

CELEBRITY PRIVACY: HOW FRANCE SOLVES PRIVACY PROBLEMS CELEBRITIES FACE IN THE UNITED STATES

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INTRODUCTION

Imagine waking up in the middle of the night to an intruder standing over your bed, or coming home after a game or concert, only to discover your home has been burglarized. Further, imagine trying to enjoy an evening with your family at a restaurant and upon leaving, discovering dozens of people waiting outside to take your picture, aggressively blocking your path, and shouting inappropriate statements to get your attention. While these occurrences are farfetched to the average person, they occur almost daily for public figures in the United States. Outside

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of hiring private security, public figures have been left with virtually no options for preventing their privacy from being violated.

While the right of privacy is one of the most cherished fundamental rights in the United States, Freedom of Press dissolves most privacy protections for public figures. Public figures feel the effects of lack of safety and privacy when they are harassed by aggressive paparazzi, stalkers, and criminals who take advantage of leaked home addresses and celebrity work schedules. While public figures in the United States have no effective means of preventing privacy invasions and have very limited recourse in court, other countries have effectively addressed such preventative measures.

In France, publishing private information or pictures of celebrities appearing in a public place is prohibited unless the appearance is related to their position as public figures.¹ Further, publicizing the address of a public figure is unlawful, which minimizes the risk of a stalker or burglar visiting the private residence of the public figure.² Those who violate these privacy laws are subject to fines for each incident of illegal publication, irrespective of whether such publication occurs in France or any other country within the European Union.³ Even though these fines are not costly, they have contributed to the moderate success of preserving the right of privacy for public figures in France.⁴

This Comment discusses the privacy issues pertaining to public figures and proposes France's approach to privacy law as a possible solution. Part I of this Comment discusses the history of the right of privacy in the United States, including the current state of privacy law. Part II identifies three major situations in which privacy laws fall short in protecting public figures in the United States. Part III provides an

1. Myria Saarinen & Julie Ladousse, *Privacy in France: Overview*, THOMSON REUTERS (Feb. 1, 2017) [https://uk.practicallaw.thomsonreuters.com/7-573-6346?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/7-573-6346?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1).

2. *Id.*

3. *Id.*

4. In 2017, a French court ordered executives of a celebrity magazine to pay \$53,500 each for violating the privacy rights of the Duchess of Cambridge by publishing topless photos of her in 2012. *See, e.g.*, Brian Love, *French Magazine Found Guilty over Topless Photos of British Duchess*, REUTERS (Sept. 5, 2017, 5:32 AM), <https://www.reuters.com/article/us-britain-royals-france-photos-idUSKCN1BG1Q7>.

overview of French privacy law regarding public figures. Part IV reviews the effectiveness of the French privacy law as applied to public figures within the European Union. Finally, this Comment concludes that while implementing French privacy law in the United States will be a step toward protecting public figures' right to privacy, imposing monetary penalties and criminal sanctions is required to effectively reduce privacy law violations.

I. RIGHT OF PRIVACY IN THE UNITED STATES

A. *History of the Right of Privacy*

Although the Constitution provides no explicit right of privacy, certain penumbras in the Bill of Rights have allowed for such right to be implied by the U.S. Supreme Court.⁵ The right to privacy, or “right to be let alone,” emanates from *The Right to Privacy* by Samuel D. Warren and Justice Louis Brandeis.⁶ The Framers deemed “the right to be let alone – the most comprehensive of rights and the right most valued by civilized men.”⁷ Because the right to privacy is highly valued, privacy laws must be designed to protect all people, including public figures, from the disclosure of private information to the public against their will.⁸ Because “solitude and privacy have become more essential to the individual[,] . . . modern enterprise and invention have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than [he] could be inflicted by mere bodily injury.”⁹

5. *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965).

6. Scott J. Shackelford, *Fragile Merchandise: A Comparative Analysis of the Privacy Rights for Public Figures*, 49 AM. BUS. L.J. 125, 139 (2012).

7. *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

8. “The design of the law must be to protect those persons with whose affairs the community has no legitimate concern, from being dragged into an undesirable and undesired publicity and to protect all persons, whatsoever; their position or station, from having matters which they may properly prefer to keep private, made public against their will.” Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 214-15 (1890). In this Comment, the terms “public figure” and “celebrity” are used interchangeably. These terms are used to refer to someone who gets more notoriety from the media than the average person.

9. *Id.* at 196.

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In many ways, the privacy rights of public figures have succumbed to the Freedom of Press guaranteed by the First Amendment.¹⁰ Through the guise of public interest and newsworthiness, Freedom of Press has been afforded tremendous leeway, at the expense of the privacy and safety of public figures.¹¹ As Freedom of Press expands, “[e]ach crop of unseemly gossip, thus harvested, becomes the seed of more, and, in direct proportion to its circulation, results in a lowering of social standards and of morality.”¹² The lowering of social standards and morality appears limitless by news published allegedly in the public’s interest. The scope of newsworthiness is defined “in accordance with the mores of the community”;¹³ however, because publishers control the articles and news distributed to the public, they directly control what is deemed to be the mores of the community. Thus, as long as publishers control the scope of newsworthiness and the mores of the community, they will have limitless power to justify any invasion of privacy rights.

However, U.S. federal courts have held the right to Freedom of Press can be limited in some instances if a significant privacy violation has occurred.¹⁴ Such limitations exist because courts have acknowledged that the essence of privacy is to allow an individual “to shield intimate and personal characteristics and activities from public gaze; to have moments of freedom from the unremitting assault of the world and unfettered will of others in order to achieve some measure of tranquility . . . without which life loses its sweetness.”¹⁵ On the other hand, “[it] is necessary to [afford] limited protection[s] . . . [to] publishers in their reporting of public affairs.”¹⁶ In search of a balance

10. *See generally* *Hustler Magazine v. Falwell*, 485 U.S. 46, 50 (1988).

11. *See generally* *Virgil v. Time, Inc.*, 527 F.2d 1122, 1128-29 (9th Cir. 1975) (holding that “a standard for newsworthiness does not offend the First Amendment [because] it expresses the distinction between that which is of legitimate public interest and that which is not”).

