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Who Owns Celebrity? – Law and the formation of Fame

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Introduction

We were devastated and shocked by the news. We felt as if our home had been ransacked and everything taken out of it and spread in the street. It was a truly gut-wrenching and very disturbing experience which left both of us deeply upset.

-Michael Douglas (*Douglas v Hello! Ltd.* [2003] EWHC 786 at para 83)

Such a statement is resonant of a severe crime, but what sounds like a terrible and degrading misdeed turns out to concern the sale of pictures, taken at a celebrity wedding reception. The movie stars Catherine Zeta-Jones and Michael Douglas hosted their wedding at the Plaza Hotel, New York in 2000 (see <<http://abcnews.go.com/Entertainment/story?id=113151&page=1-.T5b0LI5hyvk>>). They granted the British magazine *OK!* exclusive rights to publish pictures of their marriage. However a third-party photographer managed to gain access to the premises, took pictures and sold them to the competitor magazine *Hello!*. After *Hello!* had published the pictures, Zeta-Jones and Douglas sued the magazine in order to receive compensation for their contractual partner *OK!*. They won the case eventually, being granted damages for breach of confidence (*Douglas v Hello! Ltd.* [2003] EWHC 786 at H37). Despite Michael Douglas stressing his irritation about the unlawful intrusion into the pair's privacy, the true reason for the law suit appears to be commercial. The pair had received £1,000,000 from *OK!* Magazine, but *OK!* could not make use of the monopoly to publish the couple's pictures (*Douglas v Hello! Ltd.* [2003] EWHC 786 at para 1). In this context Douglas's statement is an expression of the engrained perception that a celebrity has accomplished great achievements and is therefore entitled to harvest all fruits of celebrity. In times of marketing companies designing publicity strategies, the media featuring individuals in TV or press and individuals creating fan fiction as well as other user-generated content about their "stars", this assumption seems to show only one of the manifold causes for celebrity. 1

This article examines the phenomenon "celebrity" through an analysis of literature from cultural studies, marketing, law and sociology. It seeks to make a contribution to the issues of what celebrity is, who contributes in its production and how the legal system reflects these structures of celebrity. 2

What is Celebrity?

In every day life everybody seems to know, or at least think they know, what is meant by the term celebrity. We see people in arts, music, films, TV series, politics, sports and the news who are generally considered famous or popular because they are featured in everyday discourse. But what actually is the attribute or meaning of celebrity? Is it mere popularity? Is it recognisability? Or do people measure celebrity through a person's impact on the audience? Daniel Boorstin (1971) stated: "The celebrity is a person who is well known for their well-knownness". This statement not only determines the problem of finding a suitable definition of celebrity but also commissions to give thought to the meaning of "well-knownness". For the purpose of this article celebrity will be examined from several perspectives. Starting from the literal meaning, the article proceeds of to assess the way celebrity is communicated in order to explore its core. 3

Attempts of Definition and the Literal Meaning

The Oxford Dictionary defines celebrity as "the state of being well known" 4 (<<http://oxforddictionaries.com/definition/celebrity?q=celebrity>>). This seems to suggest nothing new, as we have already become acquainted with Boorstin's tautologic definition of celebrity. These two definitions show that a first requirement is the public awareness of a person. Once an individual is known by a certain quota of the members of the public the criteria is satisfied – whether it be through personal contact or mediated stories about the individual (Rojek, 2001, p. 12). Certainly there are no set threshold levels determining 'knownness' on an overall scale. It seems that publicity has to be calculated as a quota, relating to the overall group of people concerned with a person. But detecting the quota needed to be famous or well-known is not the only

issue in finding whether one has attained celebrity or not. There seems to be more than mere degree of popularity.

