

Image Rights

Time to create a new statutory regime and right in Ireland?

In the age of the Internet and the global marketplace famous personalities have become increasingly aware of how their image and identity ('Image Right') can be commercially used and exploited. In part, this awareness has been spurred on by the development of the Internet and the global marketplace. Regrettably however, the law in many jurisdictions has simply failed to provide the necessary support mechanisms to assist personalities in protecting, enforcing and exploiting their Image Rights. All too often personalities are left to flounder in a legal quagmire and have to rely on cumbersome, expensive and time consuming legal remedies to redress the damage and loss caused to their Image Rights.

It is generally accepted by commentators at home and abroad that Ireland is one of the most Intellectual Property friendly jurisdictions in the world. Coming off the back of its favourable reputation, Ireland now has the opportunity to firmly place itself as a pioneer in the protection, enforcement and exploitation of 'Image Rights' in the European Union by introducing a new Statutory 'Image Right' and to develop a recognised legal framework to facilitate the protection, enforcement and exploitation of such a right.

In advocating the introduction of specific 'Image Rights' legislation in Ireland, I will examine how Image Rights have been protected in the past and, in particular, how the traditional forms of Intellectual Property have been relied on to enforce such a right.

By introducing a new Statutory 'Image Right', Ireland can benefit from the experience of other jurisdictions in protecting this type of right. I will therefore also provide an overview of the law in those countries that have a recognisable body of 'Image Rights' jurisprudence. By undertaking this dual 'overview' approach, I firmly believe that the blueprint of a new Statutory Right can be created and considered for discussion and review amongst personalities, legislators, performer's rights organisations and Intellectual Property professionals and academics.

What is an 'Image Right'?

It may seem strange, but there appears to be some divergence of opinion as to what exactly is an 'Image Right'. An 'Image Right' can, in my view, be best defined as a combination of the distinctive attributes and characteristics of a well known celebrity that links him/her with the public and the right to commercially exploit and enforce such attributes and characteristics.

The Old Approach – Reliance on traditional areas of Intellectual Property

Historically, traditional areas of Intellectual Property have played a helpful, although not entirely satisfactory, role in the recognition and enforcement of the various aspects of what an Image Right encompasses. Copyright, registered and un-registered design right, passing off, registered trade marks and, to a small extent, breach of confidence have assisted individuals in protecting their rights.

A. Copyright – images

Bearing in mind that Image Right covers both identity and image, copyright has only really been of use in protecting images. While copyright subsists in original literary works, it has long been recognised that there is no copyright in a name¹. Copyright is therefore of no help to a celebrity who wants to enforce rights in his/her name.

Copyright may be of more assistance in protecting personality images or photographs. If the personality or his/her management company owns the copyright in a photograph of their image, then it should be possible to prevent unauthorised production and use of that photograph. However, the limits of copyright in such a situation should be recognised. In *Merchandising Corporation of America Inc V Harpbond Ltd*², it was held that the copyright in a portrait image of the 1980's singer 'Adam Ant' wearing his signature 'Prince Charming' outfit and makeup was not infringed. The court found that there had not been substantial taking from the photograph.

Of course copyright will not be able to prevent the independent taking and creation of a photograph of a celebrity. In such a situation, a celebrity would have to try and rely on Passing off or, in circumstances where a breach of privacy is concerned, breach of confidence.

B. Registered Designs and Unregistered Designs

Under the European Union Designs Directive³, a design is defined as being '*the appearance of the whole or part of a **product** resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the products or its ornamentation*'. To be validly registered, a design must be 'new' and have 'individual character'; the requirement of 'individual character' being assessed through the eyes of an 'informed user' who, in the case of merchandise, is likely to be a wholesale buyer. Given that 'novelty' is the key requirement of a valid Design registration, a problem would appear to arise if the design in question was of the likeness of a celebrity who is already well known. In *Dean's Rag Book Co Ltd v Pomerantz & Sons*⁴ it was held an application for the registration of a 'Mickey Mouse' doll should be allowed even though the shape of Mickey Mouse was well known from earlier cartoons. Similarly, in a case from the UK Intellectual Property Office, the pop group *The Spice Girls*⁵ sought to cancel a series of designs in the name of an unconnected third party on the grounds that the designs in question were not new. The UKIPO held that the key requirement of 'prior

