned Articles in conjunction with the Constitution of Greece, Article 14 pertaining to the freedom of expression, provide for the protection of life, health and physical integrity (bodily goods), mental health and emotional state of being (mental goods), an individual's honor, liberty, the sphere of confidentiality, the image of a person, the inviolability of the home.

IT In our jurisdiction, besides of penal protection, there are some rules concerning personality rights: art. 6, 7, 8 of the Civil Code, right to one's name; art. 9 of Civil Code, right to one's assumed name; art. 10 of Civil Code, combine with art. 96 of author's right act, right to one's image; art. 10 of Civil Code, combine with art. 41² of the Constitution and art. 97 of author's right act, right to one's honor, reputation and dignity.

PT § 26 der portugiesischen Verfassung, § 199 des Strafgesetzbuches, § 79 des ABGB, § 7 des Code de la Publicité

SE The Swedish Penal code (Brottsbalken) chapter 15 paragraph 1 and 2; the Act (1978: 800) about name and personal picture in advertisement

SK Apart from Copyright Act (Act No. 618/2003), criminal-law protection of copyright, industrial and other related rights (§ 150 to § 152 of Code penal) as well as other acts related to intellectual property protection and some specific rights like damage and abuse of record placed at information medium (§ 257a of Code penal) there are mainly:

Personality protection – § 11 to § 16 of Civil Code

Requirements to advertisements – § 3 k) and m) of Act No. 147/2001 of advertisement as amended alterations and riders

Abuse of commercial name – § 9 paragraph 1 of Civil Code

Personal data protection – Act No. 428/2002 of personal data protection as amended alterations and riders, § 178 of Code penal

3)	Is the scope of such protection limited to photographs or does it go beyond (e. g. including drawings and the like)? Please describe the scope and give examples.	Ist der Anwendungsbereich dieses Schutzes auf Photos beschränkt oder geht er darüber hinaus (z. B. einschließlich Zeichnungen u. ä.)? Beschreibe bitte den Anwendungsbereich und nenne Beispiele.
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AT The protection extends to all kinds of images (e. g. photos, drawings, paintings, death masks).

BE The protection applies to all portraits (drawings, paintings, ...). The only condition is that the person has to be recognizable.

CH Ja, andere Abbildungen, insbesondere Gemälde (Portraits etc.) sind durch den Schutzbereich des Rechts am eigenen Bild abgedeckt, und zwar zumindest dann, wenn auf dem Bild erkennbar ist, um wen es sich handelt oder wenn andere Umstände (mündliche Erklärungen, Kontext, Bildlegende etc.) die Identität der Person preisgeben. In den Worten des Bundesgerichts: "..., ein (Personen-)Bild im juristischen Sinn ist nämlich immer dann gegeben, wenn der Abgebildete für Dritte erkennbar, also identifizierbar ist." (Entscheid. des Bundesgerichts vom 27. Mai 2003 in Sachen Julien v. Schärer und Bilski, zu

	finden auf www.bger.ch , Rechtsprechung, Urteile ab 2000, Aktennr. 5C.26/2003). Hier ging es um einen Kunstmaler, der von zwei Personen ohne deren Einverständnis Portraits mit entblößten Oberkörpern erstellt hatte. Gemäß diesem Entscheid wird das Recht am eigenen Bild insbesondere nicht eingeschränkt durch die Kunstfreiheit von Art. 21 BV.
DE	Nein, jede Art von Personenbild unabhängig vom Herstellungsverfahren, außerdem jede Art von Wortberichterstattung.
DK	Court practice includes a case involving a drawing. Liability for damages will potentially result from any likeness, which is used in such a way as to cause tort or loss of marketing value.
FI	The answer is normally no. But if you can identify a person from a for example drawing one had made, it can be illegal (= recognize) if context is insulting.
FR	It has no limit other than the limit defined by jurisprudence, as the Civil Code stipulate that everyone is entitled to the protection of one's private life.
GR	The aforementioned de jure stipulations overall protect an individual's image, in any way, shape or form this may be expressed (e. g. photography, drawings, paintings, sculpture, cinema, television). For example, the taking and publication of a photograph without the subject's consent is prohibited. Comics and caricatures are not considered a priori censurable, especially when they portray public figures (politics, art etc.), unless the degree of exposure is extremely high and distinct.
IT	The scope of the protection is not limited to photographs. It includes any image representation subject to be published, broadcasted or exposed (photographs, video, drawings, caricatures etc.)
PT	Filme
SE	The scope of the protection is not limited to the technique, e. g. photos and drawings. There is a court case regarding the Swedish ex tennisplayer Björn Borg, in which an actor was dressed like Mr. Borg (look-alike) and was used in advertisement. It was considered to be an illegal use of Mr. Borg in the respect of the Act from 1978.
SK	Copyright law protection in sense of copyright act is relatively wide as it protects each masterpiece created as a result of creative activity of the author (hence it is picture, drawing, sketch, illustration etc.) From the point of personality protection each unjustified publishing of such demonstration of personal character that enables intervention to privacy or personal integrity of human being can be regarded as the infringement of hereof personality right. § 12 of Civil Code stipulates some examples of personal character demonstrations related to natural person (e. g. apart from display image or display record portrait of natural person is protected as well). The law prohibits making and usage of one's portrait without approval of person concerned. Exceptions are stated in the act (more widely to the question No. 4).

