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Kids Sell: Celebrity Kids' Right to Privacy

Seong Choul Hong

Department of Journalism & Communication, Kyonggi University, Seoul 120-702, Korea; hong21@kyonggi.ac.kr; Tel.: +82-2-390-5154

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Abstract: The lives of celebrities are often spotlighted in the media because of their newsworthiness; however, many celebrities argue that their right to privacy is often infringed upon. Concerns about celebrity privacy are not limited to the celebrities themselves and often expand to their children. As a result of their popularity, public interest has pushed paparazzi and journalists to pursue trivial and private details about the lives of both celebrities and their children. This paper investigates conflicting areas where the right to privacy and the right to know collide when dealing with the children of celebrities. In general, the courts have been unsympathetic to celebrity privacy claims, noting their newsworthiness and self-promoted characteristic. Unless the press violates news-gathering ethics or torts, the courts will often rule in favor of the media. However, the story becomes quite different when related to an infringement on the privacy of celebrities' children. This paper argues that all children have a right to protect their privacy regardless of their parents' social status. Children of celebrities should not be exempt to principles of privacy just because their parents are a celebrity. Furthermore, they should not be exposed by the media without the voluntary consent of their legal patrons. That is, the right of the media to publish and the newsworthiness of children of celebrities must be restrictedly acknowledged.

Keywords: privacy; celebrities' children; legitimate public concern; voluntary exposure; public space

"I understand that there is a certain amount of my own privacy that I have to give up. There's a tradeoff...However, when it comes to my child, and their fear of leaving their house and feeling they cannot move in the world in a safe way, that is when as a mother I have to step up for my rights as a woman."

Halle Berry [1]

while arguing in favor of a legislation that would limit the ability of paparazzi to photograph the children of Hollywood celebrities, at the Assembly.

1. Introduction

The lives of celebrities are often spotlighted in the media because of their newsworthiness; however, many celebrities argue that their right privacy is often infringed upon [2]. Concerns about celebrity privacy are not limited to the celebrities themselves and often expand to their children. As a result of their popularity, public interest has pushed paparazzi and journalists to pursue trivial and private details about the lives of both celebrities and their children. By framing celebrities' children as "our" children, the media may attempt to exploit a kind of pseudo-intimate relationship between the public and the celebrities [3]. In this process, the children and their privacy can be at risk and threatened. Specifically, rapid advances in communication technology have expanded the number of privacy infringements. In particular, the Internet and social media have increased the tension and collisions between the "right to privacy" and the "right to know".

Although the U.S. Constitution, the Bill of Rights, and Amendments to the Constitution lack specific provisions on the right to privacy, the concept of privacy has been recognized within the Constitution's framework by the U.S. Supreme Court [4]. Similarly, English law did not willingly recognize "privacy a principle of law in itself" but privacy values underlie a rule of common law [5]. In fact, the right to privacy is inherently in conflict with the right to know, which has long been cherished under the First Amendment in the United States. The inception of the right to privacy can be traced back to Louis D. Brandeis and his law partner Samuel Warren in 1890, when yellow journalism stirred antipathy against the press and journalists. Warren and Brandeis argued, "Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life" [6].

Nonetheless, the courts did not recognize a common law pertaining to the right to privacy and legislation did not grant this right until 1905 when the Georgia Supreme Court accepted the existence of a common privacy law in *Pavesich v. New England Life Insurance Company* [7]. The *Pavesich* court noted that people had the right to order their lives unless they violated the rights of others [8]. The more serious recognition of the torts was made in parallel with an insatiable public appetite for private information in the 1930s and 1940s. In fact, the invasion of privacy is more conspicuously noted when related to famous people. Even though the concept of the right to privacy originated in a grievance against journalistic practices in the late 19th- and early 20th-century, it has become even more important in today's multimedia society.

Celebrities struggle with issues of privacy; however, legitimate public concerns and voluntary appearances in the media often waive their privacy rights. When the right to privacy meets the right to know, the balancing test is preferred [9]. For the balancing test, the following factors must be considered in order to acquire First Amendment protection in the United States [10]: (1) the social value of the facts; (2) the voluntary nature of notoriety; and (3) the substantial public interest. Generally speaking, courts have been unsympathetic to celebrity privacy claims unless the press violates news gathering ethics or torts such as trespass, theft, or intrusion by electric tools [11]. Nevertheless, courts have been inconsistent when dealing with privacy issues related to the children of celebrities. For instance, in *Kapellas v. Kofman*, the U.S. court recognized the inevitability of privacy infringement for guaranteeing the right to know [12]. On the contrary, the widow of John F. Kennedy and wife of Aristotle Onassis successfully defended the right to privacy of her children and herself from the approach of paparazzi in *Galella v. Onassis* [13].