The literal meaning of celebrity includes a qualitative requirement as well. Containing the word “celebrate”, celebrity is also a state of being feted for something (see <<http://www.britannica.com/bps/dictionary?query=celebrity>>). Historically many famous people were known because they did something extraordinary. The classical conception of celebrity describes a heroic status. Whether it be explorers or generals, politicians or scientists, these historical heroes were known because they did something great and acted as role models (Cashmore, 2006, p. 50). Corresponding to their heroic status, the involved were supposed to represent responsibility, as their achievements were only attainable by careful and diligent planning. 5

Today people move into public awareness usually by outstanding achievements in sports, music and suchlike (Drake and Miah, 2010, p. 51; Gabler, p. 3). People render homage to talents and abilities that distinguished the well-known person from the man in the street and establish a special position in society. As distinct from this so-called *achieved celebrity*, *ascribed celebrity* originates from relation (Rojek, 2001, p. 4). Sons and daughters of kings and queens, movie stars and famous politicians are not famous because of own achievements. They are known to the public as the children of Mick Jagger or Sir Paul McCartney. Maybe they consolidate this status by own accomplishments but the foundation is laid by their birth (Rojek, 2001, p. 18). 6

It is suggested that people attaining publicity through relationship and marriage with a public person can be categorised as an “ascribed celebrity” as well. Even if one would regard the matrimonial market as an open competition space where being picked by a coveted single is considered an achievement, this would not suffice to constitute fame itself. The public gets to know the person because of the life partner's prominence. 7

Having said that, achieved and ascribed celebrity have one thing in common: people attribute specific skills or relations to the affected person causing a distinction between usualness and celebrity (Evans, 2005, p. 17). This distinction is blurred by a new form of celebrity, a form that is not based on skill or relation. Mass-media has created a solipsistic type of celebrity that exists for its own sake, *attributed celebrity*. This form of celebrity is not based on any achievement or relationships in the real world, but on “pseudo events” - events that are created to be publicised (Rojek, 2001, p. 18; Boorstin, 1971, p. 38). A good example for these sorts of events are many of those featured in Reality TV shows or in the tabloid press. Often the involved obtain popularity just by being part of a documentary, or perhaps via a series of trivial pictures (Murdock, 2010, p. 279). In this regard it is not easy to understand what the extraordinary core of attributed celebrity actually is – if there is one at all. It is, de facto, part of contemporary celebrity culture and has huge economic, societal and cultural impacts, but does not fit the understanding of celebrity outlined previously and is an area in need of further research (cf. Frost, 2013, p. 179). The fact that we are not capable of linking all factual types of celebrity to a common principle calls for further investigation, and it is therefore advisable to refrain from a circumscribed definition. In the following section the portrayal of celebrity in public and its impact on the people will be examined, gaining a deeper understanding of its structure and effect. 8

Communication of Celebrity

Through analysing how celebrity is communicated hints on the core structure of celebrity are uncovered. This includes an investigation in two directions. On one hand, the means by which celebrity is communicated gives some indication of what features may be the core of celebrity. The use of painting, pictures and printed text may have other implications on its recipient than a word of mouth. On the other hand, the quality of coverage over celebrity may also indicate the determinants of celebrity, that is to say an assessment of what we are actually referring to when we are alluding to celebrity. 9

Who's talking? The Means of Communicating Celebrity

Many commentators state that celebrity did not exist before the advent of the 20th century. This conclusion is mostly drawn upon the emergence of mass media that brought a whole new level of public presence (Drake and Miah, 2010, p. 49; Gabler, p. 3; Cashmore, 2006, p. 257). Mass media companies can make use of several means of information exchange: words, pictures and sounds. By combining these, the recipient gets an accurate idea of the transmitted information. This precision of multimedia can be best seen when contrasted with traditional methods of communication. Before Gutenberg simplified copying through the invention of the printing press, the main medium of information exchange was speech (Kaufer and Carley, 1993, p. 6; Harnad, 1991, pp. 40-41). Whether actually spoken or written down on paper, speech is able to describe and transmit thoughts and facts. But speech is stretched to its limits when it comes to graphic information. For example one can describe a person's looks with words, but pictures – both drawn and photographed – outmatch verbal circumscription through their accuracy (Stöckl, 2004, p. 95). Especially when combined, pictorial and verbal communication provide a precise way of exchanging information about a person and his or her life. In this context modern multimedia-based celebrity news coverage is able to paint a picture about a person's personality, including both moving and non-moving pictorial as well as verbal information. Summing up, celebrity is dependent on the means of communicating personality. Through covering all aspects of personality in pictures and text, audible and visible information, multimedia coverage establishes celebrity in a concrete 10

shape.