4)	What does the protection consist in? Which acts (e. g. publication) are considered illegal ? Does the protection imply the right to prevent being photographed?	Worin besteht der Schutz? Welche Handlungen (z. B. Veröffentlichung) gelten als rechtswidrig ? Schließt der Schutz das Recht ein, schon das Photographiertwerden zu verhindern?
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- AT Protection is granted against the publication of a person's image if the publication would infringe this person's legitimate interests. In principle, however, there is no legal way to object being photographed.
- BE All acts of reproduction or communication to the public of a portrait without prior consent are considered illegal. Article 10 of the Belgian Copyright act implies not the right to prevent being photographed.
- CH Eine Verletzung ist bereits dann gegeben, wenn jemand ohne seine Einwilligung "um seiner Person willen" abgebildet wird (vgl. die Rechtsprechung des Bundesgerichts, z. B. BGE 129 III 715, S. 723 f., mit weiteren Verweisen, <http://www.bger.ch/>). Das bedeutet, dass eine Fotografie, in der die betroffene Person nicht als Einzelperson erkennbar ist, erlaubt ist. Sie ist auch erlaubt, wenn die Person zwar erkennbar ist, diese aber nur einen unwesentlichen oder ersetzbaren Teil des Bildes darstellt und ihre Identität mit dem Zweck des Bildes nichts zu tun hat.
- DE Die Herstellung eines Fotos unter den Bedingungen des § 201a StGB, die Veröffentlichung unter den Bedingungen der §§ 22, 23 KUG
- DK It is a breach of the criminal code (§ 264a) to photograph any person who is situated in an area that is not freely accessible (private ground), unless it is justified by consent or objective defence reasons (emergency law, public interest)
It is also a breach of the criminal code (§ 264c) to publish or pass on Photographs that have been taken in breach of § 264a.
It is breach of the criminal code (§ 264d) to publish or pass on photographs with a content expressing information that belongs to the private sphere (e. g. pornographic pictures taken with consent, but not for publication) or if the persons depicted in the photograph obviously have a right to demand that the photos not be published (e. g. people injured in street accidents).
According to the Authors Rights Act the photographer needs consent in order to reuse a commission portrait photo. (This does not include portrait photos taken for editorial reasons or photos that have already been published.)
- FI There's no list which acts are illegal. A main question is that are context insulting or not. However, there is no paragraph which prevents photographing. So if you for example are standing in a public square, you can be a target to a photo legally (without asking any permission). But it doesn't automatically mean that you can publish the picture, if the photograph or the title of a photograph is offensive.
- FR Publication without consent is certainly subject to condemnation and on some cases, tape recording or photographing people can be deemed unlawful if the aim or effect is clearly an infringement of someone's private life. It is applicable to public figures as well in as much as the picture has not been taken within the framework of his/her public activities.
- GR The response to this question is contained in response to question 3.
- IT Protection consists in the right of the image owner to avoid other people taking cognizance of his image without permission. Therefore, is considered illegal any unauthorized diffusion (exposition, broadcast or publication) of one's image. Our jurisdiction provides a subsequent protection only: the judicial authority, upon request, can order to cease unauthorized diffusion (by sequestration, inhibition etc.), but cannot prevent the abuse.
- PT Photographieren ist erlaubt.
- SE Act of 1978: Only use that have been taking place. The penal code: Attempts to defamation are also a crime. (No attempts to commit a crime may be punished in the constitution (non-commercial use of pictures in printed media and in radio/television etc.).
- SK To the question No. 3 some connections with personality protection are already described. According to juridical practice personality protection regards to each unjustified

intervention in natural person right to one's privacy, i. e. each making and publishing that enables identification with person concerned without approval of that person is in contradiction with personality right to privacy. The exceptions are described above. Even taking photograph without approval of natural person apart from official purposes is possible only for scientific, artistic and reporting purposes. But the usage can't be in contradiction with justified interests of natural person. Specific event e. g. in case of legal dispute will always be considered in context – the way and the situation under which the photograph was made, how was the connection with reporting system when the photograph has been used (e. g. whether personal tragedy of person concerned was not misapplied, person's defenceless etc.).

