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Intellectual Property Alert: Celebrities v. Paparazzo Copyright in Photographs of Themselves

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It is settled law that copyright in a photograph, as with any original work of authorship, belongs to the author: the photographer. Barring assignment, license, or applicable affirmative defense, no other party has the right to reproduce or use it. Even if it's a picture of you.

In recent years, a number of celebrities have discovered to their chagrin that paparazzi photographs they have posted to social media have drawn lawsuits based on copyright infringement; these include such mega-stars as Katy Perry, LeBron James, Jennifer Lopez, Victoria Beckham and Justin Bieber. It's particularly aggravating to celebrities, as the paparazzo corps' strategies to get photographs are aggressive and intrusive; the suits have raised tensions further.

One can well imagine a celebrity wanting to use such a photo either for their own publicity, or to demonstrate paparazzo invasions of privacy. Under the copyright law, however, unless certain defenses are present, such a lawsuit could succeed.

The author (in this case the photographer) possesses a bundle of exclusive rights under the Copyright Act, including the right to use, copy, or sell a work. The penalties under the Copyright Act can be heavy, since the penalties are typically calculated per copy, where a single Instagram post could net well over a million viewers (each view a copy). It's not surprising therefore that parties often settle before the court would have a chance to rule on some of the arguments raised by stars in their defense, such as implied license, fair use, or co-authorship.

One typical case is that of Justin Bieber, who was sued for reposting an image of himself sitting in the back of his car. It quickly settled for an undisclosed amount.

In a different case, however, LeBron James countersued the owner of the photograph based on his state right of publicity; that case is pending. Filings in the suit state, "Mr. James has never licensed or otherwise permitted the use of his image or likeness for any purpose to plaintiff ... [and] [p]laintiff has exploited Mr. James's image and likeness

to promote plaintiff's photography services." That case is pending.

Others involving Khloe Kardashian and Katy Perry, like the Bieber case, reached confidential settlements.

What Does This Mean For You?

It's very simple: do not post or otherwise use images of yourself taken by others unless you are prepared to do battle. Better, anyone likely to be the target of paparazzi photos should consider hiring their own social media photographers to provide content. If you do get sued, it is likely to be most expedient to settle quickly and avoid litigation as it is not at all clear that defenses will be effective in avoiding potentially significant damages should an unfavorable ruling result.

