

● IMAGE RIGHTS - A WORLD FIRST FOR GUERNSEY

THE POTENTIAL

Guernsey has been promising innovative intellectual property legislation for a while now. A lot has been done already to bring this vision into reality. With the role of the super injunction being hotly debated in the UK recently, the Policy letter in August Billet reflects the far sighted and visionary approach adopted by the Guernsey IP Office and the Commerce and Employment Department.

This legislation, if enacted, will be a world first and will see Guernsey bringing in a registrable image right. This IP right will define the rights of an individual to protect their own image and balance them against the freedom of news reporting and the public interest.

This legislation will support the strategic plan to diversify Guernsey's economy whilst utilising Guernsey's existing skills base. It also has the potential to create new job opportunities and to attract business to the island.

THE REASONS

The Policy letter sets out three reasons for proving a clear legal code for image rights.

- Image rights are high value and a fact of commercial life but the lack of definition in law leads to uncertainty as to the extent of the rights and the limits of value-creation opportunities;
- Clarifying the rights will include their more effective management while also protecting the public interest by defining the extent of the rights in law;
- The Bailiwick of Guernsey could provide such a law custom-made for image rights and the industry supports the introduction of image rights.

KEY FEATURES

The Image Rights Ordinance will enable registration of a registered personality right, a property right, which would also provide rights in the registered personality's associated images.

The key features are:

- Establishment of an Image Rights Register and a Registrar of Image Rights.
- The creation of a right for a qualifying personality to be registered on the Image Rights Register. Registrable features of a qualifying personality will include a personal name and any other associated distinguishing indications (such as voice, signature, photograph, character or likeness) which identify the personality uniquely.
- Qualifying personalities will include any living or deceased natural person and could extend to some non-living entities, such as fictional characters.
- A registered personality right relating to a living personality will have indefinite duration and can continue to exist after the death of the personality subject to regular renewal / validation of registration on the Register of Image Rights.
- There will be creation of exclusive ownership rights which may be enjoyed and protected by the holder of a registered personality right and which may be assigned and otherwise dealt with as personalty, subject to relevant registration requirements.
- Exceptions and limitations to the exclusive use of rights will be created to ensure that images may be used where it is in the public interest to do so, for example legitimate news coverage.
- The rights will be designed to be fully compatible and integrated with modern media including broadcasting, satellite transmission, the internet and other electronic communications. This will be particularly important in providing protection in the mass media market.

FEES

Fees will be set following consultation with the intention that they should be sufficient to deter frivolous but not serious applications and will include:

- Initial registration of the personality
- Additional fee for each image to be entered on the Register
- Renewal / validation of registration
- Renewal / validation of each image

NEXT STEPS

The States will debate the Policy letter on 28/29 September and will then decide whether to progress to the drafting stage. The Policy letter states that the sponsoring department would like to see these proposals become law as soon as possible and that it regards this proposed legislation as its most time critical priority for new legislation. Two key factors drive this urgency. These are the Olympic Games and 2012/13 football transfer season running from July to August 2012. It is estimated that, subject to approval and responses to the consultation phases, the drafting time shall take about 4 months.

COLLAS CRILL

At Collas Crill, we have been heavily involved in the development of Guernsey's IP regime. Jason Romer sits on the Commercial IP Steering Group and the Drafting Sub-Committee. Our team can assist with all IP related matters - in the law firm and our unique IP Management Company, the only IP registration company in the Channel Islands.

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