But media companies not only foster celebrity by combining different channels of information. They also contribute by disseminating information on a broad scale (Redmond and Holmes, 2007, p. 128). The advent of supra-regional newspapers, TV and radio broadcasting, news-blogs and webpages make it possible to reach a huge number of people at the same time. Information about events and news can be transmitted to a group simultaneously instead of relying on slow and imprecise word of mouth communication. Besides, stories about interesting people are not only covered in single branches of mass media like newspapers or TV stations. The combination of internet, TV, radio and newspaper coverage constructs constant repeat (Rindova et al., 2006, pp. 51-52; Boorstin, 1971, p. 42; Gamson, 1994, p. 62). Thus permanent public awareness is created. 11

Finally, one of the most prevalent contributions to the creation of celebrity is mass media's quickness. Media products can be brought out in short time, allowing novel information about public persons to be disseminated gradually and on a daily basis (Evans, 2005, p. 24). 12

Altogether the existence of celebrity is attended by mass communication. In order to provide constant public awareness, the communication medium must reach a great number of recipients. Different media are able to highlight certain aspects of celebrity. These highlighted aspects can then be introduced to a wide audience. 13

What are you talking about? The Subject of Celebrity Discussion

As noted above, media presence is a core structural feature of celebrity. At best individuals then seize the topics presented and bring it to their everyday existence. Thus celebrity gets a second dimension besides media coverage: public dialogue. This conceptualisation of "celebrity" has a participatory character. People do not only consume commodified information, they get involved actively and help celebrity to grow (Seifert, 2010, p. 38; Hellmueller and Aeschbacher, 2010). But what makes people talk about "stars", what information do people pick from the media to share it with others? 14

Much celebrity coverage deals with lifestyle and what might be termed the 'moral conduct' of public persons (Maloney, 2012). Illustrated articles report on drug abuse, marriages, divorce and parties. These stories seem to have nothing to do with outstanding achievements or merits. 15

As Neal Gabler (p. 4) pointed out, the main reason why people are interested in famous people is to get to know their stories, or as he put it their "narrative". In his idea, all celebrity is based on a "foundation narrative" which can be a specific achievement like composing a "hit" song or just a person's character portrayed in TV (p. 10). By reason of the basic story people want to get to know more aspects of that person (p. 6). Thus the basic story can be eclipsed by subsequent parts of the narrative. According to this, celebrity coverage about lifestyles is just one part of an entire story. People who want to be entertained choose to trace narratives. Gabler's theory offers a good approach to understand what the media and public actually is looking for in celebrity. It reflects the fact that celebrity is not mere well-knownness but a process of developing a real-life storyline. According to the involved public person, the "foundation narrative" can be academic, musical, artistic, athletic or political merit as well as character and appearance. Celebrity status begins when a row of subsequent episodes in the narrative has been told and ruled as entertaining. 16

In the following the involved parties in the creation and exploitation of these narratives will be examined. 17

Who Is Involved?

After examining the core of celebrity and the role of mass media with its paramount importance, the next step is to analyse the particular stakeholders involved in producing and exploiting celebrity. In every aspect of celebrity production and exploitation a particular human being ("a celebrity") takes a central role. His or her individual attributes are being promoted, he or she is the chief character in the foundation narrative outlined before. But in order to be heard one needs assistance from skilled third parties (the "celebrity industry") and -of course- the public, ie the audience. 18

