

Thesis Title	PROTECTION OF RIGHTS OF PERSONS AGAINST VIOLATION OF PRIVACY IN RELATION TO PHOTOGRAPHS
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### Abstract

Current advancements in information technology and communications have given rise to changes in society. In particular, advanced technology used in photography allows zooming into a very distant point so that photographs may be taken of private individuals in a manner violating their right to privacy even in the absence of physical trespass into private residences. Photographs acquired through secret shots are, to a significant extent, of commercial value and allow personal gains as well as professional success in favour of malicious photographers known as “paparazzi”, hence a tendency of paparazzi to encroach upon individuals’ right to privacy as recognised by law. Given that the dissemination of those photographs secretly taken without consent of private individuals cause great injury to the victims, this thesis therefore seeks to explore legal issues related to the protection of individuals from being photographed and dissemination of secretly taken photographs without their consent. In this light, the thesis also examines freedom of expression of the press. It investigates philosophical foundations, legal principles and court decisions in relation to liability of paparazzi towards public figures in foreign jurisdictions as well as in Thailand. As far as Thailand is concerned, discussion includes the provisions on wrongful acts enshrined in the Civil and Commercial Code, the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) and other relevant laws related to photography.

It is found that, from both theoretical and legal points of view, provisions of the Civil and Commercial Code afford individuals with adequate protection. However, for the sake of clarity with regard to the scope and extent of protection of persons injured by photography and dissemination of photographs without consent, a compelling need is felt for enactment of specific law establishing measures for the protection of rights of individuals against photography and dissemination of photographs without consent, on the following bases.

1. With respect to compensation to the victim of photography and dissemination of photographs without consent, Thai courts have called into play section 420 of the Civil and Commercial Code on the basis that this right to privacy is 'any other right' under the said section. Indeed, taking photographs and dissemination thereof without consent of the private individual have tremendously adverse impacts on the victim; such secretly taken photographs bear no relevance to the expression of ideas, with the result that the photographer should not be protected under the copyright law and should not be regarded as having ownership in the photographs taken. Rather, it is the private individual whose photograph is taken that should enjoy the "*droit à l'image*" as if he were the author of that photograph, in as much the same way as what is envisioned in the legal concept in France. In addition, punitive damages should, apart from damages representing actual loss, also be recoverable by the victim, as in the Anti-paparazzi Act of the State of California of the United States of America. Such punitive damages scheme contributes to the reduction of violation of privacy rights by paparazzi.

2. Greater protection should be afforded against photography in private residences than in public places. Where a photograph is taken in a public place, it must be considered whether the activity concerned performed by the victim is of a "purely private nature" or is simply an activity in general. Activities of a purely private nature as performed in public should receive the same treatment as activities performed in a private residence. Such position is indeed along the line of the decision of the European Court of Human Rights.

3. The extent of protection of the victim who is a public figure and one who is an ordinary person needs to be examined. Photographs of public figures are usually used for presenting their stories and working lives. Public figures are taken to have waived their private lives and subjected themselves to reasonable public scrutiny and enquiry as to matters related to their works within the limit of the recognition of their qualification and status as 'public figure' *par excellence*. Thus, taking photographs of public figures and dissemination of their photographs are part of public scrutiny, through photographers, into their working lives and, consequently, photographs taken and presented possess newsworthiness available to the public. In this light, the level of protection afforded to public figure should be lower than that afforded to ordinary individuals.