5)	Presumably there is a principle : Either the publication of a person's image is illegal except in special cases – or the publication is legal if no additional aspects come into play. Which of these principles is applied in your jurisdiction?	Vermutlich gibt es einen Grundsatz : Entweder die Veröffentlichung eines Personenbildnisses ist mit Ausnahme besonderer Fälle rechtswidrig – oder die Veröffentlichung ist mangels zusätzlicher Umstände rechtmäßig. Welcher dieser Grundsätze gilt in Deiner Rechtsordnung?
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AT Second option.

BE Belgian jurisdiction and doctrine have recognized that public figures have to accept the publication of their image if the photograph is not taken in private circumstances and if the publication has no commercial purposes (e. g. advertising, merchandising)

CH Handelt es sich um die Fotografie einer Person während einer Veranstaltung, bei der sich die Person willentlich der Öffentlichkeit zeigt, gilt der zweite Grundsatz, d. h.: Die Veröffentlichung ist grundsätzlich zulässig, da die Person ja bereits in der Öffentlichkeit steht und daher in diesem Moment die Privatsphäre nicht betroffen ist, auch nicht durch eine Fotografie. In allen anderen Fällen jedoch gilt der (erste) Grundsatz, daß die Fotografie einer Person als verbotener Eingriff in seine Privatsphäre gilt, und je nach Umständen (überwiegende andere, insb. öffentliche Interessen, Einwilligung etc.) dennoch erlaubt ist – was zwar häufig vorkommt, aber dem Sinne nach und aus der Sicht des Persönlichkeitsrechts dennoch die Ausnahme bildet.

DE Grundsatz der 1. Alternative unter der Voraussetzung, dass keine Einwilligung der abgebildeten Person vorliegt.

DK The publication is legal except for the above mentioned restrictions.

FI Latter is relevant in Finnish legal system (= the publication is legal if no additional aspects come into play).

FR There is a balance between the two logics.

GR –

IT The principle in force in our jurisdiction provides that the publication of a person's image is illegal unless there is the permission of the owner or in case of a famous or notorious person's image. In this second case, diffusion must not offend dignity and reputation of the person, must be connected to his area of reference, cannot be realized for gain and has to satisfy public interest to a complete information connected with the notoriety of the person.

PT Die Veröffentlichung eines Personenbildnisses ist rechtswidrig, auch, so wie jemand sich in der Öffentlichkeit gezeigt hat nach § 199 des Strafgesetzbuches. Ausnahmen/Veröffentlichung ohne Zustimmung nach § 79 n° 2 des Code Civil: Bekanntheitsgrad, Amt des Photographierten, Forderung der Polizei oder Justiz, zu wissenschaftli-

chen, didaktischen oder kulturellen Zwecken und im Rahmen des öffentlichen Raums und in Angelegenheiten öffentlichen Interesses oder die öffentlich passiert sind. Nach § 79 des Code Civil überwiegt Recht am eigenen Bild vor dem Recht auf Information, Polizeizwecken, kulturellen Zwecken.

SE Number two

SK There is a principle stated as the first alternative as the law specifies person's previous approval as the priority for any kind of physical person's image making including the approval for further publication of that image of person. Subsequently the law appoints the cases when the consent is not needed. Similar procedure applies also judicial practice although each specific case judging is the authority of the particular judge or judicial council.

6)	Is the accompanying text or the entire context taken into account when judging the legality of the publication of a person's image?	Wird bei der Beurteilung der Rechtmäßigkeit der Veröffentlichung eines Personenbildnisses auch auf den Begleittext oder den Gesamtzusammenhang abgestellt?
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AT Legends, underlines, accompanying text and entire context – everything taken into account.

BE For private persons the accompanying text is of no importance.

For public persons: if the context is promotional, the publication of a portrait is illegal.

CH Ja: Wer der Veröffentlichung seines Bildnisses zu einem gewissen Zweck zugestimmt hat, ist widerrechtlich verletzt, wenn sein Bild für einen anderen Zweck veröffentlicht wird. Es gilt der Grundsatz, daß der Inhaber eines Persönlichkeitsrechts gewisse Einschränkungen zwar erlauben kann, nicht aber gänzlich darauf verzichten bzw. es abtreten kann (BGE 118 II 1). Es ist im Einzelfall und gemäss dem Vertrauensprinzip abzuwägen, für welche Verwendung des Bildes der Abgebildete seine Zustimmung gegeben hat.

DE Darauf kann abgestellt werden, z. B. wenn ein Foto für die Veröffentlichung zwar bestimmt ist, aber nicht im Zusammenhang mit Werbezwecken, es hängt auch von dem Umfang der Einwilligung ab.

DK The context and accompanying text may well be the factor that leads to damages for tort and/or damages for lost marketing value.

