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The Legal Protection of a Person's Image

Conclusions drawn from Responses to an AREG Questionnaire

1. Existence of a personality right to control the use of one's image

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, ...)?

All countries from which we received responses (AT, BE, CH, DE, DK, FI, FR, GR, IT, PT, SE, SK) provide for such right. According to the responses from DK and SE, Scandinavian countries seem to be less protective to a person's image (thus living up to their well-known openness?).

2. Legal basis of protection

Please cite the legal basis of such protection (e. g. § 78 of the Austrian Copyright Act).

In most of the countries there is more than one legal basis. In any case provisions aimed at protecting a person's image can be found in highly different laws, ranging from the Civil Code (CH, DE, FR, GR, IT, PT, SK) to the Penal Code (DE, FI, PT, SE, SK). In some countries the right to control the use of one's image is incorporated into the Copyright Act (AT, BE, DE). Some countries apply specific rules on advertising (DK, SE).

3. Scope of protection

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.

In no country the scope of protection is limited to photographs only. On the contrary, the protection usually extends to drawings, paintings, sculptures and the like, the lowest common denominator being that the depicted person must be identifiable. In Scandinavian countries even the mere depiction of a look-alike seems to be critical. In DK 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. In SE there is a court case in which the use of a look-alike of Björn Borg for promotional purposes was considered illegal.

4. Acts to be considered illegal

What does the protection consist in? Which acts (e. g. publication) are considered illegal? Does the protection imply the right to prevent being photographed?

Apparently no legislator has established a list of illegal acts. On the contrary, all ways and means of publication seem to be illegal. The question arises, however, whether the legal protection of a person's image implies the right to prevent being photographed. In some countries there seems to be – at least in principle – no way to object being photographed (AT, BE, FI, PT). Other countries provide for a broader protection, outlawing already the taking of a picture (CH, DE, DK, SK).

5. Rule and exceptions

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?

Most of the countries seem to follow a rule: Either the publication of a person's image is illegal except in special cases (DE, IT, PT, SK) or the publication is legal if no additional (harmful) aspects come into play (AT, BE, CH, DK, FI, SE). Of course even in the stricter countries the depicted person's consent renders a publication legal.

6. Accompanying text etc. to be taken into account?

Is the accompanying text or the entire context taken into account when judging the legality of the publication of a person's image?

In almost all countries and cases, the accompanying text and/or the entire context are/is taken into account. In BE the accompanying text seems to be of no importance with regard to private persons.

7. "Worst practice examples"

Are there cases where the unauthorized publication of a person's image is illegal without any further consideration (e. g. publication for promotional purposes)?

Throughout the countries in question, there are reasons that render the publication of a person's image illegal without further consideration. Most countries apply a stricter regime when a person's image is used for promotional purposes without consent. The same is the case when it comes to nude photos or other pictures taken in private circumstances. In FR there is reinforced protection for minors. On the other hand, public figures have to accept a higher degree of tolerance. According to the European Court of Human Rights, a public figure must not necessarily be well known; in order to be considered a public figure it is sufficient to enter the political stage or public arena voluntarily (see *Krone Verlag GmbH & Co. KG v. Austria* judgement of 26 February 2002).