

False Light and Appropriation in Social Media

COM 530 7-1 Presentation

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Types of Privacy Rights

- There are two specific types of privacy rights under discussion today:
 - False Light—in which a person's or persons' words or actions are misrepresented, e.g., by inserting them into an untrue situation, without regard for the consequences of such action regardless of whether the perpetrator knew about the falsehood (or simply did not care to fact-check).
 - Appropriation—in which the image or name of a person or persons is used, perhaps out of context, for the benefit of another.

False Light, Example One

- Warren E. Spahn v. Julian Messner, Inc. (1964) (Supreme Court, Special and Trial Term, New York County., 1964): Messner undertook to publish a biography of Spahn, a baseball player, aimed at children. It stated that Spahn had been awarded a bronze star in the military, which was not true. The Court ruled in Spahn's favor despite an appeal, holding that the "emotional" distress suffered by Spahn as a result of this untrue account erased any constitutional protection such fiction would otherwise have enjoyed.

False Light, Example Two

- *Cantrell v. Forest City Publishing Co.* (1974) (Moore et al., 2012): A local reporter, Joseph Eszterhas, covered the collapse of Silver Bridge at Point Pleasant, West Virginia, in which 44 people were killed. Eszterhas focused on the family of Melvin Cantrell, writing an award-winning feature on the funeral, and then wrote a follow-up piece five months later. The follow-up contained false statements and inaccuracies, including a paragraph about how Cantrell's widow wore the same (non)expression then as she had during the funeral... but Eszterhas did not actually meet with Margaret Cantrell this time around. This and other untrue statements (about the family's supposed poverty and the condition of the home) led the Court to find in the Cantrells' favor, awarding compensatory damages for false light, for the "outrage, mental distress, shame and humiliation" suffered by the Cantrell family as a result.

Appropriation, Example One

- *White v. Samsung Electronics America, Inc.* (1992) (Moore et al., 2012): Vanna White sued Samsung for using her likeness to promote its own brand. Even though Samsung had not used her image, the Court ruled in White's favor, because Samsung had used her identity and her (reasonably easily identified) personality, in the form of a robot turning letters on a game show, to promote its products. (JRO, 2013)

Appropriation, Example Two

- Mr. Rogers and Burger King Corporation (1984) (Moore et al., 2012): Burger King agreed to stop broadcasting a 30-second commercial that showed a likeness of Mr. Rogers, of the PBS show Mr. Rogers' Neighborhood, ostensibly endorsing Burger King products by using the word "McFrying" to refer to the products of a competitor. Mr. Rogers had never used his character or likeness commercially (Dougherty, 1984), turning the commercial into a clear case of appropriation.

False Light and Social Media

- The following guidelines may be of help to address possible incidences false light within the context of social media :
 - Always check your facts: verify your facts using at least two separate sources, and do not introduce elements into your posts that you have not verified. If you are reposting or retweeting something, click through to the original article or post and read it through first, and then verify the facts contained therein.
 - Do not take liberties with the information you have obtained; refrain from extrapolating ideas from the facts already present, regardless of your motivation. Using one of the aforementioned cases as an example, do not use facts in evidence (the dilapidated condition of a dwelling) to presume facts not in evidence (the family's poverty).

Appropriation and Social Media

- The following guidelines may be of help to address possible appropriation within the context of social media:
 - Do not use a person's image or words out of context: using an image you've come across on social media to present a story or opinion that was not part of the original image's narrative is unacceptable unless prior (written) permission of the subject(s) has been obtained. For example, do not use a photo of a couple downloaded from a Facebook post or shot with a camera in a park with an unrelated and possibly damaging article (e.g., on the subject of divorce or couples' therapy) unless you have approached the original subjects and obtained their express permission to do so, and, assuming permission has been obtained, without appropriate and complete citations and/or disclaimers.

Appropriation and Social Media, Continued

- Do not take a photograph of or otherwise record a person's image or word without their express and written permission to do so. The advent of telephoto lenses and other advanced technological tools should not be used to circumvent reasonable expectations of privacy to lend credence to a social media post, or otherwise used for the advantage of someone else. Always obtain the subject's permission to capture and use their likeness, informing them of the context in which it is to be used, and provide full citations and disclaimers when the image or recording is used.

Final Thoughts

- In an age in which it is relatively easy to download photos, videos, and recordings, from multiple sources, and in which it is even easier to reach a wide audience using social media and other forms of self-publication, it is critical that we, as responsible members of our organization, safeguard the privacy of our subjects and our audiences.
- As such, whenever in doubt, consult your supervisor or the Legal team before you use images or possibly inaccurate or untrue elements in your social media posts: they are here to protect you, your audience and our company.

References

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