

Regal Personalities and Royal Images:

Protecting the private lives and public personas of the Royal Family

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Abstract: Can a Royal personage be protected by the *Image Rights (Bailiwick of Guernsey) Ordinance 2012*? How would one balance the rights of free speech and free press with the economic and dignitary interests of the Royal personage? Does the European Convention on Human Rights have a role to play in this balancing act? If the Queen is not above the law, then neither should the law be beneath her.

I Introduction

Today, news has become entertainment (infotainment) and private stories have become public spectacle. Likewise, individual lives have been mercilessly exposed to glaring unwanted publicity. Should this continue or should there be boundaries of intrusion where distinctions are made between children and adults; between public figures and ordinary citizens; between people who choose to live in the spotlights, and ordinary citizens who stumble into the public forum, and between ordinary citizens doing something of public significance and those who do not?¹ Queen Elizabeth II² shall be used as an example to illustrate the conundrum in which she and her family find themselves. The Queen has two legal personalities: her public persona as Queen and Head of State; and her private personality as Elizabeth Windsor.

Individuals, including Sovereigns, should be allowed to define themselves and to decide how much of themselves to reveal or to conceal in different situations. As Jeffrey Rosen notes, privacy is a form of opacity, and opacity has its values. We need more shades, more blinds and more virtual curtains. By respecting the boundaries between public and private speech and conduct, a liberal state can provide sanctuaries from the invasions of privacy that are inevitable in social interactions.³

¹ Cohen-Almagor, R (2003) *Privacy-Two Episodes: Princess Diana's Death and Les Editions Vice-Versa Inc. v. Aubry*, 7 Int'l J. Comm. L. & Pol'y 6

² Her Majesty Elizabeth the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland, and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith

³ Rosen, J (2000) *The Unwanted Gaze*. New York: Random House

Other examples of this conundrum are Queen Victoria and Diana, Princess of Wales. Their deaths highlight their differences. Both provoked intense mourning. In 1901, the death of Queen Victoria, the symbolic head of an empire, was a very special event. She had been queen for longer than the lifetime of most of her subjects; yet, very few people actually knew her or saw her. For many years after the death of her husband, she made almost no public appearances. She was called her the 'Widow of Windsor.' Nobody outside of court circles had any idea what she sounded like or had ever heard her voice. Nevertheless, there were elaborate ceremonies of mourning, and a tremendous crowd in London watched the funeral procession.⁴

On August 31, 1997, Diana was killed in a high-speed car accident. The news was broadcast around the world instantly and was followed by an enormous outpouring of public grief. People wept openly at the death of the woman they called the 'People's Princess.'⁵ The news dominated television totally and internationally. In a survey conducted by the British Film Institute, 50% of the people surveyed said that Diana's death affected them 'personally.' Many said they were 'devastated.'⁶

The significant difference between these events was the depth of the grief, the sheer magnitude of the emotional reaction. Why was the grief so profound? Diana had no power and no particular role in society. She was no longer a member of the Royal family of England. She was divorced from Prince Charles. Nevertheless, the difference between Diana, Princess of Wales, and Queen Victoria was simply: Diana was a celebrity; Queen Victoria was not. Queen Victoria was incredibly famous; but not a celebrity in the modern sense.⁷

The present Monarch, Elizabeth Windsor, is entirely different from her predecessor. She is not remote from the public, but rather is constantly in the

⁴ Rennel, T (2000) *Last Days of Glory: The Death of Queen Victoria*, London: St Martin's Press

⁵ Blair, T (1997) People's Princess Speech made after the death of Diana; see, Mendick, R (2013) *Tony Blair's 'people's princess' speech honoured* available at <http://www.telegraph.co.uk/news/politics/tony-blair/10454599/Tony-Blairs-peoples-princess-speech-honoured.html>

⁶ Turnock, R (2000) *Interpreting Diana: Television Audiences and the Death of a Princess*. London: British Film Institute. People heaped incredible amounts of flowers around various London palaces - one estimate is that mourners left ten to fifteen tons of flowers.