FI Of course entire text is taken into account.

FR The entire context is taken into account, the judge trying first and foremost to find whether the person is central or "accessory" to the published picture.

GR The legality of a publication is subject to the court's discretion. Nevertheless, it is implicit that an offensive, insulting or scornful text beneath an individual's image is either damaging or constitutes in itself an attack of a personality.

IT The accompanying text can bring immediate damage if not true and complete, if it is not exposed in an appropriate way and if it doesn't correspond to a social information interest. A context totally unrelated with the accompanying text may as well occasionally bring an image damage when such connection (between one's image and context) may result offensive for dignity, honour or reputation of the represented person.

PT –

SE The entire context.

SK The whole context is always judged as the law apprehends personality protection more widely than single person's image – it means publication of all facts relevantly considered

to be as the facts adjoining personality rights (life, health, civil honour, human dignity, privacy, name and demonstrations of personal character).

7)	Are there cases where the unauthorized publication of a person's image is illegal without any further consideration (e. g. publication for promotional purposes)?	Gibt es Fälle, in denen die nicht bewilligte Veröffentlichung eines Personenbildnisses ohne weitere Abwägung als rechtswidrig gilt (z. B. Veröffentlichung zu Werbezwecken)?
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AT Almost no way to legally publish a person's image without this person's authorisation in two cases: publication for promotional purposes, publication of nude photos.

BE Yes, publication for promotional purposes, or the publication of images of public persons taken in private circumstances.

CH Das Bundesgericht hat unlängst festgestellt, dass die Veröffentlichung eines Spielfilmausschnittes zu Werbezwecken einen widerrechtlichen Eingriff in des Recht am eigenen Bild des Schauspielers darstellt (BGE 129 III 715, S. 723 f., www.bger.ch).

DE Ja, Verletzung der Intimsphäre i. d. R. Verletzung der Privatsphäre, Werbung etc.

DK It will lead to damages for tort and/or damages for loss of marketing value if a persons image without consent is used for promotional uses.

FI Same answer than above, main question is does the act cause a damage or suffer or object that person to contempt. If not, there's no legal problem. But you have to remind both political and commercial aspect in mind. If an ordinary person is standing in a public place like a harbour and he's being photographed and next week the photo is in an advertisement (so he's advertising for example cruising in the North Sea without knowing it himself) it can be a problem. Same with a politics. If you are "ordinary citizen" magazine can't write the information that you are a new member of a Labour party. But if you are a Labour Party's candidate in a communal election, it is relevant information (are you member of not) and an information in a magazine is therefore ok.

FR There is reinforced protection for minor children.

GR The combination of stipulations indicated in Art. 57 of Greek Civil Law, and the L. 1178/1981 article pertaining to "civil liability of the Press and other stipulations", primarily prohibit "the taking of one's image (photography, cinema, television broadcast), the presentation of said image to third parties and the reproduction or provision thereof to the public". As such, photographing the offended party in violation of personal confidentiality rules constitutes an attack on the right of the personality. By exception, photographing an individual and further publicizing said image is allowed if: the subject has granted consent; if consent is unnecessary and thus the taking and publishing of said photographs is allowable when the subject is a public figure and these photographs befit journalistic interest and are not taken for sensationalist purposes. Lastly, these stipulations allocate proper and factual liability onto the publisher (thus rendering the publication's owner liable, irrespective of fault), provided that subjective liability (stemming from fault) has been committed by the publisher's editor or managing editor. In other words, one who publishes an individual's photograph without the latter's consent may be sued for pecuniary damages should the publication of said photo discredit the subject's honour, which is a matter for the courts to decide.

IT In case of a not famous person, publication is illegal if not justified by the right to inform. In case of a famous person, publication is illegal if offends his dignity and reputation, if is not connected to his area of reference, if is realized for gain or doesn't satisfy public interest to a complete information.

PT Veröffentlichung zu Werbezwecken ohne Zustimmung.

SE It will lead to damages for 1) the sole use of the personal image; and 2) tort and/or damages for loss of marketing value if a persons image without consent is used for promotional uses.

SK In reply of question No. 5 the issue was essentially described and person's image usage in advertisement is governed at advertisement act when the law prohibits the infringement upon other person's rights without their approvals. Forasmuch as pursuant to Civil Code the question of personality protection is regulated in sense that for making and publication of photograph is needed the previous approval of natural person and at the same time in this case there are neither official, artistic, scientific nor reporting purposes, such usage of person's image is illegal. The previous legal regulation of advertisement defined more narrowly personality protection and natural person's possessory rights. Current legal regulation apart from prohibition of personal data introducing contains general reference to prohibition of other person's rights without their approvals. Regulation more widely regulates personality protection for as much as Civil Code more widely defines this protection.