While several studies explore the celebrities' right to privacy [14–16] or the privacy right for children [17,18], few studies address the privacy right of children of celebrities [19]. The main aim of this paper is an investigation of the conflicting areas where the right to know and the right to privacy collide when dealing with the children of celebrities. The application of law, of course, may differ from case to case and from culture to culture [20]. In making a decision, the court should rely on convincing grounds, such as evidence and precedent, rather than simple speculation or manifest obligation. Thus, this paper first considers the celebrity's right to privacy in diverse situations. Then, in order to help understand whether the restraint based on the First Amendment can be extended to the case of children of celebrities, it examines the three prongs of celebrities' privacy: publicness, self-promoted characteristics, and space where privacy is infringed.

2. The Right to Privacy of Celebrities

2.1. Publicness as the First Prong

A celebrity may be defined as "a person who is known for his well-knownness" [21]. In a sense, the concept of "well-knownness" is a circular one; it is simultaneously a target as well as a result of media activity. Indeed, they are "famous for being famous". Although a celebrity is a byproduct of mass communication, a celebrity is not someone who is empty of meaning, nor a kind of pseudo-event. Lammie argues that a celebrity is characterized as an individual with "a variety of culturally and

politically relevant images, symbols, and values” [22]. In this vein, the concept of celebrity includes political figures. Broadly and conveniently speaking, celebrities can be classified into two groups: political celebrities and non-political celebrities [10]. Political celebrities include politicians, public officials, and people who participate in public affairs through contracts with public officials. Most politicians earn the status of celebrity by public votes [23]. Non-political celebrities refer to actors, movie or sports stars, and so on. For media content producers, the details of words or pictures concerning celebrities have often been hot selling items. About 110 years ago, Warren and Brandeis, aforementioned, argued, “Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery” [6].

The one significant difference between political and non-political celebrities is the fact that non-political celebrities are not in positions to enforce legitimate violence even though non-political celebrities also partake in public discussion to some extent. Thus, the right to privacy is more restrictedly applied to political celebrities than to non-political celebrities, because some degree of privacy infringement is a necessary evil in order to guarantee the media’s watchdog role concerning public officers [24]. The concept of checking value provides the most plausible explanation for the narrow application of privacy rights to public officers. Since public officers are entitled to use legitimized violence, the abuse of official power may have the potential to cause serious harm to both society and the individual. In *The New York Times v. Sullivan*, Justice Brennan emphasized public discussion as “the stewardship of public officials” [25]. He held that penalizing the press for its criticism of public officials may hit at the heart of the constitutional protection of free expression. However, non-political celebrities need to have separate standards of proofs. In the defamation case of *Gertz v. Robert Welch, Inc.*, the Court also stated that actual malice as a standard applied to the public figure plaintiffs was not necessarily required for private individuals [26].

Surveillance of public officers is an inevitable process not only in order to protect the public’s interests and safety but also to provoke robust debates. In particular, even a little private and trivial information about public servants who run for public office becomes an important rationale for the electorate’s choice. Specifically, from the point of view of the self-governing theory, in order to govern ourselves wisely and efficiently, voters should acquire intelligence, integrity, sensitivity, and generous devotion to the general welfare [27].

Even though both the checking value and the self-governing theory emphasize the robust political communication in common, there are distinguishable differences: first, the checking value focuses on misconduct by government officials, whereas the self-governing theory supposes active participation in the political process. Second, the checking value sees public officials as political decision-makers, whereas the self-governing theory regards them as agents of a political system [24]. From the point of view of either the checking value theory or of the self-governing theory, broadly recognizing freedom of speech at the expense of a public officers’ privacy is taken for granted in a democratic society.

