

• SUPER INJUNCTIONS - RECOGNISING THE IMPORTANCE OF IMAGE

The recent spate of super injunctions has gripped the UK press for some time now. Several high profile individuals have been revealed to have applied for super injunctions to be granted to prevent third parties from disclosing (usually) damaging revelations about them to the public.

WHAT IS A SUPER INJUNCTION?

A super injunction is a legal tool used to protect the privacy of an individual or individuals. Unlike cases in the past regarding privacy, which have been widely reported (such as certain widely publicised privacy cases involving celebrities like Naomi Campbell or Michael Douglas and Catherine Zeta-Jones), a super injunction is more of a comprehensive gagging order which, in addition to preventing the publication of the details the subject of it, also prevents the parties to it from mentioning the injunction itself, the idea being to create a virtual information blackout.

The super-injunction evolved out of a series of court rulings, going back to the UK 1998 Human Rights Act, citing the right to privacy under this Act as the basis for the super injunction. Various judges have interpreted this right in numerous ways, and without any further statutory guidance, the court took the step to create this remedy.

HOW IS A SUPER INJUNCTION CONNECTED TO IMAGE RIGHTS?

Information which is the subject of a super injunction can often be said to have the potential to damage or reduce the value of someone's "image". While it cannot be said that all "negative" press attention will devalue the image of an individual, this can only be

measured on a case by case basis.

Recent examples of super injunctions have related to Premiership footballers. While you may consider that a footballer may apply for a super injunction for personal reasons, one must also consider the sources of income that could be affected by damage to their image, such as sponsorship, merchandising and advertising contracts. Effectively, the super injunction allows the individual concerned to continue to exploit their image for monetary gain while preventing any potential devaluation.

Super injunctions are not specifically designed for this purpose, but the fact that the courts have considered them to be necessary at all presents a clear picture: image rights have value and should be capable of protection. Statutory protection for image rights would be beneficial, both for the protection and exploitation of a person's image. Against this background, there have been calls for Parliament to legislate on the degree of protection that should be afforded for an individual's image right and Guernsey is ahead of the game in this innovative and extremely important area of law.

The proposed image rights legislation in Guernsey would be the first of its kind and would further secure Guernsey's position as a world-leading jurisdiction for IP. We are currently awaiting the draft legislation and further information on this exciting new IP right will follow soon.

**FOR MORE INFORMATION,
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