12. Warren & Brandeis, *supra* note 8, at 196.

13. RESTATEMENT (SECOND) OF TORTS § 652D cmt. g (AM. LAW INST. 1997).

14. “Photographs can be a substantial invasion of privacy and feel like a violation” because they are quite personal in nature. *See* Jennifer R. Scharf, Note, *Shooting for the Stars: A Call for Federal Legislation to Protect Celebrities’ Privacy Rights*, 3 BUFF. INTELL. PROP. L.J. 164, 168-70 (2006).

15. *Galella v. Onassis*, 353 F. Supp 196, 232 (S.D.N.Y. 1972).

16. *Rosanova v. Playboy Enterprises, Inc.*, 580 F.2d 859, 862 (5th Cir. 1978).

between privacy and Freedom of Press, courts often must consider whether any community mores are at stake.

For example, a sixteen-year-old Harvard graduate, William James Sidis, was a child prodigy known for giving lectures to distinguished mathematicians on *Four-Dimensional Bodies*.¹⁷ Due to his popularity, Sidis decided to live his life out of the public light and was mostly successful in avoiding the media.¹⁸ However, an article was later published about the intimate details of Sidis' life, including all his attempts to avoid public scrutiny by changing his name and seeking employment as a clerk.¹⁹ The article posed "great reader interest, for it [was] both amusing and instructive; but it [could] be fairly described as a ruthless exposure of a once public character, who has since sought and has now been deprived of the seclusion of private life."²⁰ In Sidis' lawsuit against the publisher, the court determined that because "the misfortunes and frailties of . . . public figures are subjects of considerable interest and discussion of the rest of the population . . . [a]nd are the mores of the community, it would be unwise for a court to bar their expression in the newspapers, books, and magazines of the day."²¹

B. First Amendment Versus Right of Privacy

In the United States, Freedom of Press often clashes with the privacy rights of others. These clashes increase and intensify when the matters involve public figures. Allowing publishers to have a high degree of freedom makes it difficult for public figures to keep many aspects of their lives private. However, prioritizing privacy interests may have a chilling effect on publishers' ability to effectuate their full First Amendment rights. So, where should the lines be drawn between these two competing interests? While there is no clear-cut rule, U.S. courts have provided some guidance on balancing these conflicting interests.

17. *Sidis v. F-R Pub. Corp.*, 113 F.2d 806, 807 (2d Cir. 1940).

18. *See id.*

19. *Id.*

20. *Id.* at 807-08.

21. *Id.* at 809.

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In *New York Times v. Sullivan*, an elected Commissioner for the City of Montgomery, L. B. Sullivan, sought \$500,000 in damages for a New York Times publication criticizing the actions of police officers in the city of Montgomery.²² The U.S. Supreme Court determined a public official could not recover civil damages for the publication of a false story or criticism regarding official conduct without a finding of malice.²³ Additionally, the Court held that the media was entitled to protection when publishing a story regarding a public official to ensure people could make fully informed decisions regarding public office.²⁴ Three years after the *New York Times* ruling, the Court in *Curtis Publishing Co. v. Butts* and its companion, *Associated Press v. Walker*, further extended the media's constitutional right to publish "defamatory criticism of 'public figures.'"²⁵

Additionally, the Court has articulated that public figures may not recover damages for the publication of an article that depicts offensive false statements without a showing of malice.²⁶ In *Hustler v. Falwell*, a magazine published a parody interview in which Falwell, a nationally known minister, stated that his "first time" was in an outhouse with his mother.²⁷ The ad portrayed Falwell as a drunk and suggested that he only preached while intoxicated.²⁸ While the accusations may have been false, the Court reasoned, "At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern."²⁹ Because Falwell was unable to prove malice, he was barred from recovering damages for the publication.³⁰

In *Cox Broadcasting Corp. v. Cohn*, the Supreme Court examined whether an invasion of privacy cause of action for damages could be

22. *New York Times Co. v. Sullivan*, 376 U.S. 254, 256-57 (1964).

23. *Id.* at 283.

24. *See id.* at 272.

25. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 335-36 (1974).

26. The Court defined malice as "with knowledge that the statement was false or with reckless disregard as to whether or not it was true." *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988).

27. *Id.* at 47-48.

28. *Id.* at 48.

29. *Id.* at 50.

30. Malice could not be found because it could be easily determined this was a parody that was not "reasonably believable." *See id.* at 57.

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brought for the publication of a deceased rape victim's name if the name had already been released to the public during prosecution of the crime.³¹ The identity of the victim was kept confidential until eight months after the incident when a reporter accessed the indictments.³² Appellee sought damages claiming an invasion of his privacy after a television station broadcast the victim's name.³³ The Court determined that "the prevailing law of invasion of privacy generally recognizes that the interests in privacy fade when the information involved already appears on the public record."³⁴ As a result, the freedom of the press allows the publishing of truthful, private information when the information is known to the public.³⁵

C. Current Privacy Related Torts

While tort law provides some protections for public figures, it does not effectively address privacy concerns. Because torts are civil actions, they are ineffective against stalkers or thieves who often engage in criminal conduct. In addition, tort law often uses a reasonableness standard, which is difficult to apply in scenarios involving celebrities because the average person does not understand the unique difficulties celebrities face every day.³⁶ Therefore, it is important to understand why torts such as public disclosure of private facts and false light publicity fall short of protecting the privacy of public figures.

A person is liable under false light publicity for publicizing a matter concerning another person that places the other in a false light to the public.³⁷ The publicized, false information must be highly offensive based on the reasonable person standard, and the publisher must have known the information was false or acted with reckless disregard as to the truth of the information.³⁸ However, for this tort to equally provide

31. *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 471 (1975).

32. *Id.* at 472.

33. *Id.* at 473-74.

34. *Id.* at 494-95.

35. *Id.* at 496.