In their original claim, Warren and Brandeis declared that the right to privacy should exclude persons who hold or seek a “public or quasi-public position” because the aim of the right to privacy is to protect the privacy of a private life rather than that of a public life [28]. Even a private person who gets involved in business dealings with the government cannot be entitled to claim the infringement of privacy rights concerning those dealings [29]. In a sense, participation in public affairs takes for granted the loss of privacy to some extent. Indeed, differentiation between the public officials and public figures did not make much sense as stated by Chief Justice Warren in his concurring opinion of *Curtis Pub. Co. v. Butts* [30]. That is partly because the distinctions between governmental and private sectors are blurred and partly because public figures, even those not holding public offices, have an influence on the decision-making process, and also have access to the same mass media of communication as public officials. In *Associated Press v. Walker*, the Supreme Court consistently extended the actual malice standard to public figures as well [31].

2.2. Self-Promoted Characteristics as the Second Prong

In theory, a non-political celebrity is entitled to the same protection of privacy as private citizens. However, in practice, the scope of legal protection is much more narrowly applied to non-political celebrities than it is to political counterparts [32]. It is partly an outcome of their status as a public figure and their ability to access the media and influence the public. As a result, too broadly guaranteeing privacy to a celebrity may directly regulate free speech and have a chilling effect on public debate. At the same time, the fact that celebrities have a tendency to voluntarily expose themselves to the media deprives them of privacy. Regardless of displeasure expressed by celebrities, media and their consumers demand sacrifice of celebrities' privacy to some extent [10]. In addition to this self-promotional character, news media tend to defend themselves with First Amendment protection in the name of the newsgathering process and newsworthy privilege [32]. For these reasons, non-political celebrities rarely claim an invasion of privacy except when journalists commit some obvious malpractice [33].

Self-promoted characteristics often put celebrities outside of privacy protections. A striking example to this, is the case of Pamela Anderson's 1998 sex videotape [34]. A famous film actor, Lee and her then-boyfriend Bret Michaels filed suit against the Internet Entertainment Group (IEG) and Paramount, which had broadcast a story disclosing eight excerpts from the tape. In the case, Pamela Anderson Lee was considered as a *voluntary figure* who made an effort to become famous. In addition, the public may reasonably have been expected to have a legitimate interest in the story even though the social value of the excerpts themselves was arguably low. Hence, Lee's right to privacy was restricted when applied to a celebrity. By contrast, the right to publish is widely protected concerning the coverage of a celebrity. Nordhaus argues, "Contemporary attitudes toward the media and celebrities make it very difficult for celebrities to claim that certain facets of their lives are not newsworthy, especially since celebrities are categorized as voluntary public figures" [32].

To some extent, notwithstanding lacking self-promotion, engaging in legitimate public concerns demand sacrifices of the right to privacy in name of newsworthiness. For example, in *Cox Broadcasting Co. v. Cohn*, the U.S. Supreme Court reversed the Georgia Supreme Court's judgment by ignoring the right to privacy of a deceased rape victim. Since the Cox Broadcasting Company acquired the name of a rape victim from public record, which reflected a government concern, reporting the contents of the public record was regarded as a public benefit. The Court held that "the freedom of the press to publish that information appears to us to be of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of public business" [35]. The Court further expressed worries that prohibiting publication of the public record in the name of privacy might invite timidity and self-censorship, which could eventually cause the suppression of the freedom of the press. In particular, Justice Douglas Powell added in his concurring opinion that "there is no power on the part of government to suppress or penalize the publication of 'news of the day'" [35].

Furthermore, a celebrity in a public place is generally not entitled to the protection of privacy rights. In *Gill v. Hearst Publishing Company*, the court dismissed an invasion of privacy claim because a photograph taken in a public place simply played the function of an extension of certain knowledge from a small number of eyewitnesses to a larger audience of secondhand witnesses [32]. At the same time, the court recognized that *Gill* plaintiffs' voluntarily exposed themselves to the public's gaze when they went into a public place [36]. In U.S. torts, there is little privacy protection when celebrities are in public view. Even when events or facts happen in private places, newsworthiness often outweighs the right to privacy if a journalist does not violate news gathering torts such as trespass, theft, or intrusion.