¹ Exxon Corpn v Exxon Insurance Consultants International Ltd [1981] 3 All ER 241

² [1983] FSR 32

³ Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs [1988] OJ L 289/28

⁴ (1930) 47 RPC 485

⁵ 16 August 1999

publication' (needed to destroy novelty) had to be of a *design applied to an article*. Both these cases show that images of celebrities would not be considered designs unless they are actually applied to articles. So, unless it can be shown that the articles bearing the design have been previously made available to the public, the key requirement of novelty will not be destroyed. It would therefore seem that Registered Design protection would be attractive to those celebrities who have not yet commercialised their image, but of limited use to those who have.

The other avenue that a celebrity may have recourse is unregistered design right, which allows the holder of such a right to prevent third parties from using the same or similar designs. Protection is valid for a period of three years from the time that the design was first made available to the public (in Ireland this must be after 6 March 2002 when unregistered design right was introduced into law). Like registered designs, there is a requirement of novelty in order to claim a valid right and infringement can only be brought in cases of direct copying. On balance, in view of the requirement of novelty, unregistered design right is likely to be of limited use to celebrities wishing to protect their image.

C. Registered Trade Mark protection

It would seem that seeking to register images of celebrities as Trade Marks might afford the strongest form of protection and some notable celebrities have already chosen to rely on this form of protection in the United Kingdom⁶.

The one advantage that Trade Mark protection has over other forms of Intellectual Property is that it can be used to register both names and images. Insofar as names are concerned, we have to examine how the name of a celebrity can perform the key 'indicator of origin' requirement that is implicit in a trade mark. Two cases demonstrate the difficulties here. In *TARZAN*⁷, the English Court of Appeal held that the name 'Tarzan' constituted a direct reference to the character or quality of the goods for which registration was sought; this even though 'Tarzan' was an invented name at the time Edgar Rice Burrows wrote his book about the character of the same name. Similarly, in *ELVIS PRESLEY Trade Marks*⁸, it was held that the 'Elvis' name did not indicate to the consumer that there was a connection in the course of trade between the goods for which registration was sought (toiletries) and the successors of the famous singer. In essence, it was held that the ELVIS mark merely commemorated the singer rather than identifying the origin of the goods in question.

In *Arsenal Football Club v Matthew Reed*⁹, the ELVIS decision was turned on its head. In responding to a reference from the English Court of Appeal, the European Court of Justice ruled that that where a

⁶ <http://www.ipo.gov.uk/types/tm/t-os/t-find/t-find-number?detailsrequested=C&trademark=2120277>

⁷ [1970] RPC 450

⁸ [1999] RPC 567

⁹ [2002] ECR I-10273

third party used, in the course of trade, a sign which was identical to a validly registered trademark on goods which were identical to those for which it was registered, the proprietor was entitled to prevent that use. It did not matter that the defendant's sign was perceived as a badge of support for loyalty or affiliation to the proprietor. Use of a trademark, which affected or was likely to affect the essential 'indicator of origin' function of a trademark could be prevented by a trademark proprietor.

If a trade mark can be infringed even if a consumer sees the infringing sign as a 'badge of loyalty', the names of deceased personalities could be registered and protected in cases where the defendant raises the defence that the infringing sign is merely there to serve the purpose of commemoration.

Sometimes, celebrities or their successors will seek to exploit their image in three dimensional formats in the form of dolls or figures. While the Trade Marks Act, 1996 (TMA) includes provisions on the registerability of shapes, it seems likely that any attempt to register the representation of a celebrity in the form of a doll or figurine would be met with the objection that the shape *gives substantial value* to the goods for which registration is sought. In a nutshell, the average consumer would buy the doll because of the image that it represents and not necessarily because they believe the doll has a particular commercial origin.