36. Scharf, *supra* note 14, at 175-76.

37. RESTATEMENT (SECOND) OF TORTS § 652E (AM. LAW INST. 1997).

38. *Id.*

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privacy protections for celebrities, it would need to hold publishers accountable for the actions of paparazzi or the manner and context photographs are being used for publication.³⁹

Another tort law regulating privacy is the public disclosure of private information. A person is liable for publicizing private information that would be seen as “highly offensive to a reasonable person,” and the information does not regard matters of public concern.⁴⁰ This law also includes a public interest standard, which is broadly defined to include anything the public may be intrigued by, but that fails to consider the value of the publicized information.⁴¹

Many problems arise from these narrow tort laws, which are often ineffective in protecting the privacy of public figures. The scope of the public interest exception is so wide that it seemingly encompasses all subject matter regarding a celebrity. This creates a situation in which virtually every photograph or publication could potentially fit under the public interest exception.

Moreover, highly offensive intrusion into a *private* place or conversation is another tort that celebrities could pursue to recover damages and protect their privacy interests.⁴² However, this tort uses a reasonable person standard to determine what is considered highly offensive.⁴³ Further, even though the newsworthiness exception applies, it does not operate as an absolute defense.⁴⁴ Also, because the tort only prevents intrusion into a private place, it does not inhibit a paparazzi’s ability to intrude upon a celebrity’s privacy while in a public space. Even in the face of a potential lawsuit, a paparazzi may find taking a picture worth the risk, especially nowadays when the profit made from a simple picture may substantially outweigh the fine.

39. Scharf, *supra* note 14, at 173.

40. RESTATEMENT (SECOND) OF TORTS § 652D (AM. LAW INST. 1997).

41. Scharf, *supra* note 14, at 176.

42. MILES J. FELDMAN & MICHAEL E. WEINSTEIN, *Elements of Claims and Legal Standards*, in ENTERTAINMENT LAW & LITIGATION § 11.02 (Matthew Bender ed. 2017-2018) (emphasis added).

43. As discussed, this standard is problematic because an average person may not understand the daily struggles of a celebrity in protecting his or her privacy. *Id.*

44. *See id.* (discussing that “the press has no immunity or exemption from generally applicable laws”).

D. Newsworthiness

The newsworthiness and public interest exceptions to privacy protections for public figures have been interpreted very broadly to include information consistent with community mores. The standard of newsworthiness is difficult to define and leaves public figures unclear of the privacy protections they possess. Moreover, the mentioned exceptions are increasingly difficult to evaluate because the media affects the public's interest in the private lives of celebrities through the stories they continuously publish. Once a story is published, it becomes public information, and it is no longer considered private or protected. Thus, a momentary breach of privacy causes lasting and irreparable harm.

There is a fine line between what is considered a private fact and what is considered newsworthy and of public interest. More often the latter is determined based on customs and community mores.⁴⁵ If a private fact is of no public interest, its publication should be considered a violation of an individual's right of privacy.⁴⁶ However, making such determination has been a challenge for the courts.

For example, in *Virgil v. Time*, a well-known body surfer, Virgil, was interviewed by Thomas Kirkpatrick for a story to be featured in *Sports Illustrated* magazine.⁴⁷ Virgil was willingly interviewed, but was unaware of photographs being taken, and ultimately determined he did not want to participate in the story.⁴⁸ Despite Virgil's unwillingness to be featured in the article, *Sports Illustrated* published the story after ensuring the information was correct.⁴⁹ Pictures published in the story included some that Virgil considered to be private.⁵⁰ After hearing the case, the circuit court concluded that the newsworthiness standard

45. *Virgil v. Time, Inc.*, 527 F.2d 1122, 1129 (9th Cir. 1975) (citing RESTATEMENT (SECOND) OF TORTS § 652D (AM. LAW INST., Tentative Draft No. 21, 1975)).

46. *See id.* at 1129-31.

47. *Id.* at 1123.

48. *Id.* at 1123-24.

49. *Id.* at 1124.

50. *Id.*

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should be applied, so a jury could determine if the story was in the public's interest and based on community mores.⁵¹

A California state court addressed the same issue in *Sipple v. Chronicle Publishing Co.* This case revolved around Oliver W. Sipple, who prevented Sara Jane Moore from assassinating President Gerald R. Ford with a gun.⁵² As result of this act, Sipple was recognized as a hero, with several news outlets publishing articles about his heroic act but also outing him as a member of the San Francisco gay community.⁵³ Although Sipple sought to recover damages under an invasion of privacy tort, the truthful publication was protected because "(1) it [was] newsworthy and (2) it [did] not reveal facts so offensive as to shock the community notions of decency."⁵⁴ The publication was not deemed so offensive as to shock the community notions of decency because Sipple was already known to be part of the gay community.⁵⁵ The court reasoned that although Sipple did not intend to become a public figure, his actions made him an involuntary public figure, making his private life a subject of public interest.⁵⁶

In *Michaels v. Internet Entertainment Group*, a federal district court dealt with the issue of newsworthiness in the context of a private sex tape. In this case, Paramount broadcast a story about the impending leak of a sex tape of Pamela Anderson Lee and Bret Michaels.⁵⁷ Paramount's broadcast included eight excerpts from the tape, each lasting around two to five seconds.⁵⁸ The court determined this was a light intrusion of Lee's privacy because her expectation of privacy had

51. However, "[t]he fact that they engage in an activity in which the public can be said to have a general interest does not render every aspect of their lives subject to public disclosure. Most persons are connected with some activity, vocational or avocational, as to which the public can be said as matter of law to have a legitimate interest or curiosity. To hold as matter of law that private facts as to such persons are also within the area of legitimate public interest could indirectly expose everyone's private life to public view. Limitations, then, remain to be imposed and at this point factual questions are presented respecting the state of community mores." *Id.* at 1131.

52. *Sipple v. Chronicle Publ'g Co.*, 154 Cal. App. 3d 1040, 1043 (1984).

53. *Id.* at 1044.

54. *See id.* at 1048, 1050.

55. *Id.* at 1049.

56. *Id.* at 1049-50.

57. *Michaels v. Internet Entm't Grp.*, 1998 U.S. Dist. LEXIS 20786, at *2 (C.D. Cal. Sept. 10, 1998).

58. *Id.* at *3.

