

Perez Hilton takes their best shots

The gossip blogger's use of an agency's paparazzi photos puts the legal spotlight on copyright infringement.

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It's hard to know whom to sympathize with in this fight.

On one side: the paparazzi who stalk celebrities in their moments of greatest vulnerability — at doctors' offices, with their newborns, when they are falling-down drunk.



Perez Hilton, whose real name is Mario Lavandeira, operates a popular celebrity... (Myung J. Chun / LAT)

On the other: a blogger who helps himself to those photos, scrawls puerile comments on them, and posts them on his immensely popular and profitable website.

The owners of one L.A. photo agency are so frustrated with what they consider to be blatant theft by self-styled "gossip gangsta" Perez Hilton that they've decided to make a federal case of it.

On Nov. 30, X17 Inc., known for the aggressive pursuit of celebrity prey, filed a \$7.6-million federal copyright infringement lawsuit against Hilton, alleging that he has used 51 photos without permission, payment or credit.

The list of allegedly infringed photos is an almost poetic inventory of the state of pop culture and people's obsession with it: "Pregnant Katie Holmes," "Kevin Federline Pumping Gas," "The New Slim Britney Spears," "Britney Spears Exposes Her Derriere," "Britney Spears Exposes Herself (Again)."

Brandy Navarre, who co-owns X17 with her husband, Francois Navarre, said the agency is suing the owner of <http://www.perezhilton.com> not just because he doesn't pay or credit them, but also because they don't like his attitude.

While X17 has agreements with many gossip blogs — Pink IsTheNewBlog, PopSugar and SocialiteLife, among others — allowing them to post photos with proper credit and a link back to the X17 website (<http://www.X17online.com>), Navarre said she was tired of constantly reminding Hilton to credit X17 and had finally given up.

"We've had trouble with a lot of bloggers," she said. "But he's the biggest, and the most arrogant and pigheaded about it, frankly."

Reached by phone at his "office," a corner table in a Coffee Bean & Tea Leaf on Sunset Boulevard, Hilton, whose real name is Mario Lavandeira, sounded miffed. "She is suing me because I'm *arrogant*? That's not what her press release said. My position is that I don't think what I am doing is illegal, and I am going to vigorously defend myself. I am willing to step up to the plate and fight for my rights and fight for the rights of all bloggers."

While it's easy to be flippant about a battle between paparazzi and a sometimes juvenile blogger (who might draw cocaine or mucus trails from noses, mouth drool or other snarky/silly things on the photos he posts), there is a serious legal question at issue.

If it turns out that what he does is copyright infringement — rather than a fair use of newsworthy images, as Hilton's attorney claims — it would not only put a serious crimp in the photo-driven field of gossip blogs, but possibly create new case law.

"The effect would be to eliminate the ability to comment on and transform photographs under the fair-use exception to the Copyright Act," said Hilton's attorney, Bryan Freedman of Century City.

It's one thing to take somebody's copyrighted work and turn around and sell it, he added, but to alter the work to achieve a satiric or humorous end is entirely different and is allowed under the law.

'Basically free-riding'

But X17's attorney, John Tehranian of Costa Mesa, doesn't see it as fair use at all. Hilton, he said, "is basically free-riding on the labor and efforts of X17 and its photographers who stay up all night and roam the city, and he simply right-clicks and posts their photos." (Actually, Navarre said, she has altered her site so that Hilton can no longer right-click to get photos, but he manages to get them anyway.)

This conflict is more than a juicy legal fight between two controversial enterprises. It's also the manifestation of a cultural shift in how those obsessed with pop culture get their fixes. These days, no one has to wait for People's weekly appearance on the newsstand or even "Access Hollywood's" nightly roundups to find out about Nicole Richie's latest arrest or shockingly low weight.

Hilton, who said he earned less than \$50,000 last year and expected to make in the six figures this year, is known for the dizzying pace at which he updates his site, sometimes posting two dozen or more times a day.

"Perez is not being targeted because he's an affront to paparazzi everywhere," said technology expert Matt Lum, whose company, Hoodlum Productions, provides technology expertise to both Hilton and X17. "He is being targeted because the entire industry is undergoing a shift that was arguably brought on by blogs like [perezhilton.com](http://www.perezhilton.com), which took stargazers from a weekly or nightly television fix to an hour-by-hour, minute-by-minute, entertain-yourself-at-the-workplace enterprise.

"The way that Americans get their news and entertainment these days is a whole lot different from waiting for things to get printed, and that's what's at the crux of this whole ordeal," Lum added. "When he says he is fighting for all bloggers, he really is."

Getting personal

There is, as well, a personal aspect to the suit. Hilton and X17 used to be allies, linking back and forth to each other's sites. When Hilton grew tired of being admonished by Navarre to credit X17, he said, he retaliated by removing the link to her site. Hilton said her lawsuit is a public relations ploy aimed at squelching his blog to improve the prospects of hers, [X17online.com](http://www.X17online.com), which was started last June, and appears to be modeled in concept on what Hilton has done since he launched his current blog in early 2005.

Navarre scoffed at that. "We are suing him," she said, "because he is stealing our images and costing us money every day."

Take Monday, for example. X17 had landed what it considered a major scoop: photos of the newly separated Spears kissing an unidentified man.

In an attempt to prevent unauthorized downloading of her photos, Navarre spent hours personally attaching photos in e-mails that she sent to glossy weeklies and the big infotainment TV shows. She used e-mail instead of the much faster but more vulnerable technology called FTP (file transfer protocol), which transfers the images directly into clients' computers.

"People and Us Weekly are closing today," she said Monday, "and it would have been so much faster to FTP them, but I don't want Perez Hilton to have them on his website."

No such luck.

Hilton had somehow obtained and posted the photos before X17 even had a chance to put them on its own website. "He was the first one to get those photos," Navarre said. "I am so fuming."

She said X17 can make as much as tens of thousands of dollars from one magazine on an exclusive story. In the case of the Spears smooch shot, X17 sold a two-page spread to Us Weekly, but the magazine decided to shrink the photo play (which lowered the price by \$10,000, to \$15,000), Navarre said she was told, because the images had already been on Hilton's site and others.

One prominent copyright attorney said it was impossible to tell who would prevail.

"Clearly, photographs are copyrighted and afforded protection; on the other hand, wide berth is given to the press to report on newsworthy events," said Century City copyright attorney David Nimmer, author of "Nimmer on Copyright." In this context, a photograph could be considered a newsworthy event.

How bloggers get unauthorized photos in the first place is baffling to the agencies, Navarre said.

"Perez gets his photographs from any number of places," said technology expert Lum, who is not involved in the procurement of photos. "I am sure there are lots of links in so many chains that somewhere along the way, there has got to be a tug here and there, which results in a photograph veering from its intended pathway."

A joint letter

As it turns out, X17 is not the only agency trying to stop its photos from veering from their intended pathways. Seven notoriously competitive paparazzo agencies have set aside their differences to send a joint cease-and-desist letter to Hilton, demanding that he stop using their photographs. They have not filed suit but are watching X17's case with interest.

"He's stealing. Simple as that," said Frank Griffin of Bauer-Griffin, which has joined forces with six other agencies. "Why doesn't Us or People just steal the photos and not pay for them? What's the difference?"

Hilton, for his part, is unrepentant.

"If the law says I am wrong, if a jury of my peers says they think my actions are wrong, then I will listen to them. But I don't think they will. Especially if they see that the person who is suing me admitted she is suing me because I am arrogant. A judge would dismiss that."

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Times staff writer Jessica Garrison contributed to this report.

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