The Business Side

The professionals helping to market celebrity work in specialised areas which can be classified as eight industrial sub-fields: entertainment, representation, publicity, communications, merchandising, appearance, coaching and legal & business (Rein et al., 2006, pp. 46-63). All these areas represent certain operations that can be performed by several actors. However many tasks are interwoven and one party can carry out multiple functions. In industry sectors with a high degree of concentration (such as the music industry) huge corporations fulfil almost all functions related to the industries named above (Burkart and McCourt, 2006, pp. 18-19). Having said this, the classification set up before should not be seen as a set of static, differentiated business sectors on their own, but they help with understanding the tasks being performed in order to develop and market celebrity. 19

The *entertainment industry* is an umbrella sector, creating and marketing customised recreational products 20

(Rein et al., 2006, p. 47), but as music companies, film studios, TV stations and sports clubs are highly integrated, their contribution to the production of celebrity can not be portrayed in isolation. Most of their departments are related to one of the other sectoral functions and will be discussed as part of that analysis, but the term "entertainment industry" also includes the operators of venues like concert halls and sports stadiums (Rein et al., 2006, p. 47). These institutions provide opportunities for individuals to give proof of their ability, to build a fanbase and therefore foster achieved celebrity. They help celebrity to be built up and be maintained. Besides the performing person, other celebrities can use entertainment venues as a place to be seen. This provides new episodes in their narratives, in which people are possibly interested. The *representation industry* is characterised by agents, personal managers and promoters. Agents take the effort to find engagements for clients. They act as gatekeepers, connecting client and employer (Turner, 2004, p. 201). The agent has to establish ties with decision makers in event companies and aspiring celebrities-to-be. For this purpose they have to find promising talent and keep in touch with partners and the market. As agents usually represent many clients at one time, they maintain close relationships with different possible employers. They then analyse the best opportunities for their clients and campaign for them in their personal network. Personal managers do not represent that many clients. Their contribution to the client's career is much more strategic and sustainable – and therefore needs more time to invest (Rein et al., 2006, p. 50). Personal managers align all the client's activities to a master plan. The field of activity comprises organising meetings with other intermediaries (such as agents) as well as many personal affairs. Thus they are co-pilot and career advisor the same time.

Finally the promoter stages events. As promoters take high personal and speculative financial risks, they have to assess the publicity effect of booking a person for an event. They are not bound to the client on a permanent basis (Rein et al., 2006, p. 50). The three aforementioned institutions often overlap and merge. The *publicity industry* includes publicists, public relations firms and advertising agencies. Publicists and public relations firms are responsible for generating attention and form a public image. Again these institutions rely heavily on networks. In order to cause sensation they have to have access to key decision makers in media corporations and society. They try convincing executives to disseminate information according to elaborated information campaigns (Turner et al., 2006, pp. 768-787). But they can also influence the public image of a person. By consulting marketing research specialists they are able to explore perceptions and preferences of the public advice their clients to adjust their performance to it (Rein et al., 2006, p. 53). Closely related to public relations, advertising companies play a huge role in the publicity industry. They contribute to the creation of celebrity in two ways. On one hand they promote products for celebrities (e.g. music albums). On the other hand, they employ celebrities for canvassing. Celebrity can be used to translate a person's image into a product. While this is done primary to advertise a certain product, it also helps keeping up celebrity status. Visibility in the media secures that one is still under debate. Even the overall number and sort of advertising contracts can be subject to discussion in the public (Rein et al., 2006, p. 53). In order to shape one's public image via visible information the publicity industry makes use of photographers and illustrators. 21

To follow their strategies, the actors of the publicity industry are also heavily reliant on the *communication industry*. As we have already seen, the communication industry (i.e. the media) serves a paramount role as an interface between celebrity and public. The media is involved in perceiving any celebrity content. In the past the prevalent (offline) forms were TV, radio, film, newspapers and magazines. While all of these traditional players now offer their services via the internet also, social networks have risen to be a major form of contemporary celebrity communication (Marshall, 2010, p. 38). As more people spend more of their time in social networks or the internet in general, there are more opportunities to present celebrity. People get email alerts, status updates, newest pictures and stories about their favourite public persons. Through combining these media channels, the communication industry is able to create and exploit celebrity at the same time: Companies can charge access to a celebrity's story but by disseminating it they also foster the celebrity's public awareness. 22