D. Passing off

Very often celebrities and their successors overlook the benefits of trade mark registration; be it through ignorance or perceived high cost. In the absence of a trade mark registration, a celebrity would still have possible recourse to a claim for passing off. So long as a celebrity can satisfy the classic trinity of 'reputation', 'misrepresentation' and 'damage', it would seem that a claim in passing off is the most suitable route a celebrity could choose to stop un-authorized use of his or her Image Right. However, while not necessary for a successful claim in passing off, many cases involving Image Rights very often fail because a lack of competition between the plaintiff and defendant means that it is not possible to prove 'misrepresentation'. If there is 'misrepresentation', then there is likely to be no harm/damage to the plaintiff's goodwill/reputation, again because of a lack of a competitive relationship with the defendant. This has certainly been the case in the United Kingdom. In *Wombles v Wombles Skips*¹⁰, the producer of the childrens' television series was unable to prevent a waste disposal company trading under the name 'Wombles Skips'. The lack of a common field of activity meant that there was no harm to goodwill. Likewise, in *Lyngstad v Anabas Products*¹¹ the pop group ABBA was unsuccessful in preventing the sale of memorabilia bearing their name because they were unable to show that they were in the business of producing such goods. The court held that even if ABBA was able to demonstrate that they were in the business of producing memorabilia, it is unlikely that consumers would be deceived into thinking that the defendant's goods were produced under licence from ABBA.

¹⁰ [1977] RPC 99

¹¹ [1977] FSR 62

Another case which highlights the extent to which an action in Passing off may be useful to celebrities is *Irvine v Talksport Ltd*¹² where the well known Formula One driver Eddie Irvine sued for the unauthorised use of his image in sales promotional material for a new radio station. While Irvine succeeded in his action, commentators have suggested that his case shows that use of passing off is limited to cases of false endorsement rather than misappropriation of image *per se*.

E. Breach of Confidence

As Ireland is a signatory to the European Convention on Human Rights¹³, an aggrieved personality may, in certain circumstances, also be able to rely on the 'Privacy' provisions of the Convention. Article 8 provides a right to respect for one's "private and family life, his home and his correspondence". To succeed, a litigant would have to show that what they are seeking to protect is in fact 'private' and that the right to privacy outweighs the right to freedom of expression set out in Article 10.

In *Douglas v Hello Ltd*¹⁴ photographs were taken of the plaintiff and his bride at a private wedding ceremony. It was held that as the photographs were taken in breach of the wishes of the plaintiff, this constituted a breach of his rights under Article 8. The plaintiff's Article 8 rights took precedence over the defendants 'freedom of expression' rights under Article 10.

In *Campbell v MGN Ltd*¹⁵ the famous model Naomi Campbell was photographed leaving a drug rehabilitation clinic despite denials from her that she was undergoing such treatment. It was held by the House of Lords that the photographs that were taken by the defendant infringed Campbell's right to privacy and that publication could not be justified in the public interest.

In a contrasting decision, the former wife of Sir Paul McCartney, Heather Mills was unsuccessful in preventing the SUN newspaper from publishing details of her address on the grounds that it would affect her safety – *Mills v News Group Newspapers Ltd*¹⁶.

F. Constitutional Protection

A discussion about Image Rights in Ireland would be incomplete without examination of the protection that may be available to personalities under the Irish Constitution¹⁷; albeit recognising that protection would only be available to Irish citizens.

¹² [2002] 2 All ER 414

¹³ 3rd September 1953

¹⁴ [2003] 3 All ER 996

¹⁵ [2004] 2 All ER 995

¹⁶ [2001] EWHC 412

Article 40.3.2 of the Constitution recognises that a citizen has the right to his/her good name and the right to a livelihood. While there is no explicit provision recognising an citizen's right to privacy, numerous cases over the years have implied a right to privacy. In *Kennedy and Arnold v Ireland*¹⁸ it was held that wiretapping of the plaintiff's phones had infringed their right to privacy. However, it is important to stress that Hamilton J indicated that the right to privacy was not absolute and is subject to requirements of public order and morality. In *X v Drury*¹⁹ Costello J held that the plaintiff's right to privacy outweighed the contrasting right of the press to freedom of expression. In this case, the defendant sought to prevent publication of interview notes in a sexual abuse case.

In *Herrity v Independent Newspapers Ltd*²⁰ photographs were published by the defendants of the plaintiff in the course of an affair with a Roman Catholic priest. The court held the purpose behind the publication of the photographs and other materials violated the plaintiff's right to privacy.

The closest the Irish courts to came to recognising that an individual's personality is a tradable commodity was in *O'Keeffe v Ryanair Ltd [2003] 1 ILRM 14* where the plaintiff agreed to participate in a promotion run by the airline Ryanair. The court held that the plaintiff had given up her rights of privacy in return for participating in the promotional campaign.