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already been diminished at the time the private tape was first leaked.⁵⁹ On the other hand, Paramount had a strong First Amendment interest in covering the topic immediately after the release of the tape because the leak caused the story to be of high public interest.⁶⁰ Thus, Lee's invasion of privacy claim failed because the private intrusion was outweighed by the public's interest in the story.⁶¹

II. PRIVACY LAW'S FAILURE TO PROTECT CELEBRITIES

A. *Paparazzi Crossing the Line*

One of the most tragic and highly publicized instances of a paparazzi encounter escalating to a dangerous level was when Princess Diana was chased at high speeds by paparazzi, leading to her death in a car crash. This incident prompted a discussion on the dangers of paparazzi's newsgathering techniques.⁶² One of the main issues of focus was the difficulty of imposing regulations on paparazzi because most encounters with celebrities occur in public places in which celebrities can expect very little privacy. This difficulty increases exponentially because of a perception that people give up their expectation of privacy when they become a celebrity.⁶³

The newsworthiness and public interest exceptions to the right of privacy have made it difficult to determine when a violation of privacy occurs. For this reason, it can be said that the First Amendment rights to freedom of expression and press often trump any privacy right. The First Amendment protections provided to paparazzi are seen as "information gathering," which has been used to justify their aggressive techniques.⁶⁴

59. *See id.* at *28-29.

60. *Id.*

61. *Id.* at *29 (concluding that Lee did not raise a genuine issue as to the broadcast's lack of newsworthiness).

62. Jamie E. Nordhaus, *Celebrities' Rights to Privacy: How Far Should the Paparazzi Be Allowed to Go*, 18 REV. LITIG. 285, 286 (1999).

63. *Id.* at 290.

64. Patrick J. Alach, *Paparazzi and Privacy*, 28 LOY. L.A. ENT. L. REV. 205, 207 (2007-2008).

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The aggressive techniques of paparazzi pose a serious danger to the safety of citizens.⁶⁵ One of the most common and dangerous methods is chasing celebrities in a vehicle, which has often led to fatal car collisions. Even considering the extreme dangers of these techniques, there is very little recourse for victims of this conduct.⁶⁶ Therefore, it has been suggested that as a matter of public policy in an effort to prevent physical harm, these dangerous newsgathering techniques should be suppressed without this suppression being seen as an infringement of First Amendment rights.⁶⁷ While this suggestion is a step in the right direction and addresses the safety concerns for citizens, it does not provide sufficient protections to alleviate the privacy concerns of public figures.

As a result of insufficient privacy protections, what was once an intimate dinner with family or friends, now quickly turns into a barrage of photographs and large crowds shouting outside of the restaurant. Many of the more seasoned paparazzi discover back exits and side doors to popular restaurants, forcing the celebrity to face a large and often aggressive group of paparazzi. Therefore, a tranquil private dinner with family or friends has become an unrealistic fantasy.

Upon confronting a paparazzi, public figures are subject to aggressive behavior and ridicule as celebrities are often provoked by this behavior, resulting in damaging and embarrassing press coverage. Online videos show paparazzi yelling obscenities and making offensive remarks toward celebrities to obtain a photograph of the celebrity's reaction. Many of these photographs are then sold for substantial amounts of money to a publication that often uses them to publish misleading stories.⁶⁸ The profit made from the sale of the photographs incentivizes paparazzi to continue their aggressive and inappropriate behavior and publishers to use photographs in a disingenuous way.

65. *Id.* at 232.

66. *See id.* at 232-33 (stating that although the photos being taken are illegal, imposing liability on photographers for such actions is not within the reach of First Amendment jurisprudence).

67. *Id.* at 236 (reasoning that applying a general law targeting this conduct would be constitutional because it could overcome a strict scrutiny review).

68. Nordhaus, *supra* note 62, at 305 (stating that the media use these photographs on their magazine covers to attract sales). *See also* RICHARD L. SARTORE, *The Media Trials*, in *MEDIA RESPONSIBILITY* 43-44 (Xlibris Corp. 2000).

Such behavior has prompted celebrities to speak out about the need for further privacy protections for them and their families. For example, Halle Berry and Jennifer Garner both testified in front of the California Assembly Judiciary Committee in support of a bill that would provide their children with protection from aggressive paparazzi.⁶⁹ Jennifer Garner painted a picture of the paparazzi as “a gang of shouting, arguing, law-breaking photographers who camp out everywhere [her family is], all day, every day, [continuing] to traumatize [her] kids.”⁷⁰ The paparazzi stand close enough for children to hear the obscenities and inappropriate remarks being made, often causing the children to be afraid.⁷¹ The horde of paparazzi waiting outside of Halle Berry’s five-year-old daughter’s school was so intimidating that her child no longer wanted to attend school.⁷² On one occasion, a stalker waited behind paparazzi at the school, then confronted Halle Berry shouting that he wanted to cut her baby from her womb.⁷³

Preventing horrific events, such as these, vastly outweighs any minute societal benefit from the pictures and headlines obtained. Public figures and their family members should not be subject to relentless harassment from aggressive paparazzi. Little newsworthy information can be gained from a child playing in a park, a family eating a meal together, or a public figure walking his or her dog. As the media publishes stories involving public figures, it is creating and expanding the newsworthiness exception by increasing the public’s interest in celebrities. The media is able to profit off of the lack of privacy rights celebrities have and reiterates the argument that celebrities have no privacy. This is exactly what Justice Brandeis and Samuel D. Warren

69. Laura Olson, *Actresses Urge Support for California Paparazzi Bill*, SAN DIEGO UNION-TRIB. (Aug. 13, 2013, 11:33 AM), <https://www.sandiegouniontribune.com/sdut-actresses-urge-support-for-calif-paparazzi-bill-2013aug13-story.html>.

70. *Id.*

71. Samantha Schaefer, *Halle Berry, Jennifer Garner Testify on Paparazzi Bill*, L.A. TIMES (Aug. 14, 2013), <https://www.latimes.com/local/lanow/la-xpm-2013-aug-14-la-me-ln-halle-berry-jennifer-garner-paparazzi-bill-20130814-story.html>.

72. *Id.*

73. Ben Child, *Jennifer Garner Joins Halle Berry’s Fight for New Anti-Paparazzi Law in California*, THE GUARDIAN (Aug. 15, 2013, 3:12 AM), <https://www.theguardian.com/film/2013/aug/15/jennifer-garner-halle-berry-paparazzi-law>.