⁷ Friedman, L (2004) *The One-Way Mirror: Law, Privacy, and the Media*, 82 Wash. U. L. Q. 319

public eye. As such, she must conduct herself in an entirely different manner. Her monarchy has been totally redefined by modern technology. The public knows many things about Elizabeth – she is a mother, a grandmother, a dog and horse enthusiast. We know the names of her children, her grandchildren, and her dogs.⁸ We know the sound of her voice. Her face is everywhere on currency, stamps, and newspapers. She is on television regularly. She is visible at public ceremonies, delivering speeches, and opening parliament - all of which is faithfully recorded for posterity. We even know who designs her clothes, and how much she pays for them. Because of all this exposure the Queen is a totally familiar presence; and therefore, she is a celebrity.⁹

II Can a Royal personage be protected by the Image Rights (Bailiwick of Guernsey) Ordinance 2012?

The Image Rights (Bailiwick of Guernsey) Ordinance 2012 (IRO) provides for the registration of personality and any image rights (including rights in characteristics, mannerisms or traits) unique to that personality. Infringement proceedings can be brought if the personality is used to garner unauthorized economic benefit. The ability to publicly assert, exploit and protect 'personality' has now become a property right – i.e. not just something that happens to a person, but something that can be commercially exploited by or stolen from a person. The IRO provides a legal framework which protects both economic and dignitary interests, without having to sacrifice one for the other.¹⁰

The registration of a personality immediately captures all present, historic *and future* images associated with that personality. In the context of the law, 'image' is framed extremely widely and means the name of the person and includes:

“...the voice, signature, likeness, appearance, silhouette, feature, face, expressions (verbal or facial), gestures, mannerisms, and any other distinctive characteristic or personal attribute of a personage, or...

⁸ In 2007, Queen Elizabeth II had five corgis: Monty, Emma, Linnet, Willow and Holly; five cocker spaniels: Bisto, Oxo, Flash, Spick, and Span; and four dorgis dachshund-corgi crossbreeds): Cider, Berry, Vulcan and Candy. Monty.

⁹ Friedman, *supra*

¹⁰ Adrian, A (2014) *Image is Everything: The New Image Right of Guernsey*, available at <http://icondia.com/wp-content/uploads/2014/01/Image-is-Everything.pdf>

*...any photograph, illustration, image, picture, moving image or electronic of other representation ('picture') of a personage and of no other person ..."*¹¹

If the personality concerned is capable of expressing something unique by any means, it can be protected as a 'registered image' under the law. Moreover, as registered, protected intellectual property, a registered image (or the entire registered personality) can be sold or licensed for the authorized use by others recognizing the value that was hitherto difficult to clearly define and capture.¹²

Because Queen Elizabeth is a recognizable celebrity, it is clear that she is a personality who is capable of expressing something unique. The IRO has special provisions and protections for the Royal family. Section 7, in particular, states:

"(1) A personality or image which consists of or contains -
(a) the Royal arms, or any of the principal armorial bearings of the Royal arms, or any insignia or device so nearly resembling the Royal arms or any such armorial bearing as to be likely to be mistaken for them or it,
(b) a representation of the Royal crown or any of the Royal flags,
(c) a representation of Her Majesty or any member of the Royal family, or any colourable imitation thereof, or
(d) words, letters or devices likely to lead persons to think that the applicant has or has recently had Royal patronage or authorisation,
shall not be registered unless it appears to the Registrar of Intellectual Property ('the Registrar') that consent has been given by or on behalf of Her Majesty or, as the case may be, the relevant member of the Royal family."¹³

If Queen Elizabeth were to choose to register her image, she could. If the Duke and Duchess of Cambridge would choose to register their images and that of their son, Prince George, they could with the consent of Her Majesty. But what would that mean?

III How would one balance the rights of free speech and free press with the economic and dignitary interests of the Royal personage?

