

**ASIAN PACIFIC COPYRIGHT ASSOCIATION CONFERENCE
(COPYRIGHT LAW AND POLICY IN THE ASIAN PACIFIC)
27-28 November 2015**

Presentation title:

Using New Zealand copyright law to prevent unconsented use of personal images:
challenges and opportunities

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Abstract:

Use of a personal image without the person's consent may result in emotional, reputational, or financial harm to the individual in question. Such unconsented use often occurs in relation to people who are in the public eye, such as entertainers and politicians. This kind of unauthorised use is not, however, limited to public figures: it could happen to anyone. There have accordingly been several instances of individuals attempting to prevent others making use of their images, including photographs.

This paper will examine the extent to which New Zealand copyright law can be used to prevent and protect against such unauthorised uses of a person's image. The focus will be on unauthorised image use in both commercial and non-commercial contexts, with the assumption that any appropriate legal protection would ideally be applicable to both celebrities and non-celebrities, and to both online and offline use.

Using copyright law as a protective measure in such contexts can provide New Zealand plaintiffs with advantageous opportunities, such as posthumous protection, applicability to non-commercial and non-celebrity contexts, and applicability to both online and offline uses. On the other hand, copyright law can pose challenges due to authorship and ownership issues, as well as in instances where the image has been altered.

Drawing on illustrative examples, the paper will explore some of these opportunities and challenges with regard to using New Zealand copyright law to prevent unconsented use of a person's image. In doing so, the paper will seek to identify situations where potential plaintiffs may find it difficult to rely on copyright law and may instead need to turn to alternative areas of the New Zealand legal framework for recourse.