On the contrary, simply appearing in public spaces cannot provide media with a sufficient defense for private infringement in Europe. The European Court of Human Rights (ECHR) ruled that German law failed to provide proper privacy protection for Princess Caroline von Hannover of Monaco, in name, if she was in public places regarding the publication of a series of photographs in German magazines [37]. The Court held that her private activities even in public places were not relevant to any political or public debates but were solely to satisfy the curiosity of readers. Thus, the photographs

did not contribute to a debate of public interest. The Court stated that the general public did not have a legitimate interest in knowing whereabouts or how she behaved [37]. Previously, the German Constitutional Court ruled that Princess Caroline had to tolerate the publication of photographs of herself in public places in the way of her daily life, because of her status of a public figure. Against the decision, Princess Caroline complained to ECHR and argued that the decisions of the German courts infringed her right to respect for her private life, as guaranteed by Article 8 of the European Convention on Human Rights.

3. The Right to Privacy of Celebrities' Children

Regardless of their parents' social status, wealth, or fame, the best interest of the child should always come first. As article 16 of the United Nations Convention on the Rights of Child (UNCRC) established: "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honor and reputation" [38]. Thus, in theory, the media can hardly make excuses for their infringement on the privacy of children. However, in practice, a child may be of legitimate public concern when he or she is involved in legal proceedings, such as a juvenile offender, a witness or litigant in civil or criminal proceedings, or a subject of family proceedings. Nevertheless, even children in legal proceedings should be protected from press intrusion because they have not developed adult mechanisms for coping with embarrassment and humiliation [39]. Moreover, media publicity may result in indelible harm for children in legal proceedings.

Of course, a child's right to privacy is not absolute and serious offences committed by children may create exceptional circumstance that waives a child's privacy in name of public interest [40]. Any arguments for protection of a child from privacy infringement often become futile when a child is a member of a famous family. The public's insatiable interest of celebrities may reject a common law right of privacy and often result in exploitation of celebrities' children. In this paper, I will argue that the abovementioned analogies related to the privacy protection of celebrities can be used as a reference; however, they should not be directly applied to the privacy rights of celebrities' children. Nonetheless, stricter requirements should be considered when it comes to children, regardless of their parent's social status. The first prong of publicness may not an effective standard to waive children's privacy. However, the second prong of self-promotional characteristics should be noted in restricting the scope of privacy protection. Finally, the right (to or of) privacy that is infringed upon must be considered in parallel not with the precedent U.S. torts, but with the international standard.

3.1. The Privacy of Political Celebrities' Children

When the newsgathering process goes beyond that of legitimate and routine newsgathering [41], public celebrities may be successfully entitled to protection for themselves and their children's privacy rights. The First Amendment is not considered as "a license to trespass, to steal, or to intrude by electronic means" into the domain of another person's home or office [42].

For instance, two award-winning broadcast journalists prepared an investigation into the company U.S. Healthcare for their episodic news program, *Inside Edition*. During the investigation, they observed and recorded the daily lives of Nancy Wolfson and her husband Richard Wolfson, director of U.S. Healthcare. The journalist recorded the Wolfsons and their children using a shotgun microphone as they vacationed in their Florida family home. When the Wolfsons filed an action against the journalists, the Court ruled that the newsgathering process was beyond the legitimate purpose of routine newsgathering [43]. In particular, the Wolfsons successfully persuaded the justices with sufficient evidence of how their children were intruded upon by the television crews. The Court held that journalistic hounding, harassing, and ambushing infringed on the family's right to be left alone.

Likewise, when a spouse of a public official is no longer related to public affairs, they may strongly protect the rights of both themselves and their children. In *Galella v. Onassis*, widow to the late president John F. Kennedy and wife of shipping magnate Aristotle Onassis, Jacqueline Kennedy

Onassis, successfully restricted a paparazzo from approaching her and her children [13]. The court considered the balancing test, as many privacy decisions do. In addition to reconciling the right to privacy and freedom of speech, the Court also considered whether the case related to a public figure, if it was a clear and present danger, possessed redeeming social values, *etc.* Although a photograph might satisfy the legitimate public curiosity about a well-known widow and her children, it also raised doubt of whether the report fulfilled an uninhibited, robust, and wide-open public debate. As a result, the self-governing or checking values of the First Amendment could not be applied to the case because Mrs. Onassis was no longer in the public arena. Instead, the court held that the First Amendment does not necessarily guarantee the press's blanket rule that "everything which is published is newsworthy and therefore constitutionally privileged" [13].

