

LEVESON INQUIRY INTO THE CULTURE, PRACTICES AND ETHICS OF THE PRESS

**WITNESS STATEMENT OF GARY MORGAN
ON BEHALF OF SPLASH NEWS UK LIMITED**

I, GARY MORGAN, of WILL SAY as follows.

Question 1: Who is providing the statement and a brief summary of your career history

1. I am a Senior Vice President of Splash News and Picture Agency LLC and am duly authorised to make this statement on behalf of Splash News UK Limited. I make this statement in response to questions identified in a letter dated 5 January 2012 from the Assistant Solicitor to the Inquiry to Splash News. For convenience I use sub-headings setting out the questions in that letter.
2. The matters set out in this statement are within my personal knowledge unless the context shows otherwise, in which case I have checked the matters against documents or with persons with more detailed knowledge.
3. By way of a background, in August 2011 the assets of the business operated as "Splash News" were acquired by a company ultimately owned by Corbis Holdings, Inc., a

company headquartered in the State of Washington, USA. The UK operations of Splash have been transferred to Splash News UK Limited which is a subsidiary of Splash News & Picture Agency LLC, based in the USA. When describing the business which has been carried out by companies within the Splash group, I will use the term "Splash". When referring to the UK entity, I will use the term "Splash UK".

4. As is apparent from my statement, Splash's business is now global. Whilst I put the UK activities in that global context, I address this statement to activities of Splash in the UK.
5. My first job after leaving University and completing a journalism course at Richmond College, Sheffield was as a journalist with the Southampton Evening Echo. I then worked for South West News, a news agency based in Bristol; freelanced for national newspapers in London; and became a staff reporter on the Today newspaper. After I left Today, I travelled for a year and met Kevin Smith in Los Angeles in the course of that year. Kevin was also a journalist, who worked using the business name Splash, which he had started using in about 1989 or 1990. I joined Kevin in 1992 when I was 27 years old. Since then I have stayed with Splash as it developed in the US and the UK and held the position of Chief Executive Officer from 1996 until the sale in August 2011, after which I became Senior Vice President of Splash News and Picture Agency LLC.

Question 2: A brief history of Splash, how long it operated, what it does and how many staff it employs

6. The first Splash company was incorporated in California in 1996. Prior to its incorporation we used the name as an unincorporated business for our news reporting service. We had a total of 3 reporters, including Kevin and myself. We reported on celebrity news in addition to more general news stories, which we sold to US, Australian and UK media. However, we identified that the syndication of celebrity news with photos was a profitable business in which there was limited competition at the time and so focussed on that from early on.
7. At this time celebrity journalism was much more in demand in the UK and Australia than the US. Accordingly in the early to mid 1990s nearly all our celebrity stories and photos were sold in the UK and Australia and hardly any in the US or anywhere else in the world. Since then Splash has expanded into several territories worldwide and today the USA is our dominant market.
8. We set up a company in the UK in 2003. It had its own staff of photographers and its own sales team and administrative staff. It would sell photos taken in the UK and

elsewhere in the world and its photographers took photos in the UK and elsewhere in the world. In addition to the staff photographers, the company sold photos taken by freelance photographers.

9. Splash UK now employs 18 people, of whom 9 are staff photographers.
10. Splash has the following websites:
 - a. Splashnews.com, which is for the use of business customers. Photos available for purchase by publishers are uploaded onto this site and available for viewing with a login and password, made available to Splash business customers.
 - b. Splashnewsonline.com, which is a blog site aimed at consumers. Whilst I have not been able to check the statistics, I believe that in 2011 less than about one fifth of hits on this site were from the UK, compared to about 65% from the USA.
 - c. Splash-video.com, which is a business to business site whose purpose is to distribute video footage. The site requires a login and password, provided to business customers.
 - d. Splashnewstv.com, which is a marketing site to clients for Splash News TV product. Clients of this business include the BBC, the Wall Street Journal, Virgin and Yahoo.
 - e. People-paparazzi.com, which is a platform enabling members of the public to upload photos.
11. Splash is a global operation, and focuses on entertainment news. Our business succeeds because it meets the demands of publishers and their customers throughout the world.

Question 3: In addition to the number of staff employed, how many people on freelance or casual contracts are used by your agency?

12. Splash has about 2,700 freelance contributors of which about 15% have UK addresses. Splash UK does not contract with freelance contributors all of whom contract with our US entity.
13. Splash does not generally retain photographers on any basis other than as an employed staff photographer or on a freelance basis. It is possible that we might agree to pay a day rate to a photographer as their only payment to go on an assignment, but it is much more likely in those circumstances that we would offer the assignment to a freelancer and agree a commission for the project (i.e. an agreed percentage of revenue generated from the syndication of the submitted photographs).

14. Splash offers to accept photos from members of the public. Most offers of photos from the public are rejected, as I address below, but if they are accepted, the contributors are included in the number of freelancers identified above.

Question 4: Please indicate to us the typical work pattern of a photographer either employed by your agency, or working for you under the terms of a casual contract or on a freelance basis. How many hours would a typical photographer work?

15. Splash UK staff photographers have structured rotas. They generally work 8-10 hours a working day although they do not have set hours and if they are working away from home will generally work longer hours. They work at the direction of the UK news desk in the sense that the news desk will often identify where they should go and on what topics they should focus. If they get their photo part way through the day then they can generally finish for the day.
16. I am not in a position to say with any reliability how many hours freelancers work, or give any indication of their work pattern. The reason for this is that they work for themselves and simply provide their photos to Splash on a commission basis: they obtain an agreed percentage of revenue generated by a photo that is unaffected by the length of time that it has taken to take the photo. They are often secretive and do not disclose where they are going. This is because they see themselves in competition not only with other freelancers, but also with staff photographers employed by Splash.

