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传媒侵犯艺人个人资料私隐的调查报告

Investigation Reports on Magazines' Intrusion to Artists' Personal Data Privacy

本所多年来担任香港演艺人协会(“协会”)的义务法律顾问。在 2011 年 6 月，三位香港电视艺人就《FACE》及《忽然一周》两本杂志的摄影记者分别偷拍和刊登他们家中的私人生活照片一事向协会求助。他们在协会的支持和陪同下向香港个人资料私隐专员公署投诉。私隐专员(“专员”)在经过约 9 个月的调查后，于 2012 年 3 月 28 日向外界发表有关的调查报告。

报告内容

专员认为新闻自由和个人私隐权同等重要，而传媒采访新闻的手法一旦涉及收集个人资料，便受《个人资料(私隐)条例》(“条例”)(第 486 章)的管制。

两本杂志今次透过拍照收集艺人个人资料(即生活照片)的手法，违反条例中要求个人资料须以合法 (lawful) 和公平(fair)方式收集的原则。报告并提出如下重点：-

- (1) 摄影记者利用长焦距镜头及放大器等器材，从远处偷拍 3 名艺人住所这种行为不符合有关艺人的合理私隐期望 (reasonable expectation of privacy)；及
- (2) “公众利益 (public interest)”不同于公众的好奇心。艺人的私人生活在一般情况下不涉及公共事务或民生等事项，不应仅凭艺人这身份便和公众利益扯上关系。

针对今次事件，专员已根据条例向两本杂志发出“执行通知 (enforcement notices)”，要求它们采取相应的措施纠正违反隐私的情况。一般来说，有关措施包括删除相关个人资料及制定内部指引避免再次违反私隐等等。

结论

作为协会的义务法律顾问，我们很荣幸今次能够协助法律事宜。专员借今次个别事件就合理收集个人资料这问题定下范例，有助以后厘清新闻采访自由和私隐权的关系。

We have been the legal consultant for the Hong Kong Performing Artists Guild (the “Guild”) for years. In June 2011, 3 TV artists asked for assistance from the Guild in relation to (1) the photographers’ clandestine photo-taking of the artists’ private behavior at home, and (2) the subsequent publishing of those photographs by the 2 magazines, namely FACE and Sudden Weekly. With the Guild’s support and assistance. The artists lodged complaints to the Office of the Privacy Commissioner for Personal Data. After 9 months’ investigation, the Privacy Commissioner for Personal Data (the “Commissioner”) published the investigation reports on the particular incidents on 28th March 2012.

Findings in the Reports

Based on the facts of the cases, the Commissioner recognized that “freedom of press” and “right to privacy” were values of equal importance. When the relevant news collecting method amounted to collection of personal data, it would fall into the ambit of the Personal Data (Privacy) Ordinance (the “PDPO”).

In the present case, the magazines’ collection of the artists’ personal data (i.e. photographs) by means of the photo-taking in the circumstances contravened the principle in PDPO requiring such data to be collected by “legal and fair means”. The reports also emphasized the following :-

- (1) the photographers’ act of taking photographs of the 3 artists’ premises from a far distance, accompanying with the use of equipment such as long-focus lens and magnifier, transcended those artists’ reasonable expectation of privacy; and
- (2) the notion of “public interest” is different from public curiosity. Under normal circumstances, private life of an artist would be irrelevant to any issue involving public affairs or livelihood, and should not constitute public interest merely by reason of the object’s occupation being an artist.

Pursuant to the PDPO, the Commissioner served “enforcement notices” on the magazines, directing them to adopt measures to remedy the contravening acts. Such measures should normally include the deletion of relevant personal data and implementation of internal guidelines to avoid further breaches.

Conclusion

As the legal consultant of the Guild, we were honoured to take part and render our assistance in advising the 3 artists and the Guild. The Commissioner’s attempt in the present case is to define the “fair means” of collecting personal data and clarifying the relationship between freedom of press and right of privacy only in the present cases.

Nothing shall constitute legal advice to any person by Messrs. Maurice WM Lee Solicitors (Tel: (852) 2537 5833) (Website: www.wmleehk.com)

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