The *merchandising industry* uses celebrity to sell commodities. But in contrast to advertising, merchandising concerns the direct exploitation of celebrity rather than its translation. Merchandising companies print names, pictures and slogans on T-shirts, towels, perfumes or any other consumer goods. The buyer should not be able to distinguish between the commodity and the celebrity, creating a brand-like association. In other words, celebrity is used as an indication of origin (Rein et al., 2006, p. 58). Even though it is not always required to have certain looks or skills when attaining famousness, creating and abiding effective celebrity often requires advice, alteration and training. The *appearance and coaching industries* offer services to bring one's looks and/or skills in line with public curiosity or a dominant notion of greatness - which is, of course, embedded in the marketing plan devised by managers and public relations companies. Makeup specialists, hairdressers and even plastic surgeons are used to shape one's body. Style consultants and personal shoppers attune clothing. But whether it be achieved, ascribed or attributed, all these not only need elaborated looks, but also training. Celebrities must be instructed to give interviews and public appearances. What is more, as achieved celebrity is often based on a long-standing career, skill needs constant improvement – otherwise the basis for celebrity might vanish and the fame decays. For example, music tutors, speech and athletic coaches all help advance the personal skills required in the relevant career (Rein et al., 2006, p. 56). However even in the case when celebrity does not need a high level of skill to be developed (e.g. attributed celebrity), being a celebrity and increasing one's popularity might need training. Eventually celebrity is used to gain income. For this reason, celebrities diversify their fields of practice and need coaching in new areas of activity (Barron, 2006, pp. 533-534). 23

Finally the *legal & business services industry* deals with sustaining celebrity. Business managers have to secure that celebrity retains its commercial value. This includes advising clients on commercial aspects of any contractual agreements, everyday duties and even conduct. Some of these activities overlap with those conducted by public relations and personal managers, as all public behaviour can affect on one's public image (Turner, 2007, p. 202). Legal services secure that a celebrity does not get 'washed-out' by unlawful uses and aims to ensure that rights granted in the particular legal system are translated into income (Wall, 2003, pp. 50-56). 24

What is more, resulting legal cases can attract a great deal of attention, again affecting public perception (Brown et al., 1997, pp. 262-263). This outline of all intermediary institutions of celebrity has shown the basic functions in creating and exploiting fame. It seems that celebrity operates through two different systems of communication: Firstly, internal industry networks communicate celebrity. Industry executives have to be convinced of a certain person. Secondly, the aforementioned institutions communicate this characters, praising their attributes and publishing episodes of their narrative. Even though many of the functions hybridise and big companies are specialising in cross-sectoral consultancy, one should distinguish these competences. Celebrity depends on all of these abilities. 25

The Commodity Side – Human „Products“

The "celebrity industry" produces commodities. Celebrity is being licensed for commercial purposes, as the case of *Douglas vs. Hello!* has shown. In contrast to other, manufactured goods however, the essential part of celebrity is not an agricultural or mineral resource. As we have seen it is a personal narrative which requires a human being to act in it. Celebrity is intimately connected with the distinct personality of its bearer (Turner, 2004, p. 37). On one hand this is a great asset which is used to market the celebrity, to advertise his uniqueness. On the other hand it is cause of many difficulties in exploiting fame. Even though being influenced by marketing, PR and management teams, the physical appearance, history and 'air' are part of a human being's dignity. While common industrial products are "dead matter" (i.e. a hi-fi system), celebrity is linked with an autonomous individual, or as Turner (2004) puts it: "[...]Celebrities have minds on their own and the capacity for independent action". This conflicts with a basic principle in industrial production – standardisation. Despite the sophisticated split of labour behind celebrity production, not all celebrity strategies bear fruit. Precisely because of the protagonists' individual personalities the celebrity industry can not exactly forecast their impact on the public (Marshall, 2006, p. 207). Once established, celebrity can be used to market other cultural products which are highly fickle: music, literary works, art and movies. But also in this case the personal behaviour of the celebrity may affect his future status. In some cases commercial interests can conflict with the individuals' opinions and interests (Turner, 2004, p. 38). This can cause friction between the "product" (the celebrity) and the intermediaries. The individual's autonomy can also be restricted as a consequence of the interests involved. In order to attain maximum publicity one can be forced to attend certain events or take part in campaigns one is not committed to (Turner, 2004, p. 36). 26

