

**CONNOLLY SUTHERS LAWYERS LEGAL ALERT
MEDIA LAW- BINGLE IN THE SHOWER - WHO OWNS A PHOTO?**



A slight Bingle in the shower??

Overview

In Australia, copyright law is set out in the Copyright Act 1968 (Cth). This is Federal legislation, and applies throughout Australia.

Copyright protection is free and automatic, from the time a work is first written down or recorded in some way. For example, as soon as a poem is written, or a song is recorded, it is protected. There is no registration system for copyright in Australia.

Ownership of photos

Generally, the photographer or camera-person owns the images they take.

Copyright protects artistic works including (but not limited to) paintings, cartoons, sculpture, architectural plans, and photographs (regardless of whether the work is of artistic quality or not!). For copyright purposes an artistic work will be protected if it is "original". In copyright terms, it's not hard for something to be original: it really just means that the work isn't a mere copy of something else.

Remember, copyright rights may be assigned (which means transferred or sold) or licensed. E.g. images or stories sold to the media.

In the case of Facebook the user continues to retain ownership of their photos. However through the statement of rights and responsibilities the user gives Facebook a "non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP* content that you post on or in connection with Facebook ("IP License")." The statement of rights and responsibilities also provides "This license ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it."

The practical effect of this statement of rights and responsibilities is that Facebook may as well own your IP because you have authorised them to do just about anything with it. It is however of some comfort to know that this permission is somewhat limited by your privacy settings. The short answer is - it would be unwise to upload anything onto Facebook that you did not want *the whole world* to know!

What is not protected by Copyright?

Although the photographer or camera-person will, in most cases, own the images there are exceptions. [Personal images of people's face or body are not protected by copyright].

Do you need permission to take photos of someone?

It is generally not an invasion of privacy to take another person's photograph. It is the use of an image which can be prevented or restricted by law. E.g. you are entitled to take a photograph of anyone including a famous person (with the exception of children). However it is your 'use' of that photo which is governed by the law. Another example involving recent headlines is the Lara Bingle/ Mr Fevola saga - Brendan Fevola while entitled to take the photo of Lara Bingle was not entitled to publish or distribute it (if indeed he did)

Defamation

In a nutshell, the law of defamation protects people's reputations, and concerns the way you speak about or refer to people and how you use their images.

Defamation is defined as a communication, from one person to at least one other, that lowers or harms the reputation of an identifiable third person and has no legal defence.

A person/plaintiff wanting to bring a defamation action under Australian law has to prove three points:

1. that the communication has been published to a third person;

2. that the communication identifies or is about the person/plaintiff; and

3. that the communication is defamatory.

It is important to remember that everyone involved in the communication is potentially liable for it. This means a person/plaintiff can not only try going after whoever created the defamatory material but also the website/newspaper/broadcaster that hosts it or distributes it.

Conclusion

With the attitude towards Facebook fast becoming that which attached to the mobile phone ("I don't know how I could function socially without it!") it seems that Facebook has become part of Gen Y and Z's everyday life, and in particular, social life. Facebook is undeniably a brilliant way for people to stay in contact with each other, especially given the ease and frequency with which young people are traveling overseas. Just remember if it sounds too good to be true it probably is! There are few important things to remember:

1. While you own the copyright to most of the photos you take, with the exception of happy snaps of friends and family (copyright does not attach to personal images of people's face or body), you authorise Facebook to do just about anything with them all without passing ownership to Facebook.
2. Your privacy on Facebook is only as good as your privacy settings - for all you know there could be some random organisation in Asir (a little known province in Saudi Arabia) using your image to promote some obscure product!

Need more information?

Please call us if you require more information about media law in Queensland.

Happy blogging!

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