¹¹ *The Image Rights (Bailiwick of Guernsey) Ordinance 2012*, s3(1)(b) and (c)

¹² Adrian, A supra

¹³ *The Image Rights (Bailiwick of Guernsey) Ordinance 2012*, s7 (emphasis added)

What happened to the right to freedom of the press and free speech? Two fundamental background rights underlining every democracy are respect for others and not harming others.¹⁴ While accepting of the inclination to provide wide latitude to freedom of expression, there is a 'democratic catch' and a need for prescribing the scope of tolerance. The right to free expression and free media, supplemented and strengthened by the concept of the public's right to know, does not entail the freedom to invade individual privacy without ample justification.¹⁵

What if the personality is well-known? A celebrity? Or famous?¹⁶ Is there a difference? Yes, there is. Not every famous person is a celebrity. Queen Victoria is a famous person; Princess Diana was a celebrity. Daniel Boorstin defined a celebrity as someone who is famous for being famous – “well-known for his well-known-ness.”¹⁷ A celebrity is a product of the mass media. They are a famous and familiar person. It is the illusion of familiarity that makes a celebrity a celebrity.¹⁸ Celebrities live in a different world from the rest of us. This world is perceived to be wondrous, magical, and awesome. They are always famous and usually quite rich. On the other hand, they live in our familiar world, and are familiar people to us. This familiarity makes them quite ordinary, ironically. However, a celebrity is a person who exists as a heightened or exaggerated or special form of the ordinary.¹⁹ This is highlighted by the way the paparazzi follow them around.

The term 'paparazzi' is defined as “a freelance photographer, especially one

¹⁴ Dworkin, R (1985) "Liberalism" in *A Matter of Principle*. Oxford: Clarendon Press; See also, The Sigma Delta Chi, Society of Professional Journalists Code of Ethics which states “ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.” The Code further instructs journalists to show compassion for those who may be affected adversely by news coverage and to avoid pandering to lurid curiosity, maintaining that the “pursuit of the news is not a license for arrogance.” Founded in 1909 as Sigma Delta Chi, the Society of Professional Journalists is the US's largest and most broad-based journalism organization. SPJ is a not-for-profit organization made up of more than 10,000 members dedicated to encouraging the free practice of journalism; stimulating high standards of ethical behavior; and perpetuating a free press. Sigma Delta Chi's first Code of Ethics was borrowed from the American Society of Newspaper Editors in 1926. In 1973, Sigma Delta Chi wrote its own code, which was revised in 1984 and 1987. The present version of the Society of Professional Journalists' Code of Ethics was adopted in September 1996.

<http://spj.org/awards/SDX98/rules.htm#society>; <http://spj.org/ethics/ethics.pdf>

¹⁵ *Edward RocknRoll v News Group Newspapers Ltd* [2013] EWHC 24

¹⁶ A similar distinction is made in trademark law. See i.e., Mostert, F (1997) *Famous and Well-known Marks: An International Analysis*. London: Butterworths

¹⁷ Boorstin, D (2012) *The Image: A Guide to Pseudo-Events in America*. 50th ed. New York, N.Y.: Random House

¹⁸ Schickel, R (1985) *Intimate Strangers: The Cult of Celebrity*. Garden City, N.Y.: Doubleday

¹⁹ Friedman, supra

who takes candid pictures of celebrities for publication."²⁰ The paparazzi pursue celebrities who captivate the public. They stalk their celebrity victims with an annoying and persistent presence. They will go to any length necessary to get the shot they desire, even to the lengths of their longest lenses. The public's obsession further encourages the paparazzi in their pursuit and effectively endorses their invasive tactics as acceptable practice. That is, until some harm or the near threat of harm occurs. Then the public becomes outraged enough to criticize the newsgathering techniques of the paparazzi.²¹

Frequently, public figures are considered to have consented to media persecution. They have forfeited their privacy rights. To what degree does a celebrity need to court the public before it diminishes his/her right to privacy? The position of the press stems from a notion that the public has a right to know.²² The next question is what exactly falls within this much coveted and regularly demanded public right? Should the intimate details of a public figure's private life become common knowledge on demand?²³