Apart from the personality-related core of celebrity, it is impossible to determine if an actual contribution of the individual is caused by a marketing plan or an independent resolution. However one can ascertain the general quality of contribution with regard to the types of celebrity outlined above. It is clear that achieved celebrity needs the highest level of personal input. In order to generate publicity via achievement, one has to perfect skills and abilities. Concerning ascribed and attributed celebrity, the quality of commitment differs. As there is no special achievement to obtain, one has to concentrate on skills for being a celebrity like public speaking, self-organisation and networking. However, being a celebrity (no matter of which category) is a twenty-for-seven job. 27

As one can not distinct between the public person (profession) and the private person (free time) any action can affect the celebrity status which has to be considered by the individual at all time (Mendelson, 2007, p. 169). 28

The Public Side – Fans, Followers and Opponents

What about the public? When one examines marketing handbooks, public relations and management readers it is remarkable how insistently this literature dismisses the role of the public in producing celebrity. The public is mostly seen as a mere consumer of celebrity, negating the "[...] cliché that only the public can make a star" (Rein et al., 2006, p. 94). But in denying the impact of the public on celebrity one is neglecting its cultural function. It might be true that publicity can be generated merely through the industry networks set out before. But the economic value of celebrity is not purely based on publicity – celebrity also has to be appreciated. 29

In the best case people try and emulate celebrities because they approve their achievements and moral conduct. But this requires engaging with one's own system of values and beliefs. As a cultural phenomenon, celebrity helps people to define and express their wishes, opinions and agenda (Ferris, 2007, p. 377). One can approve celebrity, criticise and dispute it. Review and discourse, support and affiliation of such kind help people to build one's identity (Tan, 2008, pp. 965-967). Through "[...]celebrating (or deriding) celebrities, it is possible to belong to something beyond the particular culture with which each of us might identify" (Wark, 1999, p. 33). 30

However at the same time this shaping of identity also affects celebrity itself. An often-quoted example 31

concerns the reinterpretation of Judy Garland's image in the 1950s (McLeod, 2006, p. 656; Tan, 2008, p. 970; Madow, 1993, p. 143). The actor Garland, well-known for her "ambiguous masculine/feminine coding" (McLeod, 2006, p. 656) did not specifically target the gay community. Nevertheless her behaviour was interpreted by homosexuals and acted as a means of defining their own position in society. Thus she achieved iconic status for homosexuals (Tan, 2008, p. 970). The gay community - as a part of the public - had added a facet to a celebrity's image. Also modern forms of fan culture can change the quality of celebrity. Bloggers may write about events concerning their favourite celebrities. Fans might establish associations, fan clubs and internet sites. These in turn contribute to the public perception of the celebrated individuals, defining celebrity's scope.

As can be seen therefore, the public actually influences the existence of celebrity. Indeed celebrity can be marketed by the industries involved, making use of market research and advertising expertise but its value is determined by the audience's reception and response. Focusing on a single actor (the industry) makes celebrity look like a static commodity. It does not reflect its complex discursive nature. 32

The Legal Structure of Celebrity and its Shortcomings

The legal system deals with celebrity in multiple ways. The US, UK and Civil Law jurisdictions have developed different approaches to govern the public image of famous persons. What all efforts have in common is the awareness of celebrity's commercial value. In the view of the self-proclaimed "owners" this commercial value has to be protected against unlawful exploitation. 33

The scope and derivation of the rights recognised by the jurisdictions differ considerably. As the law has axiomatic problems in dealing with the intangible good „celebrity“, most legal claims concern single facets of public impression. It is shown below, that this is due to the fact that celebrity protection originates from legal positions which safeguarded personal interests once. This personal interests protection has then been stretched to commercial exploitation. 34