However, the checking value and self-governing theory have provided paparazzi and media some reasonable excuses for covering the privacy of political figures' children. Thus, self-regulation is strongly recommended. In 1998, President Clinton requested to protect his daughter, Chelsea, from exposure to the media and the media respected his desire to protect her privacy. Regarding this, Howard Kurtz, a media critic, argued that "the media followed an unspoken pact to avoid coverage of Chelsea Clinton, allowing the president's daughter to grow up outside the harsh glare of publicity" [44]. The editor of *The Stanford Daily* even warned staff members not to disclose information about Chelsea to the public when she attended Stanford University [9].

During his presidential campaign in 2008, then Democratic Nominee Barack Obama asked that the media respect the principle of "People's families are off limit" (*sic*). However, Republic Vice-Presidential Sarah Palin's pregnant teen-age daughter made headlines throughout the campaign. As a result, both parties requested that the media respect the privacy of the candidates' children. In particular, Barack Obama strongly reiterated his previous positions, "I think people's families are off limits, And [sic] people's children are especially off limits. This shouldn't be part of our politics" [45]. Indeed, concerns over the infringement of a child's privacy may provide fears among politicians and would-be candidates, which is not a desirable outcome for robust public debates.

Nonetheless, news reports can be justified if politicians' children were involved in newsworthy misdeeds or circumstances. For example, the daughter of Rudolph Giuliani, former New York Mayor was arrested for shoplifting at a cosmetic store [46] or President George W. Bush's twin daughters, Jena and Barbara were charged with underage alcohol offenses in 2001 [47]. In the U.K.'s version, the news stories about Tony Blair's 16 year-old son Euan who was arrested after he had been found drunk in Leicester Square, London might be such a case [48]. In these cases, politician's children lose the legitimacy of claiming the right to privacy and become fair games for media, because there are legitimate public interests.

3.2. The Privacy of Non-Political Celebrities' Children

Family members of non-political celebrities are also subject to being chased by the paparazzi, gossip-mongers, and main-stream media. Although they are not initial celebrities, their relationship to celebrities make them quasi-celebrities and newsworthy people. High public concerns for their lives often lead to their victimization by the paparazzi. Nonetheless, non-public celebrities rarely file suit on the infringement of their children's privacy against media in the United States because of their self-promoted status.

Indeed, the parent's celebrity status as a self-promoted and voluntary public figure, seems to prohibit them from suing. The story of aviator Charles A. Lindbergh is a prime example. After Lindbergh flew from the U.S. to France in 33.5 h in 1927, he became a national celebrity; however, his celebrity status led to the death of his twenty month old son, Charles. Charles was kidnapped and murdered in 1932, which was recently called one of the most notorious crimes of the 20th century by *Time* magazine [49]. In spite of this tragedy, incursions by the media continued. Terrified by the fact that Lindbergh's second child, Jon, was often targeted by automobiles filled with paparazzi, Lindbergh

finally determined to escape the never-ending media spotlight and to take his family abroad without legal appealing [50].

Fearful of being pursued by paparazzi, some celebrities have disclosed photographs of their children in order to discourage unwanted pursuit. For instance, Courteney Cox and David Arquette released a photo of their newborn daughter, Coco, in order to avoid being chased by paparazzi [51]. While decrying being invaded by paparazzi, celebrities also sell their children's pictures. According to ABC news, Jennifer Lopez sold the first shots of her twins for \$5 million to *People Magazine*. The pictures of Brad Pitt and Angelina Jolie's impending twins may reportedly cost about \$10 million [52]. Celebrities' children have become good game for hungry paparazzi.

Regardless of the status of their parents' celebrity, children and their parents have little legal recourse in the United States, where the right to know is the main consideration in media legal disputes [53]. In fact, children of celebrities rarely receive the legal protection of their privacy rights in the United States. A recent case in New Zealand also applied the same standards of adult celebrity into the children of celebrities' right to privacy. When Mr. Hosking, a well-known television commentator requested a ban of his children's pictures in *Pacific Magazine*, the Court of Appeal dismissed his request stating, "the law in New Zealand does not recognize a tortious cause of action in privacy based on the publication of photographs taken in a public place" [54]. The Court held, "the photographs...do not disclose no more than could have been observed by any member of the public" in a street on that particular day.

Even though New Zealand has a different constitutional framework from the United States, the legal application of privacy is similar to that in the United States. However, problems may arise because the narrow protection of privacy right in the case of children of celebrities and does not relate to the First Amendment theory such as self-governing or checking value. Nonetheless, restraining freedom of the press for the sake of children's privacy may create problems that harm the function of media that contributes to a democratic society. As the New Zealand court recognized, "it would be unrealistic and unnecessary to consider a legal prohibition against the publication of all photographs depicting children without parental consent. That would inhibit media coverage of, for example, a children's Christmas parade" [55].

