

## MEDIA ARTICLE

### Fair dealing as a defence to copyright infringement.

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We have been advising our television clients on the impact of the recent decision in *Fraser-Woodward Ltd -v- BBC ([2005] EWHC 472 (Ch))*. This case involved the use of photographs taken by celebrity photographer Jason Fraser in the programme "Tabloid Tales", which was produced for the BBC by Brighter Pictures. The programme critically examined Victoria Beckham's relationship with the tabloid press. It featured newspaper cuttings of tabloid articles, several of which included photographs taken by Fraser of the Beckhams and their children.

Fraser brought an action against the BBC and Brighter Pictures, claiming that he owned the copyright in the photographs and that since he had not consented to their use, the defendants were in breach of the Copyright, Designs and Patents Act 1988. However, the Court decided that the BBC was entitled to rely on the defence of fair dealing for the purposes of criticism and review. Mann J said that the criticism or review which was the subject of the defence did not have to relate to the photographs themselves; it was sufficient that the programme criticised the press coverage of the Beckhams, of which the photographs formed part. Their use was consistent with such criticism and was fair.

Mr Fraser also argued that showing the photographs on television lowered their residual value and therefore competed with his commercial interests. This was rejected, as he was not able to establish any actual or significant risk of damage. (The fact that Mr Fraser occasionally licenses his photographs to broadcasters for a relatively small fee did not help his case).

Another interesting factor in this case relates to the level of acknowledgment which must be given when using a copyright work. It was held that it is not necessary to expressly identify the author every time a copyright work is used, so long as it is obvious who the author is. Not all the images in this programme were accompanied by text attributing them to Mr Fraser; however, the accompanying commentary or the use of photographs in succession following an initial attribution made it clear that they were all taken by the same person.

#### ***Reporting elections.***

In preparation for the forthcoming General Election Paul Herbert, head of the Media Department, has been giving a series of seminars to Goodman Derrick's broadcasting clients on the subject of reporting "do's and don'ts" during election periods. The relevant rules are contained both in the Ofcom (previously ITC) Programme Code and in statute (The Representation of the People Acts) and are additional to the general requirements that reports on political matters be impartial, fair and balanced. For these purposes the election period runs from the announcement of the dissolution of parliament until the closing of the polls.

When reporting on political issues during the election period, due weight must be given to coverage of each of the major parties, which in England are Labour, Conservative and Liberal Democrat. However, consideration must also be given to smaller parties and independent candidates. The rules require that justice must be done to "significant views and perspectives" in major matters. Therefore, each issue must be looked at separately to determine whether it is a major matter in the relevant constituency; if it is, it may be that a small party or individual candidate holds significant views in relation to it.

The rules also state that in a report on a single constituency, no one candidate should be given an unfair advantage. Therefore, if one candidate is invited to take part in a constituency report, candidates from the other major parties and other candidates with significant electoral support should also be invited to participate. A constituency report is one which focuses on local issues such as hospitals, roads or education. The rules will apply if a candidate talks about the

constituency he is standing in, so it is important to determine the scope of an interview prior to it taking place – if the broadcaster does not want to invite other candidates, the topics of conversation must remain general.

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**further information:**

If you would like more information about any of Goodman Derrick's Media Law services please telephone and ask to speak to a member of the Media Group.

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