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# Personality Rights and the Internet

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**PERSONALITY RIGHTS AND THE INTERNET**

The exponential expansion of Internet activities has led to a parallel expansion and a better definition of the forms of intellectual property recognized in the so-called "leading industrial nations". For any reader who has forgotten, most intellectual property falls into six categories:

- Trademarks (brand protection for a service or product);
- Copyright (protection for matters of tangible expression only);
- Patents and Related Rights (for utilitarian improvements in design or methods, plus protection of esoteric areas such as electronic chip topography or plant genetics);
- Proprietary Information or Trade Secrets (i.e., information that is or is intended to be kept confidential);
- Industrial Design (a Canadian term) or Design Patents (U.S. term) which protects aesthetic articles and improvements in them;

and last, but by no means least,

- Rights of Personality (protection of personal traits from undue exploitation).

It is the latter area which is most likely to be overlooked when considering the range of intellectual property issues arising from the contents of websites or activities of a type comprising what is loosely referred to as "e-commerce". But on the Internet, as on its predecessor television, and television's predecessor cinema, certain individuals have obtained Star Status.

Rights of Personality are what protects someone with Star Status (in no matter what medium) from unlawful exploitation of their name, likeness or endorsement. It is a protection that is branded automatically (like copyright) in various degrees in many countries.

While (perhaps regrettably) few individuals who are Internet Stars enjoy reputations in the proportions of, by way of example, Pamela Anderson, (who has managed somehow to straddle at least three forms of media), there are hundreds of individuals whose name and personality would be recognized by legions of Internet users, but not by users of other media. It is therefore tempting to incorporate their name and likeness, in ways that may at first

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appear only fleeting and indistinct, into Internet references. Conversely these individuals may be sought out to endorse or to execute Internet services, but contractual obligations setting out the terms of engagement may fall short of what is required. They may not be stars of stage, screen or television, but the same principles apply. What are those principles?

In brief, if the personality, name and image of any person is to be lawfully exploited then the holder of that name, image and personality must license that personality, name and image to the user. As with all licenses, this license can be almost unlimited in scope, term and territory, but at the minimum should include (i) all rights inherent in the name of the individual; and (ii) the right to exploit that individual's personality, name and image in furtherance of the terms of the license granted, subject to such expected limitations as a right of approval on "endorsements", and right of early termination in certain events.

The license should also go on to detail the territory, the scope of the licensed services, timelines, and as much other detail as is required to put flesh on the bones of the bare license agreement. Such detail might consist of specifying personal appearances, by time, place, number and duration, to the scope of endorsements together with model text of such endorsements. It would list various media that can be employed for the exploitation of the license and any subordinate licenses such as the right to use the person's image as it has been developed in books or other writings, videos, websites or whatever other media efforts the personality has done to achieve renown in the first place.

A large note of caution. These rights are personal and therefore cannot be assigned, but rather only licensed from the individual granting the license. Any license should specify whether or not sublicensees will be permitted and if so on what terms.

There is also an open question as to whether or not such a license should include a "Waiver of Moral Rights" analogous to present practice with respect to the creators of copyrighted material. As a matter of standard practice authors or artists now not only assign the copyright, but also waive their Moral Rights, as creator of the material in question. But as Moral Rights arise only as a result of the wording in the Copyright Act it is superfluous to include such a Waiver of Moral Rights in the license of personality.

As the Internet phenomena grows apace, it will not be long before the ways and means of acquiring the right to properly use the personality, name, and image of a recognized personage for Internet purposes will be an issue to be addressed by the owners and managers of commercial entities of all sizes and their professional advisors.

If you have any questions or concerns, please contact:

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