Recently, California introduced the anti-paparazzi act to protect celebrities from annoying paparazzi assaults on celebrities and their families. Specifically, some hope is projected to protect "the most vulnerable and popular of the paparazzi's prey, celebrity children" [56]. Actress Halle Berry stated that her children feared going on school and home trips because of paparazzi. As a result, she voiced putting a limit to their access to children of celebrities, "when it comes to my child, and their fear of leaving their house and feeling they cannot move in the world in a safe way, that is when as a mother I have to step up for my rights as a woman" [1]. Indeed, if it is the celebrities, not their children, who would like to access media and media events, the privacy waiver should not be extended to celebrities' children.

3.3. *The Self-Promoted Characteristics of Celebrities' Children*

On the contrary, there is another possibility that celebrities voluntarily reveal their children to gain more of the public spotlight. For instance, celebrity's children's exposure to the media may inevitably promote their parents. In this case, the media may have a chance to exploit their children's faces or images because the laws grant parents control over their children and their images [19]. For instance, children may accompany their celebrity parents to events like premiers or award shows, the parents know to expect thousands of cameras taking their child's picture. A content analysis of celebrity magazines shows that more than half (56%) of photos about celebrities' children were carefully produced [3]. Moreover, some children of celebrities, regardless of their parents' fame have already gained public awareness. Some examples are Drew Barrymore and Macaulay Culkin, who appeared in the movie *E.T.* at the age of five and in *Home Alone* at the age of ten. In these cases, the children's right to privacy protection could be waived.

Moreover, more problems arise when we consider recent developments in social media networks like Facebook, Twitter, Flickr, and Instagram. Since many social media sites provide photo-sharing services which enable users to upload images for their friends and families ([57], pp. 1563–72). Especially, the photos of their babies and children are their favorite subjects. Many ordinary mothers regard Facebook as a place to show their good motherhood through baby photos. Through photo-sharing sites, parents recklessly put their children at risk of privacy infringements. Given the fact that photos of babies and young children once uploaded to Facebook and will disappear, parents should have “privacy stewardship” in sharing about their children online ([58], pp. 1302–12).

Celebrities also use social media to post photos. In doing so, they put their personal lives into the public domain. The babies and children become game for paparazzi. In the past, paparazzi may have needed to climb over a celebrity’s garden wall to take photographs of the celebrity and their family. Today, social media may provide paparazzi with photographs by clicking on the celebrity’s social media networks. More importantly, the average person now has the technology to take photos of celebrities and their children with smartphones and then upload the photos with the celebrities’ names tagged. Indeed, a photo of pop star *Beyoncé* and her daughter, Blue Ivy on a street nearby a restaurant in Brooklyn in 2013 was published after it was posted through an ordinary person’s Instagram. The new term, *Facebookarazzi* and *Insta-paparazzi* which mean Facebook paparazzi and Instagram paparazzi, respectively, were coined [59,60]. Owing to widespread use of smartphones with camera lenses and social media, the whole world has become a photo agency and a paparazzi machine [61]. As Susan Barnes describes, social network sites provide a panopticon world, the high level of surveillance to celebrities [62].

3.4. The Place Where Photos Taken

Although most photos are caught by paparazzi in private spaces without any consent, another serious infringement of privacy may occur during leisure or vacation time. In public places, celebrities’ children may be inadvertently exposed to media. This unintended and spontaneous exposure to media can happen on the streets, while shopping, and on school or home trips. In these cases, it is not illegal in the United States to photograph children in public places because the right to publish outweighs the right to privacy. However, the main rationales to deny the right to privacy in a public place [36] can be rebutted because voluntary appearance does not necessarily mean voluntary consent to be photographed [63]. Furthermore, a person in a photo has no control over their images. Specifically, children in a public place may not be conscious of being exposed to public eyes when they go outside with their parents. That is, photos of celebrity kids may be recorded and circulated as a digital print without the children’s wills. In this vein, the U.S. torts should be rearranged with an international standard even when photos are taken in public.