G. Unfair Commercial Practices

Unauthorised use of Image Rights may also be caught by the provisions of the European Unfair Commercial Practices Directive²¹, transposed into Irish law by the Consumer Protection Act 2007. The Act prohibits a range of unfair, misleading and aggressive trading practices if they essentially lead to consumers being deceived and confused. Importantly, a commercial practice is deemed to be mislead if *inter-alia* it provides 'false information or deceives consumers about the 'existence, extent or nature any approval or sponsorship (direct or indirect) of the product by others'. This could typically cover a case of misleading endorsement through use of a celebrity's image on products. It should however be borne in mind that the Directive and Act are not intended to offer redress to the owner of an Image Right. Instead, the remedies and penalties are only available in the case of a direct consumer complaint.

¹⁷ Constitution of Ireland, 1937

¹⁸ [1987] IR 587

¹⁹ 19 May 1994 – Unreported High Court

²⁰ [2008] IEHC 249

²¹ Directive 2005/28/EC of 11 May 2005.

Image Rights – A Global Overview

The discussion, development and implementation of a new statutory regime in Ireland would be incomplete without an examination of how other Common law jurisdictions deal with Image Rights. For the purposes of this article, I shall confine my analysis to Australia, Canada and the USA. It may seem surprising that I have not chosen to separately examine how English law deals with Image Rights. However, given that much of the jurisprudence in Ireland is, to a large degree, based on English jurisprudence and, in part, derived from Articles 8 & 10 of the European Convention on Human Rights (to which both nations are bound), I see no reason for a separate analysis of English law.

Before my analysis, I should point out that the University of Edinburgh undertook a study of how various countries throughout the world recognise and protect Image Rights²². The study, which was carried out in 2004 is perhaps the most comprehensive comparative analysis of how various countries treat Image Rights. No implementation of a new law in Ireland should be undertaken without a proper review of this invaluable study.

Australia

In Australia, rights in personality may be protected either as 'Economic Interests' or as 'Dignitary Interests'. For the purposes of my assessment of Australian jurisprudence I shall just concentrate on 'Economic Interests'.

Australia has a strong and recent body of developed 'Image Rights' jurisprudence. Nonetheless, Australian courts tend to rely on existing 'causes of action' over the development of new ones. And there does not appear to be any current desire to implement a new legislative regime. In the absence of such a regime, litigants tend to rely on passing off as the most suitable cause of action. Here courts have proven to be more flexible than the English and Irish counterparts. An example is the leading case of *Henderson v Radio Corporation*²³ where the New South Wales Supreme Court found that there was passing off in a case where the defendant's use of a suggestive image of a dancing band amounted to a misrepresentation of sponsorship or approval by the plaintiffs, who were professional entertainers. Significantly, the Court held that it did not matter that the plaintiffs did not have their own licensing program. There was no need for a field of common activity. This approach is clearly less restrictive than that adopted by English and Irish courts. Crucially, witness evidence of confusion in the case helped to establish that the offending pictures were an indication of approval or recommendation which induced consumer purchase.

²² AHRC Research Center for Studies in Intellectual Property and Technology Law – Comparative Study of Personality Rights: Research Project and Case Studies, 2004.

²³ [1960] SR (NSW) 576

The willingness of Australian courts to make a finding of misrepresentation of sponsorship or approval in cases involving celebrities can lead one to conclude that there is a *de facto* publicity right in Australia. The leading case in this regard is *Hogan v Pacific Dunlop Limited*²⁴. This was an action brought by the well known Australian actor Paul Hogan against the producers of an un-authorised television advertisement that played on Hogan's film 'Crocodile Dundee'. Hogan was aggrieved that the television advertisement used a lookalike actor, a similar setting (the 'that's not a knife' scene) and same name as the 'Crocodile Dundee' character ('Mick'). The Australian Federal Court found that there had been a misrepresentation despite the defendant arguing that the advertisement was merely parody.

A factor that Australian courts have also taken into account is whether the character in question has been developed for marketing purposes. In *Twentieth Century Fox Corporation v South Australian Brewery Co Ltd*²⁵ the defendant had produced a concept beer under the brand "Duff" (which was associated with the character Homer Simpson in the TV series "The Simpsons"). It was held that there was misrepresentation even though the plaintiffs had not indulged in, or supported, alcohol promotions. They had however been known for other merchandising activities. Interestingly, the defendants had used a disclaimer in their promotion, but the court stated that members of the public would not find this to be believable.

