



August 3, 2012

## Ninth Circuit Finds That Consent to be Photographed Can be Implied by Conduct

### Intellectual Property Client Alert

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In a right to publicity case, the Ninth Circuit recently decided that consent to be photographed can be implied by conduct. In the unpublished decision in *Shirley Jones v. Corbis Corp.* (available [here](#)), Corbis used sample images of actress Shirley Jones to promote its stock photo service. Jones admitted that she posed for pictures at red-carpet events and understood that the photos would be distributed to the press. She objected, however, to the use of low-quality samples provided by Corbis to potential purchasers of Corbis' images.

The right of publicity in California prevents use of a person's name or likeness to advertise or sell products without the person's consent. The Court of Appeals, however, ruled here that Jones consented to the use and distribution of her likeness by appearing at events with photographers present and posing for photographs. The Ninth Circuit ruled that consent is implied when a person allows photographers to take their picture.

Companies that deal with rights of publicity and publication of images should be aware of this ruling, even if it is non-precedential. Similar lawsuits in other jurisdictions have also been dismissed showing a trend of supporting those entities that are publishing the images. It should be noted, however, that this decision relates to situations where the person consents to the photograph. In contrast, use and distribution of paparazzi photographs may be interpreted differently under various right of publicity laws as consent is not likely to be implied. Furthermore, this ruling does not affect rights of individuals where the image is used to promote unrelated products or services.

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