Unlike the United States, many countries around the world emphasize the privacy of children, regardless of their parents’ status and of the location of where the photos are taken. An excellent example is in Britain, which has long suffered from the dysfunction of tabloid journalism. In particular, they witnessed the tragic death of Princess Diana, which was reportedly caused by a high speed chase by paparazzi in 1997. As a result of her death, Britain has re-evaluated privacy rights. Similarly, a claim by J. K. Rowling, the author of the Harry Potter novels, was filed regarding photographs taken on 8 November 2004. A picture was taken on an Edinburgh street of Rowling’s 18 month old son, David who was in a buggy being pushed by her husband Murray. The photos later appeared in the *Sunday Express* magazine on 3 April 2005. The Court of Appeal in London held that children of famous parents have the same expectation of privacy as children of parents who are not well-known [64]. The Court added, “A child of ‘ordinary’ parents could reasonably expect that the press would not target him and publish photographs of him. The same is true of David, especially since on the alleged facts here the photograph would not have been taken or published if he had not been the son of JK Rowling” [64].

One of the disputed points in this case is that the pictures were taken on a public street. In this case, the Court regarded simply walking down the street was not an event of a public place, but a

person's private recreation, which was quite different from attending a concert, film premiere, or some similar occasion. Furthermore, this case was considered different from an adult case because the child's privacy seemed to outweigh other legitimate public concerns. The Court held that, "In this appeal, we are concerned only with the question whether David, as a small child, had a reasonable expectation of privacy, not with the question whether his parents would have had such an expectation" [64]. Thus, Sir Anthony Clarke ruled that children should be protected from intrusive media attention, "at any rate to the extent...he or she will not be targeted in order to procure the taking of the photographs in a public place" for publication of the pictures on behalf of the child [64]. Additionally, the Court regarded the main purpose of publishing photographs as not a robust discussion or democratic process, but solely a commercial purpose. Indeed, contribution to a debate of general interest is an important reference in balancing the conflicts between an individual's right and a publisher's right [37].

This decision is expected to establish a new standard for the privacy of celebrity's children and to inhibit tabloid journalists from chasing celebrity's children only for commercial benefits. A British journalist expected this ruling would trigger making into law what is now in the *Press Complaints Commission Code of Practice*: "Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life" [65].

Photos of celebrities' children taken in public places are legally publishable in the United States. However, the Royal Courts of Justice in Britain do not grant the right to publish photos even if the photos were taken in the United States where public place becomes an important rationale for lowering the expectation of privacy. In *Paul Weller v. Associated Newspaper Limited*, Justice Dingemans held that the right of privacy of children outweighs the right to publish of media [66]. Weller, a famous musician brought a claim on behalf of three of his children regarding photographs published in an article entitled "A Family Day Out" on its Mail Online website. The article was accompanied by photographs of Weller and his three children, Dylan, then aged 16 and twins John Paul and Bowie, then aged 10 months, shopping on the street and relaxing in a café in Los Angeles. The singer contended that the photographs were taken without consent by paparazzi and furthermore, the publication of the photographs did not contribute to a current debate of general interest.

In accordance with the *Murray v Express Newspapers*, the court held that the three children had a reasonable expectation of privacy when they were on a family trip with their father because the disputed photographs specifically showed their faces and were different in nature from a crowd shot with unidentified people. Furthermore, the court states that the child of a "famous" parent should expect the press would not target him and publish photographs of him just as the child of "ordinary" parents could reasonably expect. Even though the taking and publication of the photographs on the street of Santa Monica were lawful, the courts did not consider the location of the photographs taken. Instead, they emphasized the cause of action based on publications in England and Wales [66]. To sum up, the English courts may demand celebrities themselves to be tolerant of some privacy infringement. However, the courts, in the *Weller* and *Murray* cases, tend to be actively protecting the privacy of celebrities' children, as vulnerable people [67].

4. Conclusions

Advances in communication technology and growing soft-news have generated unprecedented concerns about children of celebrities. With this increase in public concern, invasions of privacy are more frequently found. The stories on celebrities' children have their own newsworthiness because the public has some interest and legitimate concerns. Thus, pictures and stories of celebrities' children have become a daily commodity to sell as well as the object of legal appeals. Nonetheless, there is no applicable standard.

