



**Jones v Corbis - Walking Down a Red Carpet
and Implied Consent to Uses of Images**

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When a celebrity (or anyone else) walks down a red carpet, what are they consenting to in terms of the use of their image? That issue was recently considered in the US district court decision Shirley Jones v Corbis Corporation (Case No 10-8668 SVW (CW)) (hat tip: THR, Esq.) - the decision is noteworthy because, while the layperson's response (or even a prima facie legal response) might be simple ("she's walking down a red carpet - of course she consented to the use of her photograph!") the District Court's reasons illustrate just how narrowly construed legal conclusions can be.

The facts of the case are relatively simple: Shirley Jones (perhaps best known for her role on the 1970s TV show The Partridge Family) asserted that Corbis had violated her rights of publicity by displaying "sample" photographs of Jones on their website; Corbis, a stock photo company, maintains multiple websites via which potential customers can search Corbis' library for photographs. If a user types a term into the search function, low-quality "sample" photographs matching the searched terms will appear. Corbis often does not own copyright in the photographs, but instead has entered into license agreements with the copyright owners, and in turn offers licenses in the photographs to Corbis' customers. In the case of Jones, when someone typed in "Shirley Jones" a series of sample photos would appear, indicating the inventory of relevant photographs that Corbis had available; some of those photos were of Jones at various "red carpet" events. Jones asserted that her right of publicity was being infringed by the act of showing those sample photographs.

The District Court rejected Jones' claim. The court noted that "celebrities who walk down the red carpet generally pose for photographers and respond to their requests to smile, or to look in their direction"; at some red carpet events, notices are posted "stating that the celebrities entering the red carpet consent to being photographed and recorded, and also to having their name or likeness used in connection with the event". It was undisputed that Jones had consented to the taking of the photographs. Indeed, Jones even acknowledged that the photographers who took the photos would be selling those photos and would need to show those photos to prospective buyers in order to secure sales of them (in days of yore, photographers would carry around books with copies of the photographs). The court further noted that "it is custom and practice in the entertainment industry that red carpet photographs are widely used and disseminated". At this point, it is worth noting just how finely-crafted is the "implied consent" that Jones was deemed to have given: she did not sign any documents granting consent, nor did she even verbally agree to certain uses - instead, the parameters of her consent (taking the photograph, selling the photograph, offering samples of the photograph to prospective buyers) were all implied from her actions and the context in which those actions took place.

As the court described it, Jones' "only argument" could be that "she did not consent to [Corbis'] placement of sample images on its websites for the purpose of soliciting customers".



But such an argument had no cogency: she knew the photographers would be selling their photos, and that they would need to show the photos to others; the fact that the photographers had, in turn, authorized Corbis to show the photos in order to facilitate sales was entirely consistent with the scope of the consent Jones had given - she therefore had no claim against Corbis. Her follow-up argument that her consent was limited to allow only the individuals photographers to show the photographs was completely unsupported by any evidence.

Again, though, what is remarkable about the decision is how narrow it is - in closing its reasoning, the court expressly states that its holding is "limited to the fact that Plaintiff consented to the display of her likeness for the purpose of distributing the images themselves ... [the] reasoning does not address whether Plaintiff's consent encompasses any other type of display" [emphasis added]; in particular, "the Court's holding leaves Plaintiff's rights of publicity undisturbed in cases where a defendant uses Plaintiff's image to advertise an unrelated product ... or if a defendant transforms Plaintiff's image into a separate product".

Because the court found for the defendant on the issue of consent, the court did not need to consider the defendant's other arguments (that there was First Amendment protection or that the claim was pre-empted by the Copyright Act).

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