Like Ireland, misleading trade practices legislation may also seek to curb unauthorised exploitation of a celebrity's Image Rights. Under s53 of the Trade Practices Act 1974, misrepresentation, unauthorised sponsorship, approval or affiliation is proscribed by the Act. Sometimes aggrieved Plaintiffs will very often just base a claim on s53 rather than Passing off because the statutory right does not require prior reputation. It should however be pointed out that the provisions of the Act are limited to the conduct of co-operations.

Like most Common law jurisdictions, Australia does not yet have torts of 'Privacy' and 'Publicity' and I understand that there are no plans to introduce any legislative proposals. So, for the time being, personalities will have to rely on the mercy of Australian courts, which to date have been more liberal than their counterparts in England and Ireland in developing a separate body of Publicity law.

Canada

As a result of the decision by the Ontario Court of Appeal in *Krouse v Chrysler Canada Ltd*²⁶, it can be reasonably argued that Canada has now developed the tort of 'Appropriation of Personality'. The case involved the well known Canadian football player, Robert Krouse, who played as No.14 with a team called the 'Hamilton Tiger Cats'. The defendants had contracted with an advertising firm to come up

²⁴ (1989) 14 IPR 398

²⁵ (1996) 34 IPR 225

²⁶ (1974) 1 O.R 2d (C.A)

with an advertising promotion whereby a cardboard cut out likeness of Krouse was distributed to members of the public. The purpose of the card was to allow fans to track football scores. Krause sued Chrysler Canada for 'invasion of privacy', 'breach of confidence', 'unjust enrichment', 'passing off' and 'appropriation of personality'. At first instance it was held that Krouse had the right to protect the commercial advertising power in his image. On appeal, it was held that, while Canadian law contemplated the tort of 'appropriation of personality', the elements of the cause of action had not been made out in Krouse's case. Unfortunately, the Appeal Court was not very clear in what precisely were the elements of an action in 'Appropriation of Personality'. Greater clarity was provided in the case of *Athans v Canadian Adventure Camps*²⁷ where the court recognised 'an invasion of proprietary rights' and 'liability for commercial use of one's likeness' as grounds for an action in 'Appropriation of Personality'. The court held that 'personality' included both image and name.

The 'Quebec' approach

Canada is a country where power is divided on a federal and provincial basis. In most cases, where issues of personality arise, provincial law will apply. In view of its historical development and links with France, law in Quebec is essentially governed by a Civil Code²⁸. Article 3 of the Code enshrines the right to privacy as an attribute of personality and states:-

Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy. These rights are inalienable.

Article 36 of Civil Code sets out the acts which are considered to be invasions of the privacy of a person. The acts include '*using his name, image, likeness or voice for a purpose other than the legitimate information of the public*'.

The Civil Code should be read in conjunction with the Quebec Charter of Human Rights and Freedoms²⁹ which protects fundamental rights and freedoms, e.g. equality, political, judicial, economic, social and cultural. Under Section 4 of the Charter, it is stipulated that "every person has the right to the safeguard of his dignity, honour and reputation". Specifically, Section 35 states:-

Every person has a right to the respect of his reputation and privacy. No one may invade the privacy of a person without the consent of the person unless authorized by law.

²⁷ (1977) 17 O.R. 2d 425

²⁸ Civil Code of Quebec, 1 January 1994.

²⁹ 28 June 1976

Not surprisingly, the rights enunciated in the Charter and Civil Code are not absolute. The right to reputation is balanced against freedom of expression, freedom of the press and the right to information.

Insofar as the enforcement of 'personality' rights is concerned, s49 of the Charter provides:-

Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom. In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

The balancing of the right to privacy and the right to freedom of expression was played out in landmark case of *Aubry v. Éditions Vice-Versa*³⁰ The case involved the photograph taken of a teenage girl in public without her knowledge or consent. The Supreme Court held that the right to privacy provided for in the Charter included the right to control any use made of one's own image. The extent to which the courts in Quebec go to vindicating and protecting the right of privacy in situations involving the surreptitious taking of somebody's photograph goes well beyond the situation in Ireland and the United Kingdom. It is very unlikely that an Irish or English court would come to a similar finding in the absence of a specific statutory provision, similar to that in the Quebec Charter.