The rationales used in celebrities' privacy infringements can be categorized according to the status of individuals' publicness (political celebrities or non-political celebrities), the degree of newsworthiness, the locations where, for instance, photographs are taken (public or private), and their self-promoted characteristics. Precedents set in legal judgments generally show a tendency to give

broader protections of the right to know in the case of political celebrities rather than non-political celebrities. The self-governing and watchdog theories provide legitimate and convincing grounds to guarantee relatively unregulated speech in political communication. Accordingly, the privacy of political figures is less protected than that for non-political celebrities in other fields. Furthermore, discussion and criticism of political celebrities are more widely recognized in the United States than in other countries, because of the First Amendment's predominance in the United States.

The newsworthiness tests have played a role in protecting freedom of the press against claims of privacy infringements. The tests can be shortly summarized as whether there are legitimate public concerns over the people, events, and places. Specifically, public figures are expected to endure media scrutiny, even in relation to trivial facts. For example, a Premiership footballer's off-field behaviors were deemed to be of public interest, because the footballer is a moral role model for young people [68]. For Lord Woolf in *A v B plc*, there was a real public interest in exposing any misconduct such as extra-marital affairs of public figures.

Even though newsworthiness in journalism practice is keenly affected by timeliness, newsworthiness in legal disputes lies beyond this timeliness consideration [69]. However, newsworthiness tests also have inherent flaws in that they demand subjective judgments of the court [70]. The place where an event occurs is also an important consideration. Privacy in a public space is not usually an object of legal protection because the media is an expansion of the audience's numbers from eyewitnesses to media customers [71]. These rationales are interwoven and considered case by case with balancing factors.

However, these tests are not applicable in the case of celebrities' children. First of all, the demarcation of political celebrity and non-political celebrity status invokes different sounds. Even though the press has enjoyed broader freedom regarding public celebrities, it has often been attacked and urged to protect the privacy of political figures' children. Thus, the press has employed self-imposed rules for public celebrities' children. By contrast, non-political celebrities rarely demand that their children's privacy be respected. Their heavy dependency on media exposure hinders them from taking legal recourse against privacy invasion. Considering the checking values and self-governing function of the press, it is worthwhile to report on political celebrities' children more frequently rather than on non-political celebrities' children. Nonetheless, mere pursuit of commercial values cannot provide exoneration to the press.

Second, the newsworthiness of children is measured by the celebrity status of their parents, ignoring the children themselves who inherit a celebrity status based on their parent's behaviors and social standing. In the end, it is their parent's status that creates privacy issues for the children. Thus, the parents' newsworthiness directly influences judgment about their children's newsworthiness. This is an undesirable test for legal disputes. Instead, the UNCROC's stipulation and privacy protection in other European countries provide a good lesson to the United States. Celebrities in a public space have unanimously been considered as grounds for an exclusion of privacy rights in the United States. However, this is not the case for celebrities' children. In Europe, including Britain, the children of celebrities are seen to have privacy rights regardless of where they are [72].

Surely, the position of children's privacy is different from that of their parents. In particular, UNCROC declared in article 3: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." This declaration can be read as an unlimited guarantee to the privacy rights of children. Thus, it is in conflict with the First Amendment: "Congress shall make no law...abridging the freedom of speech, or of the press..."

In the U.S., and throughout the world, reconciling these two values of right to privacy and right to freedom of the press is not an easy task. At least three methods of protecting the privacy rights of children of celebrities should be considered: media's self-regulation, legislation, and judicial protection [39]. However, statutory provisions and judicially-created privacy protections for children's privacy have the potential to endanger the autonomy of a free press. At this point, one way to

alleviate the problem is by adopting self-restraint rules similar to that of the British Press Complaints Commission's Code, which states that: "publishers must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life" [73]. Indeed, it should not be a regulation but rather an agreement amongst journalists and media content producers, which eventually provides wider freedom of the press.

Nonetheless, there is the potential for paparazzi to not follow the self-imposed regulations. In these cases, it is important that the media producer not buy children's photographs from the paparazzi. More importantly, media consumers and consumer advocates play certain roles of boycotting buying media products and advertising products of the magazines, online websites, and TV programs which buy the unconsented children's photographs from paparazzi. This is exactly the case of Kristen Bell's Anti-Paparazzi Campaign. Bell, the star of *Veronica Mars* and *Frozen* campaigns for the public to stop reading magazines publishing photos of celebrity's children [74]. With help from conscious media producers and consumers, greedy paparazzi would disappear.

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