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warned us about when discussing the dangers of gossip and lowering of societal values.⁷⁴

By making private information public, the media prevents public figures from ever experiencing the privacy that the average person has. For example, guided tours that show you where celebrities live ensure that celebrities will never feel safe. This often causes celebrities to spend exuberant amounts of money on private security in order to feel some sense of safety and privacy. The inability to keep personal information private provides stalkers and criminals with the ability to use the available information in a way that could cause irreparable harm to a public figure.

B. Stalkers' Access to Information

The internet provides stalkers with endless information about various celebrities, their families, and the area in which they live. Stalkers generally have an infatuation with a particular celebrity and feel as though they have a close connection despite often never meeting the person.⁷⁵ Stalkers use the addresses or phone numbers of celebrities to send them letters, call them, or visit their homes. With few legal preventive options, celebrities are limited to hiring private security or obtaining a restraining order against stalkers. While these options may help mitigate safety concerns, they do not prevent potentially dangerous acts. Privacy torts, such as intrusion upon a private place, cannot effectively protect celebrities' privacy rights without providing preventative measures, such as imposing a bar on distributing celebrities' contact information.

Private security companies have found civil restraining orders to be ineffective means of preventing harm from a stalker.⁷⁶ This is because courts can be the scene of the attack as the stalker is likely to know the

74. See Warren & Brandeis, *supra* note 8, at 196 (discussing that the circulation of gossip lowers social standards and morality).

75. Christine Ro, *The Psychology Behind Stalking*, VICE (Dec. 13, 2018, 12:44 PM), https://www.vice.com/en_us/article/3k94wj/psychology-of-stalking-treatment.

76. MILES J. FELDMAN & MICHAEL E. WEINSTEIN, *Stalking and Harassment*, in ENTERTAINMENT LAW & LITIGATION § 11.10 (Matthew Bender ed. 2017-2018) (discussing that civil restraining orders are especially ineffective against individuals with a history of mental illness).

exact location and time during which the celebrity will be there.⁷⁷ Additionally, stalkers often have an infatuation with the celebrity and suffer from a mental illness, making the individual more likely to be irrational or violent.⁷⁸ These traits mean that a stalker will likely not be deterred by a civil restraining order, posing a serious safety risk to public figures and their families. For example, “[i]n one [situation], a stalker . . . violated a civil restraining order thirty-three times before the City Attorney had the person arrested and, even then, the stalker was released with minimal bail.”⁷⁹

Another example involves a stalker invading the private residence of Taylor Swift, a well-known American singer and songwriter. In the early morning of March 7, 2019, Roger Alvarado used a construction ladder and brick to break into Swift’s New York home, despite Swift having a protective order against Alvarado.⁸⁰ Alvarado had previously broken into the same residence on April 2018, and had been arrested after he took a shower and slept in Swift’s bed.⁸¹ He served a six-month sentence and was released on February 5, 2019.⁸² Taylor Swift stated that “[w]ebsites and tabloids have taken it upon themselves to post every home address I’ve ever had online. You get enough stalkers trying to break into your house and you kind of start prepping for bad things.”⁸³ While Swift is not the only celebrity that has had this type of problem, her case illustrates how the current legal system does not effectively prevent intrusion upon celebrities’ privacy.

77. *Id.* (discussing that a face-to-face encounter in court might provoke the stalker to fight the victim).

78. *See generally* Ro, *supra* note 75 (discussing the behavioral tendencies of stalkers).

79. FELDMAN & WEINSTEIN, *supra* note 76, n.169.

80. Previously, Alvarado had plead guilty and was ordered to undergo a mental health program. Aaron Katersky, *Taylor Swift Suspected Stalker Arrested for Allegedly Breaking into Her New York City Apartment Again: Police*, ABC NEWS (Mar. 8, 2019, 5:29 AM), <https://abcnews.go.com/US/taylor-swift-suspected-stalker-arrested-allegedly-breaking-york/story?id=61532972>.

81. *Id.*

82. David K. Li, *Taylor Swift Stalker Arrested – Again – for Breaking into Her NYC Home*, NBC NEWS (Mar. 7, 2019, 9:16 AM), <https://www.nbcnews.com/news/us-news/taylor-swift-stalker-arrested-again-breaking-her-nyc-home-n980511>.

83. *Id.*

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Besides the risks of a potential violent encounter, a stalker may opt for sending threatening letters or making unsolicited phone calls on a persistent basis. In some instances, stalkers may send suspicious packages to the celebrity's home. In other circumstances, an individual may trespass onto the property to look around or take photographs. Fears are elevated when a celebrity's family members are home during the trespass, increasing the likelihood of mental or physical harm. For these reasons, the best method of preventing such acts is to keep the public figure's contact information, such as phone numbers and addresses, private. Once the stalker discovers a celebrity's address, the celebrity has to either hire security or hope the stalker loses interest.

In addition to finding a celebrity's address online, the internet age has provided stalkers access to endless information about celebrities with ease.⁸⁴ A website called Gawker previously allowed users to input celebrity sightings in New York and Los Angeles.⁸⁵ This information was updated within fifteen minutes, providing users with the celebrity's location on Google Maps.⁸⁶ Although Gawker is now inactive, there are countless other websites and social media platforms that provide "a fantastic way to put mentally ill people in touch with the famous people they want to stab."⁸⁷

Courts addressing this issue have determined that celebrities, along with their close friends and family, "must . . . to some extent lose their right to privacy that one unconnected with the famous or notorious would have."⁸⁸ This is problematic because, in some circumstances, stalkers will attempt to contact a celebrity's family if previous attempts to directly contact the celebrity have failed. Stalkers may use the internet to target unassuming family members of celebrities, then use

84. See Mark Burdon, *Privacy Invasive Geo-Mashups: Privacy 2.0 and the Limits of First Generation Information Privacy Laws*, 2010 U. ILL. J. L. TECH & POL'Y 1, 19-20 (2010) (explaining that sites such as Gawker and FindHeMan have allowed stalkers to easily track a celebrity's every move).

85. *Id.* at 18-19 (detailing the process of how Gawker operated).

86. *Id.* at 19 (quoting the statement of Dominic Knight, an Australian journalist).

