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Restrictions Against Press and Paparazzi in California: Analysis of Sections 1708.8 and 1708.7 of the California Civil Code

Joshua Azriel 1

In 2014 the California legislature passed into law updates to two parts of the state’s civil code aimed at protecting the privacy rights of all residents, notably celebrities. Two sections of the state’s civil code were amended to place limits on how the paparazzi can intrude on celebrities’ lives. Section 1708.8 provides protection for anyone’s privacy. Section 1708.7 limits harassment activities of anyone—including paparazzi—who stalks victims. This article analyzes both laws from a First Amendment perspective. It argues that several of the laws’ restrictions on the press regarding invasion of privacy and harassment are constitutional. Yet, the specific provisions aimed at the publication rights of the media are content-based restrictions and presumptively unconstitutional. The article also argues that the state legislature and courts need to clarify 1708.7’s anti-harassment provisions for clarity.

Let Them Authenticate: Deterring Art Fraud

Justine Mitsuko Bonner 19

Forged art is corrupting the art market, a market that has grown more brazenly dishonest as the value of artwork has skyrocketed. Fake art not only harms the financial interests of investors, but it also damages the integrity of the art market, ultimately undermining the historical-cultural record. Yet art fraud is flourishing because art experts are increasingly unwilling to express authentication opinions due to the specter of expensive litigation. This paper examines the historical background of art fraud and the legal protection needed for art experts if rampant art fraud is to be deterred.

The Dilemma Of False Positives: Making Content ID Algorithms More Conducive To Fostering Innovative Fair Use In Music Creation

Toni Lester and Dessislava Pachamnova 51

Content ID programs commonly use algorithms to block uploaded music when owners of certain copyrighted works claim their work is being used without consent. However, algorithmic enforcement programs can produce “false positives,” where legally allowable music associated with a reference file

is inappropriately blocked. The phenomenon of false positives is especially problematic for songwriters, composers, experimental music artists and others who create music by combining their own vocal or instrumental performance with work created by others and “loops” from audio libraries. Balanced by such factors as how much a new work damages the market for a prior work and how much of a prior work is used in a new work, the “fair use” defense allows songwriters to upload technically infringing work if the new work amounts to a critique, is in the public domain, or sufficiently transforms the original work to render it new. This article explains how Content ID algorithms are developed and interpreted and discusses how the fair use defense can sometimes limit the extent to which Content ID programs can block innovative music creation. The article offers methods for defining and measuring algorithmic effectiveness that both account for the risk of false positives and protect the proprietary interests of copyright holders. It also proposes a new regulatory scheme that ensures these methods are implemented properly. The proposed regulatory scheme should lead to a more equitable system for music creators and original copyright holders and to more inventive and interesting music for fans.