Consider the case of the topless pictures of the Duchess of Cambridge on holiday,²⁴ or more recently the photo of Prince George on his way to his first holiday.²⁵ "The Duke and Duchess of Cambridge have been warned by a legal expert not to 'cherry pick' which privacy cases they pursue, after a paparazzi photo of Prince George was published in a magazine."²⁶ Kensington Palace declined to comment on the photos published in Hello! But Royal sources told The Telegraph that it did not object to the pictures because they were taken "in a public place, without any harassment or pursuit".²⁷ What is of interest to the public has long been the determining factor in discerning what is or is not

²⁰ Random House Webster's College Dictionary (1991) New York, N.Y.: Random House. The use of the term originated from the surname of such a photographer in the 1959 Federico Fellini film, *La Dolce Vita*.

²¹ Nordhaus, J (1999) *Celebrities' Rights to Privacy: How Far Should the Paparazzi Be Allowed to Go?* 18 Rev. Litig. 285

²² *Edward RocknRoll v News Group Newspapers Ltd* [2013] EWHC 24

²³ Ibid

²⁴ Rayner, G & Samuel, H (2013) *Woman photographer and publisher charged in probe into topless pictures of Duchess of Cambridge in France*, The Telegraph available at <http://www.telegraph.co.uk/news/uknews/kate-middleton/10016407/Woman-photographer-and-publisher-charged-in-probe-into-topless-pictures-of-Duchess-of-Cambridge-in-France.html>

²⁵ Gander, K (2014) *The Duke and Duchess of Cambridge warned not to 'cherry pick' privacy battles*, The Independent available at <http://www.independent.co.uk/news/uk/home-news/the-duke-and-duchess-of-cambridge-warned-not-to-cherry-pick-privacy-battles-9107518.html>

²⁶ Ibid

²⁷ Ibid

newsworthy material.²⁸ “Mere newsworthiness is not a free-for-all when it comes to privacy.”²⁹ Consequently, the balance between ‘the public’s right to know’ and an individual’s right to privacy is an uncertain one.³⁰ Nevertheless, the right of a public figure to protect his or her image against commercial misappropriation exists and has been afforded legal protection in a vast majority of jurisdictions.³¹

How genuinely free the press is, is often a reflection on the preferences and values of a particular nation. In the UK, the press is allowed great leniency with respect to news gathering techniques. They have little respect for an individual’s right to privacy, as Princess Diana found to her dismay.³² The right to freely express one’s self is an equally significant, equally coveted liberty. The values embodied in both rights are by their very nature in constant competition.³³ Therefore, an individual must often relinquish a certain degree of his privacy in order to enjoy the right to live in a society in which information and opinion flow freely.³⁴ The value of privacy in its relation to freedom has been described as “a three-way deal between state power, popular instinct, and the media’s muscle.”³⁵

VI Does the European Convention on Human Rights have a role to play in this balancing act?

Recently another Royal chose to take on the press but with no success. The European Court of Human Rights (ECHR) rejected a complaint by Princess Caroline relating to the refusal of the German courts to prevent the re-publication of photographs taken of her and her husband in an unspecified location while on holiday without their knowledge.³⁶ An article was published

²⁸ Robertson, G (15 Sept 1997) *Privacy Matters*, New Yorker

²⁹ *Edward RocknRoll v News Group Newspapers Ltd* [2013] EWHC 24

³⁰ Barendt, E (2012) *Freedom of speech and privacy*, available at <http://freespeechdebate.com/en/discuss/freedom-of-speech-and-privacy/>

³¹ Adrian, *supra*

³² *Ibid*, discussing a lawsuit brought by Princess Diana against a gym she regularly attended for installing a hidden camera in the ceiling and secretly taking photographs of her as she exercised; Princess Diana asked the court to do something that had no precedent in Britain: to protect her privacy; see also, On this day in history, 1993: *Diana sues over gym photos* available at http://news.bbc.co.uk/onthisday/hi/dates/stories/november/9/newsid_2515000/2515739.stm

