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News

Photo Copying

By Simi Horwitz | Posted Dec. 15, 2010, 1:33 p.m.

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Three years ago, Bart Young was launching his then-7-year-old daughter Della's acting career when he had a nauseating experience. "As part of her marketing package, we registered a domain name and had a website built to post her headshots, demo reel, and modeling photos," he said. "After a few months of reviewing the traffic stats from her site, I noticed thousands of hits from various overseas domains. I researched those domains and eventually landed on a few of the websites that had lifted my daughter's photos. I got a sick feeling in my stomach as I realized that some of the sites were very close to child pornography. I immediately took my daughter's

website down and disabled her domain. We continued to keep her Web presence active on legitimate talent sites such as BackStage.com. Today her domain name, DellaYoung.com, forwards to her IMDb page, and at some point we may consider a personal site for her."

As parents of a young child in the business, Young added, he and his wife were learning to negotiate the fine line between marketing their daughter's talent and not exploiting her in an online world. This is especially complex when the actor is a child, but actors of any age can be targets of headshot thievery. Young decided to come forward with his story to caution others.

Varieties of Misappropriation

"Actors should be aware that there is a rampant but incorrect belief that content posted on the Internet is in the public domain and therefore free for the taking," said Danielle Van Lier, senior counsel for intellectual property and contracts for the Screen Actors Guild. "This makes it difficult for individuals to police their content, particularly photographs. There are different types of misappropriation that can occur, ranging from the relatively innocuous to the annoyingly commercial to the blatantly exploitive."

Consider Leandra Ramm's bizarre story, which involves more than just a stolen headshot. For the past five years, she has been stalked by an "admirer" in Singapore. After seeing her on a TV program, he searched the Internet for her name and found where she'd be performing, her agent, and family members. He contacted Ramm, obsessively wanting a relationship with her. When she refused, he contacted theaters where she was slated to perform and threatened them, created an email address in her name, and told her agent that she no longer wanted his representation. The emails arriving from Ramm's "new" address included her headshot.

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A large red graphic with white text. At the top, there are five stars and a thumbs-up icon. Below that, the word "backstage" is written in a bold, lowercase font with a red star on the dot of the 'e'. Underneath, "READERS' CHOICE" is written in a bold, uppercase font, followed by "AWARDS" in a larger, bold, uppercase font. At the bottom, "2014" is written in a bold, uppercase font. The entire graphic is set against a white background with a red border, and the bottom portion of the graphic is a solid red block with the words "VOTE NOW!" in large, white, bold, uppercase letters.

"I don't know if I lost jobs, but there certainly was some hesitation about hiring me," she said. "There was concern about liability. I begged this guy to leave me alone, but he wouldn't, and finally I went to the New York City Police Department. They said there was nothing they could do, because he lives in another country. Then I went to the FBI, and they said there were no laws that could protect me and that I should just ignore him. I then went to the Singapore Embassy at the United Nations and they said they'd look into it. They never got back to me."

Another actor, who did not want to be identified, was not happy when a casting director saw his headshot on a dating website. The actor had not posted it there; someone else had, claiming to be the man in the photo. The actor contacted the site and insisted that his picture be removed. "They didn't immediately believe me," he said. "I had to prove I was me. I told them to Google my name and see the photos for themselves. They did, realized someone had stolen my headshots, and finally removed them from their website. And the culprit was permanently banned from their site."

But the actor admitted to feeling violated. "The fact that I found out about it at all was a fluke," he said, noting that it's not difficult to copy photos from social networks and that even highly respected casting websites that require access codes are by no means impregnable. In fact, he is convinced that his headshot was lifted from a casting site—not that he has any intention of removing it. Like all performers, he knows that he needs to balance promoting himself with protecting his image.

Courses of Action

Clearly, having your headshot misappropriated by a pornographer or a stalker is far worse than seeing it on a dating site or advertising a product without your permission, said Larry Beckler, a corporate attorney with expertise in intellectual property, digital marketing, and advertising. But regardless of how it's misused, an actor's headshot is his or her property—even if the photographer owns the copyright, which is rare, Beckler explained, because such photos likely have no intrinsic artistic value—and the actor has a "right of publicity." An actor's likeness cannot be commercially exploited without his or her consent. Someone who uses an actor's headshot on a dating site is infringing on the actor's right of publicity, in addition to committing a fraud, he said.

Still, tracking down these culprits may be difficult and time-consuming, especially if they are not in the United States. Indeed, many countries don't recognize an actor's right of publicity, according to Beckler. But even if a culprit is found and it's a criminal case, there can be other issues, as Ramm discovered. For example, because the crime was committed via the Internet, who has jurisdiction and what laws were broken? Will the authority with jurisdiction charge the perpetrator with a crime? And will it enforce U.S. law or local laws?

Seeking redress for the violation of one's rights in civil court is no easy task either. Suing requires deep pockets, Beckler said, adding that many attorneys won't initiate a case for anything less than \$5,000. Asked if the site from which a headshot is lifted is liable, Beckler said probably not. "Website owners generally disclaim liability and responsibility for the actions of their members."

Bob Stewart, chief executive officer of Now Casting, said one hedge against theft is copyrighting your headshot. Then if your picture is stolen, it's copyright infringement, which is a more serious crime—though the law is not easily enforced, he admitted.

According to Tom Carpenter, general counsel and director of legislative affairs for the American Federation of Television and Radio Artists, there are ways to encrypt an image so it's difficult to download, but that's expensive.

If you're concerned that your photos are being misused—or your reputation maligned—a good first step to protect yourself might be to search online for your name on a weekly basis to see what comes up, experts said. Or even easier, set up a Google Alert for your name. Joanne Villani, founder of the new website ProtectedPix.com, has the technology available for individuals and businesses to protect their photographic content.

In the meantime, caution is of the utmost importance. Adjust the privacy settings on your Facebook page and be aware of what you're posting. "Performers have to strike a balance between what they put on the Web for the purpose of employment opportunities and privacy issues," said Carpenter. "Sacrificing a little privacy is necessary."

Lorrie Faith Cranor, an associate professor at Carnegie Mellon University and an expert in online privacy issues, said there's a difference between fair use of an image and violation of an actor's rights. "If it's a YouTube clip, you have to ask yourself how much is being used, for what purpose,

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and is anyone profiteering from it? If an actor's headshot, for example, is being used as part of a television show critique, that's arguably a fair use."

Van Lier also acknowledged this gray area, noting that when a headshot appears on a social networking site, the actor is within his or her rights to ask to have it removed. "However," she said, "when it's a fan who has posted the photo—and assuming the use is not in poor taste—an actor should consider whether making that request makes sense at the risk of upsetting the fan or whether there might be some benefit to the actor to allow it to remain."

As technology evolves, there's much to think about. The surface has barely been scratched.

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