87. *Id.*

88. However, a mere relationship with a celebrity does not mean that such person is subjected to a "qualified loss of his privacy" as other factors should be considered. *Carlisle v. Fawcett Publications, Inc.*, 201 Cal. App. 2d 733, 747 (1962) (holding that marriage is an instance where one related to a public figure should expect a lessened privacy interest).

the information they have gained to either show up at the homes of family members or send harassing letters through the mail or messages through internet chatting sites. In extreme cases, the celebrity's family members may need to hire private security to protect themselves from the stalker's repeated attempts to initiate unwanted contact. Additionally, in an effort to keep all family members safe, the entire family may undergo training to better prepare for the stalker's spontaneous visits and harmful conduct. The necessity for family members to take extra precautions becomes drastically emphasized when stalkers turn to the children of celebrities in an attempt to reach the celebrity. Taking extra precautions requires celebrities to pay a hefty price for even the slightest sense of safety and privacy.

C. Use of Internet for Crime

Beyond the inherent danger that comes with giving the public access to celebrities' home addresses, the internet also allows its users to obtain aerial views of the property layout by simply searching the addresses.⁸⁹ Public access to such detailed information can have a devastating effect. For example, in 2009, a group of teens were arrested for their connection to a string of celebrity home burglaries.⁹⁰ The group strategically chose which celebrity homes to burglarize, without having any prior connection with those celebrities, simply based on the fact that their addresses could be easily discovered online.⁹¹ Consequently, the police recovered over two-million dollars in stolen property from the burglars but believed it was only a portion of what was taken from the homes.⁹²

More recently, in 2018, a local Los Angeles gang perpetrated a string of celebrity home burglaries by waiting until the celebrity left town.⁹³ To accomplish their crime, the burglars drove a small vehicle

89. FELDMAN & WEINSTEIN, *supra* note 76.

90. *Id.* n.165.

91. Andrew Blankstein & Richard Winton, *More Celebrities Targeted by Alleged 'Bling Ring,'* L.A. TIMES (Oct. 29, 2009), <https://www.latimes.com/archives/la-xpm-2009-oct-29-me-celebrity-burglaries29-story.html>.

92. *Id.*

93. Allyson Chiu, *Los Angeles Burglary Ring That Targeted Rihanna's Home Also Planned to Hit LeBron James, Police Say,* WASH. POST (Oct. 3, 2018),

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around neighborhoods where celebrities were known to live and tried to blend in as much as possible by dressing in button-up shirts and nice clothing.⁹⁴ After locating the celebrity's property, the burglars waited until the celebrity left, then returned in a large vehicle dressed in hoodies, and broke into the celebrity's home.⁹⁵ The burglars quickly took as much as they could, and then fled the scene.⁹⁶ This tactic was used to burglarize over twenty homes in Los Angeles and to steal several million dollars' worth of property.⁹⁷ It was later discovered that the burglars targeted athletes because they knew their away game schedules in advanced, meaning it was easy to determine when the athletes would be out of town.⁹⁸

The availability of celebrities' addresses and their children's photographs also increases the risk of kidnapping for ransom. One of the most famous cases was the kidnapping of Charles Lindbergh, Jr., who was kidnapped from the nursery of the Lindbergh home in New Jersey.⁹⁹ Later, a ransom note demanding \$50,000 was found on the nursery window.¹⁰⁰ After the ransom was paid, the FBI discovered that the instructions leading to the location of the child were false, and the body was later found a few miles away from the Lindbergh home.¹⁰¹

In addition to the physical dangers created by the distribution of celebrities' contact information, posting private home addresses and other sensitive information online for monetary gain serves no beneficial purpose to society. Such publications should not fall under the newsworthiness exception because they are not of public interest and may cause severe deprivation of privacy for public figures. Beyond denying privacy to public figures, this information can also be used to

https://www.washingtonpost.com/news/morning-mix/wp/2018/10/03/los-angeles-burglary-ring-that-targeted-rihannas-home-also-planned-to-hit-lebron-james-policesay/?noredirect=on&utm_term=.6d6ce3f68712.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. Social media postings from the targeted celebrities also enabled the criminals to facilitate the burglaries. *Id.*

99. *Lindbergh Kidnapping*, FBI, <https://www.fbi.gov/history/famous-cases/lindbergh-kidnapping> (last visited Nov. 9, 2019).

100. *Id.*

101. *Id.*

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commit serious crimes against them, which clearly does not serve any public interest, including Freedom of Press. Therefore, in order to deter crime and protect societal values, public figure privacy interests should trump the First Amendment interests of the press.

III. FRENCH PRIVACY LAW

Article 9 of the French Civil Code (Code) provides privacy protections for all individuals. The Code states that everyone has a right to his or her private life; thereby, affirming privacy protections to celebrities and their family members.¹⁰² A person violates Article 9 by (1) recording or transmitting statements made in private; (2) taking a picture or recording a person in a private place; (3) disclosing personal information, such as information regarding family life, health, or an individual's home; (4) disclosing material information, such as property status or mail secrecy; and (5) disclosing information about private professional life.¹⁰³ Personal information is defined to include home addresses and phone numbers.¹⁰⁴ Any individual who has suffered a privacy violation may seek damages and injunctive relief against the perpetrator.¹⁰⁵ Additionally, the French Criminal Code offers further protection by providing individuals with the opportunity to seek criminal sanctions against the perpetrator for privacy violations.¹⁰⁶

In *Nobel*, Chantal Nobel, a French actress, and her husband sued the French weekly magazine, VSD, for publishing photographs of Nobel, claiming the magazine violated Article 9 of the Code.¹⁰⁷ Prior

102. CODE CIVIL [C. CIV.] [CIVIL CODE] art. 9 (Fr.). "There is no difference in the law between the claims of public figures (celebrities, exposed politicians and so on) and private persons." *See also* Saarinen & Ladousse, *supra* note 1.

103. CODE DE PROCÉDURE PÉNALE [C. PR. PÉN.] [CRIMINAL PROCEDURE CODE] art. 226-1 (Fr.); Saarinen & Ladousse, *supra* note 1.