³³ Barendt, *supra*; See also, *Arrington v. New York Times Company*, 434 N.E.2d 1319, 1322 (N.Y. 1982): discussing the tension between the right to free speech and the right to privacy

³⁴ *Ibid*

³⁵ Robertson, *supra*

³⁶ *von Hannover v. Germany* (no. 3 – application no. 8772/10)

about the trend in celebrities renting out their holiday homes; photos were included. The article discussed the possibility of renting the holiday villa owned by the von Hannover family in Kenya.³⁷

The photographs in question were published originally in March 2002. Since then, there have been numerous court appearances in both the German and European Courts. These culminated in the German Federal Court of Justice dismiss Princess Caroline's application for an injunction preventing further publication of the photographs.³⁸ The Court held that Princess Caroline was a public figure and that, while the photograph did not relate to a subject of general interest, the Article 10 rights (freedom of expression) of the magazine's publishers should not be overridden by the applicant's Article 8 right (respect for her private life).³⁹

The ECHR upheld the lower court's decision by reiterating that the German courts had taken into consideration the essential criteria in balancing the competing Article 8 and Article 10 rights:

1. Whether the information contributes to a debate of general interest
2. How well known the person concerned is and the subject matter of the report
3. The prior conduct of the individual concerned
4. The consequences of publication
5. The circumstances in which the photos were taken⁴⁰

The ECHR determined that the article was of substance and contributed to a debate of general public interest. This was not just a transparent pretext to publish celebrity holiday snaps. Moreover, the Court had found on several previous occasions that Princess Caroline and her husband are public figures and cannot expect the same degree of privacy as unknown people.

Since the enactment of the Human Rights Act 2001, the British courts are bound to protect an individual's right to privacy.⁴¹ Resistance to the expansion of this personal right to privacy was inevitable since the traditional focus in the United

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid citing *Axel Springer v Germany*, App No 39954/08

⁴⁰ *von Hannover v. Germany* (no. 3 – application no. 8772/10)

⁴¹ *Douglas v. Hello! Ltd.* [2001] Q.B. 967, 987 (Eng. C.A.)

Kingdom has been on property rights, as opposed to personal rights. As newer technology emerges, privacy rights are more important than ever, for these rights ensure that the press does not overstep its grounds.⁴² Whether based upon an extension of the common law breach of confidence, upon the privacy rights of the Convention, or upon some combination of the two, United Kingdom courts should grant citizens protection of their right to privacy, including their Sovereign.

V Conclusion

Various members of the Royal family have set up firms to protect their 'intellectual property rights', Kensington Palace has said.⁴³ In a move often associated with celebrities, the Royal couple has established companies in each of their names.⁴⁴ This will make it possible for the pair to sell officially endorsed products and take action against anyone selling items that could harm their image. However, a Kensington Palace spokesman said that the companies remained dormant after being formed more than a year ago and 'are not intended to be used as trading arms'.⁴⁵

This type of company is similar to the one that was incorporated upon the death of Princess Diana. The Trustee of her memorial fund attempted to protect the intellectual property rights in her name and image through a series of designated photographs. They believed that by holding the copyright in the photographs they could control her image. This is interesting because the law does not allow copyright in an image, only in the fixation of that image. As such, the attempt to control the quality of Princess Diana memorabilia through copyright failed.⁴⁶

Similarly, the court failed to find a famous mark in a case involving the 'Diana, Princess of Wales' moniker.⁴⁷ The executors brought an action for trademark dilution against the same company for selling jewelry, commemorative plates,

⁴² Cardonsky, L (2002) *Towards a Meaningful Right to Privacy in the United Kingdom*, 20 B.U. Int'l L.J. 393

⁴³ Prince Harry has founded a company called Tsessebe, after an African antelope.

⁴⁴ Prince William founded APL Anglesey. Kate Middleton set up CE Strathearn. Prince Harry has also founded a company called Tsessebe, after an African antelope.

