

Russia

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Russia provides up-to-date protection for image rights

Image rights are designed to protect a person's appearance and ensure privacy. Although they are similar to IP rights, they are in fact regulated by different rules

Issues relating to the use of a person's image arise frequently, especially in the field of advertising and particularly where photographs of professional models – which are often shot for a specific advertisement under a particular agreement – are used. In many cases photographs are taken not from authorised stock photo websites, but from other sources on the Internet and are used without the subject's permission.

The legal provisions governing an individual's rights over his or her image are designed to protect a person's appearance and to ensure privacy. Although image rights are similar to IP rights in their legal nature, they are in fact regulated by different rules. According to the current law and court practice, the right to publish and use an image of a person is not exclusive; portraits are not recognised as intellectual property, but rather as items with a non-material value.

Special Article 152.1 of the Civil Code governs the protection of personal images and states that the public disclosure and further use of a person's image (including a photographic picture, video recording or work of visual art) are permitted, subject to his or her approval.

After the death of the person, his or her image may be used with the permission of a surviving spouse or any children or, in their absence, with permission from his or her parents. In the absence of any such family members, consent for disclosure and use of a person's image is not required.

Exceptions to consent

The law provides several exceptions to this rule and states that permission is not required if:

- the image is used in the interests of the state or in the public interest;
- the image was obtained in a place

which is freely accessible or during a public gathering, such as a meeting, conference, concert or sporting event, except where the person's image is the main object of use; or

- the person posed for money.

The Resolution of the Plenum of Supreme Court 25 of June 23 2015 offers additional clarification to this, stating that a person's image can be used without his or her consent when this is in the public interest (eg, where a person is a public personality, holds a government or municipal position, or plays an important role in public life in politics, economy, the arts, sports or any other field, and where the image is published or used in connection with a political or public discussion, or interest in this person is socially significant).

On the other hand, if an image of a well-known person is not used in the context of his or her public activities, consent for disclosure and use is still required.

Case law has further established that no additional permission is needed where it appears that the person voluntarily participated in a photographic or video shoot. Further, the resolution points out that if the sole purpose of disclosure and use of a person's image is to satisfy a so-called 'philistine' interest in his or her private life or to make a profit, then the subject's consent is definitely required. According to the Supreme Court, a philistine interest cannot be reclassified as a public interest and thus a reason to freely use the image of a person – even if the information might attract the attention of a significant part of the population.

Court practice has also established that permission is not needed for the disclosure and use of a person's image where this is necessary for legal reasons or for national

security (eg, in connection with the hunt for criminals, missing persons or participants or witnesses to an offence).

Consent and penalties for improper use

With regard to consent, the law does not specify the procedure for obtaining consent and how this should be worded. However, an analysis of the general provisions of the Civil Code suggests that consent is a civil issue and can be given in oral or written form, as well as through actions which clearly indicate the subject's intention.

Anyone who consents to the publication and use of his or her image has the right to withdraw this consent at any time. In such instances, the entity using the image has the right to demand compensation for losses caused by the withdrawal.

Breach of these rules can incur serious penalties.

If a court rules that a person's image has been reproduced without consent, all tangible media containing the image(s) shall be seized and destroyed without compensation to the owner. Where a person's image is disclosed and published online without consent, he or she has the right to demand the removal of this image and to prohibit its further distribution.

He or she can also claim compensation for moral damages, which can range up to several tens of thousands of roubles. If publication of an image damages a person's honour, dignity or reputation, he or she can also claim reimbursement of the corresponding damages.

Images on social networks

Considering the growing popularity of social networks (eg, Facebook, Instagram, Tumblr, Twitter), it is vital to protect images of persons posted online. In its



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a person to his or her image cannot be recognised as exclusive. However, the form of image (ie, how the person is photographed or recorded) can be subject to copyright. The author of a work is either the person portrayed in it (in the case of a selfie) or the person taking the photograph (ie, the photographer, camera person or portrait painter). From that perspective, use of a person's image requires not only the consent of the person displayed in the photograph or video, but also the consent of the copyright owner.

Moreover, an individual may apply to protect his or her name as a trademark (provided that he or she is registered as a private entrepreneur). Russian law provides that in order to record someone's name – in particular, the name of a well-known person in Russia – as a trademark, it is necessary to obtain consent from that person.

At the same time, the owner of the trademark should bear in mind that, as a general rule, registration of a designation that is identical to the name of the person does not restrict or exclude the right of a person (or another individual with the same name) to use that name for its intended purposes. As a large number of surnames and first names are shared by many people in Russia, this seems only reasonable.

The above demonstrates that the use of images of persons in advertising, in trademarks or online is well regulated in Russia – through both IP laws and special regulation of these particular issues. **WTR**

current form, the law is silent on whether it is necessary to obtain the consent of a person who posts a photograph or video of himself or herself on a social network.

However, court practice has provided some guidance in this regard. In 2012 the Moscow City Court ruled that a plaintiff's uploading of photos onto a publicly available website was an expression of consent for the publication of such photos and should thus be considered as consent for their further publication and use.

However, in 2015 the Supreme Court of Russia found that publication of a person's image should be considered as publication of the copyrighted work by the author only. The publication and public availability of a person's image do not terminate legal protection for it and do not allow the image to be used without the subject's consent. However, where the terms of service of a website or social network provide that publication of photos by their user shall be taken as consent for their further use, no additional consent need be obtained.

Name and personal data rights

Article 19 of the Civil Code provides that a person has rights over his or her name (including given name and surname), and has the right to create and use a pseudonym. The damage caused to a person as the result of illegal use of his or

her name shall be liable to compensation.

Another important legislative document on the subject of publicity is the Personal Data Law 2006, which states that 'personal data' comprises any information relating to any physical person, including his or her name, marital or social status, address or profession.

The law refers to the concept of a 'data operator', which can be a state or municipal body, legal or physical person that both:

- organises or carries out (alone or jointly with other persons) the processing of personal data; or
- determines the purposes of personal data processing, the content of personal data and the actions (operations) relating to personal data.

According to the law, everything that concerns a person is classed as confidential information which may be processed by an operator only with the subject's approval. Again, there are several exceptions to these provisions, but these do not extend to discovering information about another person to satisfy personal curiosity.

Other issues

Considering the relation between publicity and image rights and IP rights, it is worth noting the following.

As has been mentioned, the right of

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