104. LIBRARY OF CONGRESS, ONLINE PRIVACY LAW: FRANCE, https://www.loc.gov/law/help/online-privacy-law/2012/france.php#_ftn22 (last updated Apr. 2, 2018).

105. CODE CIVIL [C. CIV.] [CIVIL CODE] art. 9 (Fr.). *See also* Saarinen & Ladousse, *supra* note 1.

106. CODE DE PROCÉDURE PÉNALE [C. PR. PÉN.] [CRIMINAL PROCEDURE CODE] art. 226-1 (Fr.). Such sanctions include a one-year imprisonment or a 45,000 Euro fine. Saarinen & Ladousse, *supra* note 1.

107. Jeanne M. Hauch, *Protecting Private Facts in France: Warren & Brandeis Tort Is Alive and Well and Flourishing in Paris*, 68 TUL. L. REV. 1219, 1252 (1994)

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to the incident, Nobel had been involved in a serious car accident and had spent several weeks in a hospital. While being pushed in her wheelchair, by her husband, toward a helicopter on top of the hospital roof, VSD photographers took pictures of them and published the photographs accompanied by good wishes for her health and recovery.¹⁰⁸ In *Nobel*, the High Court held:

the publication of the photographs, taken surreptitiously, divulged without consent since the persons concerned were opposed to any photos after the accident, and creating in addition the image of a weak person, racked by suffering and in physical decline, violated the right to privacy, regardless of the positive tone of the article.¹⁰⁹

This decision illustrates that the “newsworthiness” principle would not be expanded in France.¹¹⁰

The French High Court in *Nobel* placed further limitations on the French press, indicating that “the press should expect severe repercussions for aggressive reporting in areas concerning the private lives of entertainers and public figures.”¹¹¹ Additionally, in the *Aga Khan* case, the court held that “[e]ach individual, whatever his status, his birth, his wealth, his present or future position, has the right to require respect for his privacy.”¹¹² The High Court did not find any conflict between Freedom of Expression under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the privacy protections found in Article 9 of the Code because Article 10 includes certain limitations, such as the privacy of others.¹¹³

In France, a person’s right to privacy extends to private facts that have already been publicized because private facts are considered to be an “extension of an individual’s personality, [and] to strip them from

(citing Judgment of June 10, 1987, Cass. civ. 1re, LEXIS Pourvoi No. 86-16.185 (Fr.)).

108. *Id.*

109. *Id.*

110. *See id.*

111. *Id.*

112. *Id.* at 1253 (quoting Judgment of Oct. 23, 1990, Cass. civ. 1re, 1990 D.S. inf. rap. 270, LEXIS Pourvoi No. 89-13.163 (Fr.)).

113. Specifically, Clause Two of Article 10 provides these limits. *Id.* at 1254.

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the individual's control is as unthinkable to the French mind as is the truncation of an artist's moral control over the destiny of his work."¹¹⁴ Because private facts are closely connected to one's personality, consent to publish private facts must be specific and limited to the particular publication discussed.¹¹⁵

In the *Sachs* case, the High Court had to determine how much control an individual could have exercised over private facts after they had been made public without any adverse action from the individual.¹¹⁶ *Lui* magazine published a story that primarily recounted the private life of Gunther Sachs, a German playboy.¹¹⁷ The events the publisher used were public knowledge and had been used in many publications for years, including a separate story that had been previously published by *Lui* with Sachs' consent.¹¹⁸ The court determined that Sachs's prior "cooperation concerning the press cannot create a presumption that he would permit definitively and without restriction any magazine to reassemble and reproduce the affirmations which have appeared in other publications."¹¹⁹ Accordingly, French courts have consistently decided "tolerance with regard to prior revelations does not authorize the press to divulge facts of the same nature without the consent of the individual concerned."¹²⁰

IV. EFFECTIVENESS OF FRENCH PRIVACY LAW

A. *Comparison of Similar Cases in the United States and France*

To evaluate the effectiveness of privacy rights in France and to illustrate the effect that similar privacy laws would have in the United States, it is useful to compare factually analogous cases. In many factually similar cases, United States courts found no privacy violation,

114. *Id.* at 1261-62.

115. *Id.* at 1262.

116. *Id.* (citing Judgment of Nov. 2, 1966, Trib. gr. inst. de la Seine, 40 J.C.P. II, No. 14875 (1996) (Fr.)).

117. *Id.*

118. *Id.* at 1263.

119. *Id.* at 1264 (quoting Judgment of Jan. 6, 1971, Cass. civ. 2e, 1971 D.S.Jur. 263 (Fr.)).

120. *Id.*

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whereas French courts determined there was a privacy violation.¹²¹ This comparison will reveal areas for improvement for U.S. law.

In *Sipple*, an article revealed private facts about Sipple's membership in San Francisco's gay community.¹²² Although this disclosure occurred without Sipple's consent, the court denied recovery of damages because the article was a matter of public interest and contained information already known by the public. On the other hand, in a French case, a so-called Mr. G. sued a journalist for disclosing private information without his consent when the article stated Mr. G. was a homosexual.¹²³ Unlike the U.S. court in *Sipple*, a court of appeals of Paris allowed Mr. G. to recover damages because it determined that it is an invasion of privacy to publish an article stating another person is a homosexual, regardless of whether the statement is true or already known to the public.¹²⁴

Further, Jean-Marie LePen, a French politician, was featured in an article that included a picture of him at the beach—back and genitals exposed—during an official work trip.¹²⁵ LePen sought damages under an invasion of privacy action and was awarded 20,000 francs.¹²⁶ The court found the publisher liable after determining the article was published with the intent to embarrass and discredit the politician.¹²⁷ Comparing this case to *Hustler* and *Virgil*, would allow us to presume that if a similar case had been tried in the United States, there would have been no finding of liability. This difference in outcomes would likely occur because in the United States, criticism of a public figure and his or her official conduct has previously been considered a matter of public interest.¹²⁸

The following chart provides some of the key differences between the right to privacy in the United States and France:

121. *Id.* at 1288.

122. *Sipple v. Chronicle Publ'g Co.*, 154 Cal. App. 3d 1040, 1044 (1984).

123. Hauch, *supra* note 107, at 1220.

124. *Id.*

125. *Id.* at 1256-57.