⁴⁵ Press Association (2014) *William and Kate set up firms to protect image rights*, The Guardian available at <http://www.theguardian.com/uk-news/2014/jan/18/william-kate-companies-intellectual-property>

⁴⁶ *Cairns v. Franklin Mint Co.* 24 F. Supp. 2d 1013 (C.D. Cal. 1998)

⁴⁷ *Cairns v. Franklin Mint Co.* 107 F. Supp. 2d 1212 (C.D. Cal. 2000)

sculptures, and dolls depicting the princess.⁴⁸ First, the court determined that for a name to qualify for protection under the Act, it must have acquired secondary meaning.⁴⁹ The Trust argued that “because Princess Diana is well-known for her charitable activities, her title has acquired a secondary meaning as to charitable and humanitarian services.”⁵⁰ However, the court called that an “absurd contention” because it would mean that “Diana, Princess of Wales” was no longer used to identify the individual, but rather, only her charitable activities.⁵¹ The princess was recognized as a “member of the royal family,” for her “role as a mother,” and for her “image as a fashionable princess.”¹⁶¹ The court granted summary judgment for the defendants on the dilution claim. ¹⁶²

With this experience behind them, the Royal family may be trying to manage their image through privacy. This could explain why the Duchess of Cambridge is maintaining an unpredictable stance on privacy with regard to paparazzi pictures of Prince George. The photos described above were not objected to by Kensington Palace. The Duchess’s silence appears to be at odds with past objections to ‘private’ photographs taken of her in public places. This has raised the question of whether she is exercising ‘image control’ rather than protecting her privacy.⁵²

Long lens photographs of the Duchess getting off a plane en route to Mustique with the third in line to the throne appeared on the cover of Hello! magazine and across eight inside pages. It is the first time paparazzi pictures of Prince George have been published. The pictures were sold to the magazine by a freelance photographer. They are the first images of the future king since his christening in October.⁵³ A Royal aide said of the Prince George pictures: “We would of course prefer that the pictures hadn’t been published, but in this instance there was no harassment and no pursuit. The pictures were all taken at an airport and the Duchess didn’t know she was being photographed.”⁵⁴

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

⁵² Raynor, G (2014) *Duchess of Cambridge will not take action over paparazzi pictures of Prince George*, The Telegraph available at <http://www.telegraph.co.uk/news/uknews/kate-middleton/10615637/Duchess-of-Cambridge-will-not-take-action-over-paparazzi-pictures-of-Prince-George.html>

⁵³ Ibid

⁵⁴ Ibid

This is an enlightening and pointed remark from the Palace as civil actions and prosecutions are easier under the UK Protection from Harassment Act (1997). This law makes it a criminal offence, punishable by imprisonment, for a person knowingly and unreasonably to pursue “a course of conduct which amounts to harassment of another”.⁵⁵ The test of constructive knowledge is whether “a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.”⁵⁶ Harassment includes causing alarm or distress, and civil actions for damages may also be pursued.⁵⁷

As there was no discernible harassment in this case, could they successfully sue for invasion of privacy at the ECHR based upon the principles enumerated earlier?⁵⁸

1. Whether the information contributes to a debate of general interest

These are the first images of Prince George to become available. There is always considerable interest in the children of famous parents.

2. How well known the person concerned is and the subject matter of the report

As members of the Royal family, they are deemed to be well known persons of interest as are their holiday plans and choice of fashion.

3. The prior conduct of the individual concerned

The Duke and Duchess have taken steps in the past to protect their privacy. They have now gone so far as to set up companies which can protect their intellectual property. However, they seem to pick and choose which battles they wish to fight. There are rumours that unflattering photographs are sometimes quashed; while unofficial complimentary photographs are tolerated.

4. The consequences of publication

As Kensington Palace admitted, there was no harm in the pictures. In fact, they were somewhat blurry and a great distance. In most pictures, Prince George’s face is hidden by his hat.