It is fair to argue therefore that Quebec probably has the most 'Privacy' friendly regime of any of the jurisdictions being reviewed in this article.

United States of America

Like Canada, the United States of America operates a federal system of government where considerable power vests with the individual states of Union to set their own laws.

In the United States, 'Personality Rights' (as 'Image Rights' are known as in the US), essentially derive from State based law. There has been only one notable decision where Personality Right was considered at Federal level. In the case of *Zacchini v Scripps-Howard Broadcasting Co*³¹ the US Supreme Court held that the First Amendment of the Constitution³² did not grant immunity from liability to a television station from broadcasting the 'human cannonball' act of the Plaintiff without his consent.

³⁰ [1998] 1 S.C.R 591

³¹ [433 U.S. 562](#) (1977),

³² Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Personality Right is also sometimes referred to as 'Right of Publicity' and was first recognised in the US in the case of *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*³³. In this case, the plaintiff was a distributor of chewing gum that had signed a contract with baseball players to exclusively use their images on the packaging of its product. The defendant, who was the plaintiff's competitor, induced the same baseball players to authorise them to use the same images for their rival product. The plaintiffs argued that they had an assignable right. Frank J disagreed. He held that the plaintiff's contract with the players created no more than permission to use their images; hence the plaintiff did not have a 'property right' which could be transferred.

Given that 'Personality Right' is primarily governed by State law, its application and recognition varies from State to State. It is generally accepted by commentators that Indiana has the most comprehensive Image Right law in the world³⁴. The State provides recognition, not just for name, image and likeness, but also signatures, photographs and gestures, distinctive appearances and mannerisms.

Some US States recognise 'Personality Right' through statute and others at common law. States like California recognise 'Personality Right' both through statute *and* at common law. For example, the 'Right of Personality' in California is a property right and as such is fully transmissible like any other property right. Under the Celebrities Rights Act 1985, personality rights for a celebrity in California lasts not just for the lifetime of that celebrity, but also for 70 years after his/her death. This no doubt was to remedy the effect of the decision of *Lugosiv v Universal Pictures*³⁵ where the descendants of Bela Lugosi were held not to have acquired his Personality Rights.

The most recent case involving 'Personality Rights' also involved elements of Trade Mark law. In *James "Jim" Brown v Electronic Arts, Inc*³⁶, the District Court of the Central District of California had to consider a claim of False Endorsement under the Lanham Act³⁷. The Court held that the First Amendment protected the right of Electronics Arts to use the image of a virtual football player that happened to resemble James Brown.

As a result of its governmental and political structure, there is no uniform application of 'Personality Rights' law in the US. Nonetheless, some US states have been quite progressive in protecting Image

³³ [202 F.2d 866 \(2d Cir.\)](#).

³⁴ See <http://rightofpublicity.com/statutes/indiana>

³⁵ [603 P.2d 425](#) (Cal. 1979)

³⁶ 2009

³⁷ (title 15, chapter 22 of the [United States Code](#))

Rights. Indiana's comprehensive legislative regime is one that Ireland should look to in implementing its own law.

Where to now – The Creation of a new statutory framework?

My analysis shows that it is possible for countries to create a separate and recognisable 'Image Right' body of law and indeed the Constitution provides the foundation for such a law. Given that jurisdictions like Guernsey are actively taking steps to introduce similar legislation, the time is now opportune for Ireland to be one of the few sovereign nations with a recognisable body of Image Rights law. Of course any law must strive to strike a balance between the right of a personality to protect his/her image and freedom of expression. This balance has been achieved elsewhere and I suggest that any new legislation should be modelled on a combination of Indiana's Right of Publicity statute and Quebec's Civil Code and Charter of Human Rights.

The benefits to both Ireland and celebrities of a recognisable 'Image Rights' law cannot be overstated. By creating a recognisable statutory enforceable right, opportunities can be created for celebrities to commercially exploit such a right and for Ireland to gain from such a right in the form of valuable tax revenue. In combination with its IP friendly litigation regime, Ireland could be easily recognised as the most 'Image Rights' friendly jurisdiction in the world.