126. *Id.* at 1257. As of November 10, 2019, 20,000 francs have a value of \$20,063.70 USD.

127. *Id.*

128. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 295-97 (1964) (holding that criticism of an elected city Commissioner is of public interest).

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Category	United States	France
Publicly Known Facts	No privacy interest	Privacy interest exists despite the prior disclosure of the information to the public
Home Address	No privacy interest	Must be kept private
Public Place	No privacy interest for newsworthy information	Privacy interests for photographs and conversations
Private Place	Privacy interest if there is a reasonable expectation of privacy	Privacy interests for photographs and conversations
Freedom of Press versus Privacy	May publish public figure's private information if it is newsworthy	The privacy of another is a major limitation on the Freedom of Press

B. Extension of French Privacy Laws to Non-French Citizens

French privacy laws have proved effective for many celebrities whose rights have been violated while visiting the country. For example, in 2016, Leonardo DiCaprio, an American actor, demanded a magazine remove a false story and attempted to recover the maximum damages of 18,000 euros plus legal fees.¹²⁹ The story included a photograph of DiCaprio in a night club with Rihanna, an American singer.¹³⁰ A French court ruled in his favor, finding the story to have made false claims and violated France's strict privacy laws.¹³¹

In a similarly pro-plaintiff ruling, a French court determined that *Closer*, a celebrity magazine, invaded the privacy rights of Kate Middleton, Duchess of Cambridge, for publishing topless photos of

129. Julian Robinson, *Leonardo DiCaprio Uses French Privacy Law to Prevent Pictures of Him Kissing Rihanna in a Nightclub from Being Published*, DAILYMAIL (Jan. 19, 2016, 10:51 AM), <https://www.dailymail.co.uk/news/article-3406723/Leonardo-DiCaprio-uses-French-privacy-law-prevent-pictures-kissing-Rihanna-nightclub-published.html>.

130. *Id.*

131. In the end, DiCaprio was compensated 8,000 euros. *Id.*

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her.¹³² The magazine's editor of the French edition and the chief executive of the Italian publisher each received a fine of 45,000 euros; although the photographers were required to pay smaller fines, they were also convicted under French privacy laws.¹³³

French privacy laws, compared to privacy laws of other countries, have created noticeable differences in the way celebrities are treated. When a paparazzi tries to take a photograph or video of a celebrity during his or her personal time (outside of a media appearance), the celebrity's security or assistant will take a picture or video of the paparazzi.¹³⁴ Later, the picture and/or video are sent to the celebrity's attorney, and the local media outlets are informed that the celebrity will seek civil damages if the photograph or video is published.¹³⁵ This has largely deterred taking photographs of celebrities out in public,¹³⁶ and the instances in which there is a photograph, the celebrity can have the picture removed from publication and seek damages.

While the civil penalties may be low relative to the amount a publication may earn from a picture, France's privacy laws provide an important example of how to increase public figures' safety and privacy. If similar privacy laws were implemented in the United States, celebrities and their families would enjoy a private life away from the public eye. To implement more effective privacy laws, the United States could mimic France's current regulations but increase the civil fines exponentially. The goal should be to prevent any profit from being gained by violating an individual's privacy.

CONCLUSION

Freedom of Expression and Press have hindered privacy protections for public figures in the United States to such an extent that it is questionable whether they have any privacy at all. Privacy violations often pose serious safety risks and may prevent a public figure from making and maintaining meaningful connections with his or her family and friends.

132. Love, *supra* note 4.

133. *Id.*

134. Interview with Dan Palmer, Owner, Executive Protection Company, in San Diego, Cal. (Mar. 15, 2019).

135. *Id.*

136. *Id.*

Media outlets may argue their First Amendment right to Freedom of Press outweighs individual privacy rights. Although current U.S. case law supports this argument, significant legal change is needed to ensure public figures' safety and security in their property. As Samuel D. Warren and Justice Brandeis warned, the newsworthy exception is controlled by the group of people profiting from its expansion. An ever-expanding definition of what is newsworthy leads toward a severe deprivation of privacy, which lowers societal values and harms individuals' physical and mental states.

France has enacted privacy protections that treat all people equally, allowing public figures to enjoy a private life aside from their public life. France's approach of imposing civil fines and criminal sanctions helps ensure that personal information remains private. While French privacy laws are a step in the right direction, stronger punishments for press and photographers are needed to deter privacy violations. Specifically, stronger monetary ramifications in the United States could ensure the press does not profit from its actions despite violating an individual's privacy. This financial deterrent might allow public figures to enjoy intimate dinners with family and friends, without having to face large swarms of people or aggressive paparazzi. Paparazzi might lose the incentive to take high valued pictures or partake in risky behavior because the publication would be barred from using such photographs. Further, stricter privacy laws in the United States may prevent criminals and stalkers from inflicting harm on a public figure or his or her property, which could increase celebrities' ability to enjoy a private life.

If laws like those in France applied in the United States, public figures would enjoy privacy protections that would effectively address their privacy and safety concerns. Adopting similar laws would protect public figures' safety, property, and privacy by making it illegal to lead tours that identify celebrity homes and to post celebrity contact information online. These restrictions would make it increasingly difficult for stalkers and thieves to locate a particular celebrity home. For stalkers, specifically, reducing the availability of location information provides a more effective deterrent than civil restraining orders by preventing encounters in the first place, rather than reacting to a violation of privacy. While implementing French privacy laws in the United States would be a step in the right direction, public figures would not have the ability to enjoy a private life out of the public eye

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unless larger penalties were sent to remove any incentive to violate the privacy rights of celebrities.

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* J.D. Candidate, California Western School of Law, 2020. Chassen Palmer is a former case manager and protective agent for a global executive protection company, with years of experience in behavioral assessment and executive protection. First, I would like to thank Professor Cato for her encouragement and insight throughout the writing of my comment. Second, I would like to thank my father, Dan Palmer, for his invaluable experience and advice on celebrity privacy. Third, I would like to thank the *California Western International Law Journal* staff for their hard work, professionalism, and commitment to excellence. Finally, and most importantly, I would like to express my deepest gratitude to my wife, Cassidy, for her support and encouragement throughout the writing of this comment.