For the purpose of this work, the focus will be on the basic principles underlying the protection of these single aspects to gain understanding of the quality of rights, the owner and rationale. 35

The Main Rights Involved

Having established distinct fame and meaning in the public, celebrity can be used market commodities of any kind. Individual personality is used as a basis for products due to being sold (Turner, 2007, p. 195). Whether a person is the bearer of achieved, ascribed or attributed celebrity, products that exploit such celebrity have to reflect the individual's characteristics. In this regard the most valuable parts of celebrity are name and likeness of the involved individual that can be attached to a certain product. But, as this concerns a part of one's personhood, the basic legal regulative approach is a human-rights-based "personality right". Germany, as an example for civil law jurisdictions, has followed a basic rights approach, granting a right to control one's entire public portrayal through Art. 1 and Art. 2 GG (Grundgesetz) (see Hofmann, 2010, p. 327). After balancing personal and third-party interests everyone has the right to prohibit the use of their likeness and name for unlicensed purposes. These claims are based on § 22 KUG (Kunsturhebergesetz) and § 12 BGB (Bürgerliches Gesetzbuch) which are specifications of Art. 1 and 2 GG (Grundgesetz). In addition one can stop news coverage about a person when the general right of personality („ allgemeines Persönlichkeitsrecht“, § 823 I BGB, Art. 1 and 2 GG) is infringed (see Mueller, 2009, p. 86; Wanckel, 2011, p. 727 et seq.; Kastell, 2013, p. 209 et seq.). The US concept of a "publicity right" ran another path. Originally developed from the right of privacy (the right "to be let alone"), the property-like publicity right now governs all economic valuable aspects of personality – often justified by the assumption that one should be able to harvest the fruit of one's labour (i.e. one's personality) (Nimmer, 1954, p. 216). The UK does not know a personality or publicity right. Indeed there have been actions based on a privacy right via the Human Rights Act 1998 but all these actions concerning celebrities failed so far (Wall, 2003, p. 38). English law has been reluctant to acknowledge celebrities' rights in their particular name, voice or image. In fact stakeholders have to rely on circumstances of the particular case to gain protection. Defamation, passing off and breach of confidence may be applicable legal instruments when third parties use a particular image without consent (Hofmann, 2010, pp. 331-337). But all these actions originally have different purposes. Both defamation and breach of confidence centralise the human being. While defamation law relates to the claim not to be debased publicly, a breach of confidence deals with the disclosure of confident (personal) information. Despite being commercial law, courts have used personal justifications in celebrity confidence cases as the confident information will always be any kind of the individual's personal details (e.g. Douglas v Hello! Ltd. [2003] EWHC 786 at H23). 36

The tort of passing off, in contrast, is merely commercial, relating to the unlawful exploitation of goodwill and requiring public deception through a misrepresentation (Keeling et al., 2011, para 18-004). Finally trademark law is a further important and globally effective legal possibility to secure the exploitation of celebrity. One can register celebrities' pictures and names as well as related slogans and designs in order to use them exclusively for commerce. This work will not go into trademark registration issues but it has to be stated, that a trademark registration would have to be filed in the first stages of marketing and publicity. A person that is already famous can not help distinct goods of one party from those of another, Trade Marks Act 1994 s3 (1)(b) (Weathered, 2000, pp. 165-172). Once registered, trademark rights can be licensed and sold easily enabling right holders to 37

fully appropriate its value.