5. The circumstances in which the photos were taken

⁵⁵ *Protection from Harassment Act (1997)*, s 1(2)

⁵⁶ *Ibid*

⁵⁷ *Ibid*

⁵⁸ *von Hannover v. Germany* (no. 3 – application no. 8772/10)

The photographs of the Duchess of Cambridge, carrying Prince George on her hip, were taken as she and her family got off a British Airways flight in the Caribbean and switched to a smaller aircraft for the short hop to Mustique. She was unaware that she was being photographed.

This sounds like a case very similar to Princess Caroline's. The Royal family treads a fine line between what is invasive and what is not. They would risk accusations of image control if they were inconsistent in their guidance to the media. Allowing unauthorized but happy pictures of the Duchess, but not allowing photographs of a grumpy-looking Duke of Cambridge getting off a train at Cambridge station, sends a very mixed message of what is acceptable. "Privacy is a very uncertain area of the law. It has ebbed and flowed over the last 10 years, but what previous cases have established is that that there should be a degree of consistency [by complainants]. If you do permit some things and not others it is a form of image control as opposed to a form of privacy."⁵⁹

After the death of Princess Diana, three daily newspapers⁶⁰ announced that they would no longer use paparazzi pictures of Princes William and Harry in the first step to agreeing to tighter self-regulation. The Mirror said it "will now work swiftly with the Press Complaints Commission to protect these boys from intrusive paparazzi pictures."⁶¹ Andrew Marr, editor of the Independent, declared that "we will never again publish any pictures of the princes in a private situation and we will be more sparing of pictures of the princes and other members of the royal family in other situations as well."⁶² Associated Newspapers, publishers of the Daily Mail, Mail on Sunday, and London's Evening Standard, declared that any use of paparazzi pictures will have to be cleared with Lord Rothermere, the proprietor who, in turn, proclaimed that there would be a ban on "all intrusive pictures except where they are considered necessary."⁶³ Max Hastings, editor of the Standard, said: "There can be few British journalists who did not spend some hours this weekend brooding about privacy after Lord Spencer's vengeful contribution ... Some members of the newspaper trade have behaved like animals, and it is strongly in the public interest that they should be deterred from

⁵⁹ Raynor, supra citing Chris Hutchings, a privacy expert with the law firm Hamlins.

⁶⁰ *The Mirror*, *The Sun*, and *The Independent*

⁶¹ Cohen-Almagor, supra citing Ahmed, K (1997) "Editors Bar Snatched Pictures of Princes", *The Guardian*

⁶² Ibid

⁶³ Ibid

doing so."⁶⁴

These 'honourable' sentiments were maintained while the young Princes were at school. The only photos that were released were those issued by the Palace. Public sensitivity after the death of Princess Diana was strong. This is not the case anymore. The tabloids are back in action taking intrusive pictures of the adult Princes and their lives. Already, the Royal couple has been assailed by scandal when they thought that they could relax in the privacy of a friend's home. Needless to say, they do not want to repeat history. By setting up companies to protect their image rights, the Duke and Duchess have demonstrated the value they place on their image.

The Queen should do likewise.⁶⁵ "If a publisher found itself fighting a privacy case brought by a member of the Royal family in the future, the argument you would use would be that it's not about a right to privacy, it's about them controlling their image."⁶⁶ If the Queen truly wants to protect her image and that of their family, then she should take a close look at the Guernsey Image Rights Ordinance. It would be an ideal way for her to protect all aspects of her personality and that of her heirs, now and forever. If the Queen is not above the law, then neither should the law be beneath her.

This note is only intended to give a brief summary and general overview of this area of law. It is not intended to be, nor does it constitute, legal advice and should not be relied upon as doing so.

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⁶⁴ Ibid

⁶⁵ As should each member of the Royal family.

⁶⁶ Raynor, supra citing Chris Hutchings, a privacy expert with the law firm Hamlins.

Icondia comprises a team of experts that focus exclusively on the registration and management of image rights for an international customer base.

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