Structural Problems of the Legal Conception

The situation outlined above puts the celebrity in the position to exercise control over the use and portrayal of his or her public image. The legal conceptions centre the human being as he or she is the individual involved, owning the personality, skills or appearance all celebrity is based on. This is coherent and inconsequent at once. 38

At first it is desirable that the legal system restricts the threads of public slur a human being is exposed to. This accommodates the fact that individual personality is not a mere commodity but part of human existence and dignity (Weber, 2004, p. 167). As we have seen above the personality right in Germany (Art. 1, 2 GG, § 22 KUG, § 12 BGB), as well as the anglo-american conception of defamation were initially part of broader set of rules to protect personal integrity and the private life. Concerning public persons these legal measures have become commercial rights over the time. In *Douglas v Hello!* (Douglas v Hello Ltd. [2003] EWHC 786) the court granted damages for disclosure of information (photographs) based on breach of confidence, even if the information was designated to be released anyway. While it is therefore explainable, why these economic rights evolved in the person of the celebrity, it is by no means certain that this is entirely justified. As this work explored in detail, celebrity is not due to only the individual's labour. A broad system of networks and intermediaries and the public contribute to establishing celebrity. The public image is being built by a discourse between the celebrity industries and the public. Audiences make use of the public person to test their wishes and wants. 39

Only this creates a public image. In other words, celebrity "[is] determined by what different groups and individuals, with different needs and interests, make of it" (Madow, 1993, p. 195). Thus one can not assume that all fruits of celebrity are due to the individual. 40

But also from a utilitarian viewpoint there is little evidence that commercial celebrity rights foster the production of celebrity as a cultural symbol. This paper has found that the different parties in the celebrity industries rely highly on networks. These networks are overlapping and depend on each other. It seems, that internal dependencies and cash flows keep the intermediaries' networks in working order and provide incentives to spend time on their particular professional activities (Tan, 2008, p. 935). 41

The legal system does not reflect these circumstances. In fact the existing rights are used not to prohibit libellous hostility or the direct exploitation of one's image by third parties, but to prohibit expression that is likely to change a person's public perception. Celebrities and their intermediaries want to shape meaning, thus eliminate publications that could lead people to re-interpret celebrity images. The Elvis Presley Estate (EPE) for example prohibited artists to use Elvis in their paintings because the art did not meet the "quality standards" set up by the EPE (Wall, 2003, p. 54). Also John Wayne's estate proceeded against greeting cards that pictured him wearing red lipstick and therefore could flaw his "macho heterosexual image" (Madow, 1993, p.144). In this way the law helps the celebrity industries to control public opinion making and stifles cultural plurality. While this is comprehensible from an industry-view, it runs contrary to the evolutive and living character of culture. 42

Especially the application of legal instruments not devised for commercial exploitation poses serious concerns. Strictly speaking, a personality rights approach is not feasible when unauthorised exploitation of one's celebrity status does not affect the personality in a slanderous or libellous way. Also mere commercial approaches such as the tort of passing off do not get to the heart of the matter – they are grounded in the risk of confusion but not in the attribution of the commercial value of celebrity. 43

The american strategy might be the most honest one, acknowledging a publicity right that is a mostly commercial right to exploit celebrity. All approaches, however, protect the commercial value of celebrity, sharing a lack of balance of interests. If one takes the manifold influences and contributions to celebrity seriously, the protection granted in court must be less extensive. There should be clear exceptions, ensuring that audiences can criticise and interact with the celebrity image to a certain extent (Tan, 2008, p. 989). 44

Conclusion

Contrary to the common notion, celebrity has an exceedingly complex structure. As illustrated above, it is by no means a mere expression of individual greatness, nor purely the result of marketing and public relations management. These contributions are extremely important but celebrity needs audiences. The audiences' affiliation towards public persons generates the meaning of celebrity, a valuable good the commercial sector tries to exploit. Thus three different sets of interests can be observed: personal, commercial and cultural. While it is essential to protect the individual from public defamation, the law should not confuse personal and commercial interests. It should neither only reflect commercial concerns. Cultural studies can provide valuable theoretical approaches to both gain insight in the operation of celebrity and define its actual cultural effects. 45

A deeper investigation of the elements of celebrity sets the basis for a sound level of protection. Particularly the audience's role is insufficiently analysed and valued by legal scholarship. The legal conception of celebrity 46

should be rethought in the light of the actual contributions to celebrity.

This might include less extensive scope of protection and clear categories of permitted uses. Only if these prerequisites are created, audiences are able to engage in popular culture actively, thereby laying the ground for the development of celebrity.

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