Question 5: Please indicate to the Inquiry how your pay scale works. The Inquiry does not need to know, for example, the precise salaries of the owners. However, it does wish to understand how much a photographer is paid per day, or whether they are paid per photograph they file with you. Does pay increase as the photographer becomes more senior? Is pay linked to performance? To what extent do your photographers have any financial and/or commercial incentive to ensure that the photographs they file with you are as interesting / attractive as possible?

17. Splash UK staff photographers earn a basic salary with commission. Staff photographers are also paid expenses. Their salary does not increase with seniority unless they cease to be photographers and move into management positions.
18. Freelancers are paid only a commission calculated by reference to photos syndicated by Splash. They are not paid expenses.

Question 6: How are your photographs sourced? The Inquiry assumes that some are bought from paparazzi or other freelance photographers, and others are taken by photographers employed by the agency. Are there any other sources of photographs?

19. Photos are sourced almost entirely from staff photographers or freelancers anywhere in the world.
20. A small number of photos are sourced from members of the public. Nearly all photos submitted by the public are rejected. Many of them are of such poor quality as to be unusable. Some are faked: for example one was submitted in the US by someone posing with lifesize cut out pictures of two celebrities. Photos submitted by the public are scrutinised carefully before they are accepted. If a photo looks good enough to be used, experienced staff members will speak with the photographer on the phone to find out the story behind the photo. In this way they will aim to find out the circumstances in which the photo was taken.

Question 7: Do you have policies in place to ensure that your staff, casual or otherwise, do not engage in illegal or unethical practices? Please provide a copy of any code of practice or manual which regulates the activity of your employed photographers. What sanctions are imposed if your photographers fail to act in accordance with that code? How many times have you imposed sanctions on your employed photographers over the last four years? Please give specific examples. If there is no code, then please explain how photographers are given guidance as to which photographs it is appropriate to take?

21. We are sensitive to privacy issues in the UK, which are more stringent than in the USA where the great majority of photos that we syndicate are taken. The commercial pressure is on us not to cause issues for UK publishers of our photos. We do not have additional policies of our own but we have the following procedures designed to ensure that privacy is respected in the UK by our photographers.
 - a. The PCC Code of Practice is available on the internal Splash website. UK employees are required by their employment contracts to observe the terms of the Code.
 - b. All photographers must agree to Splash's media distribution agreement at the outset, and further terms and conditions each and every time they upload new photos. The agreement and the terms and condition include a warranty that the submitted content is original and does not infringe, violate or misappropriate the statutory copyright or

common law rights of privacy, publicity, or moral rights of any third party or violate any other applicable law, rule or regulation.

- c. We have informal meetings and discussions with individual staff photographers at which issues including privacy and harassment issues are discussed. The picture desks provide them with guidance on how to apply general principles to specific circumstances.
- d. We have a process under which new freelance photographers are placed on a slow track procedure and their photographs are checked before they are uploaded for distribution. In that period issues that arise are discussed and matters needing correction are corrected. New staff photographers can go on the fast track straight away because they are operating at the direction of the news/picture desk.
- e. We have a document which we call a "no shoot" list which contains the names of individuals who may not be photographed for Splash that is communicated to staff and freelance photographers on a regular basis.
- f. Both staff and trusted freelance photographers have the experience to know to telephone the news desk to identify and discuss particular issues before uploading photos that raise concerns in their minds.
- g. Photos are checked for objective red flags such as nudity and particular words in captions submitted by photographers and will pull photos from distribution to a hold area of the server to enable experienced staff to review. Not only does this serve to protect subjects and Splash, it also operates as a drag on the speed with which photos are made available for syndication and thus acts as an incentive to photographers to upload photos that will not be pulled.
- h. The faces of children to be made available in the UK are generally pixelated. There are occasions when celebrities' children's faces are not pixelated: for example, if a celebrity poses on a red carpet with his/her children we do not consider it necessary or appropriate to pixelate the children's faces. We have to exercise judgment as to whether a celebrity is posing with their child.
- i. The news and picture desks are looking at the business to business website all day long and are able to identify concerns from new photos that have been uploaded and are able to pull the photos.

- j. Freelance photographers are less susceptible to being controlled by policies and procedures of Splash. They are unlikely to contact Splash in advance of taking a photo and indeed may have specifically kept their efforts to take a photo secret in an attempt to maximise their chances of taking a photo that others do not take. Accordingly the influence that Splash can bring to bear on freelance photographers is more likely to be after the event and with a view to future behaviour, for example by pulling photos that have been taken by the freelancers.
 - k. Where a complaint is received about a photo the news desks are able to send an email alert to publishers using Splash. We have a system that removes photos from the website and from sale while a complaint is being investigated.
22. None of our freelancers are dependent upon Splash for their living, so a refusal by us to deal with them (referred to in question 11 as "blacklisting") will not affect the way in which they behave. The key point with freelancers is that they have to supply photos that our publishers and their customers want; if they do not supply those types of photos their photos will not be syndicated by Splash. For UK publishers, this means that the photographs have to be taken in circumstances that do not offend reasonable expectations of privacy, and do not, amongst other things, involve harassment.
23. In the last 4 years I have identified one formal disciplinary proceedings of staff photographers in the UK. This took place after a staff photographer left a foreign project without approval or telling his line manager.

Question 8: How do you ensure that the photographs taken by your employed photographers have not been taken in a private context, or taken in a situation that has caused distress or fear to the subject of the photograph? How often do you refuse to publish a photograph on the grounds that it was taken in the context of harassment, or without regard to privacy?

24. In addition to the procedures that I have identified under question 7, the main protection in relation to UK staff photographers is that they are directed by the news desk. This means that from the outset some circumstances are excluded by experienced Splash UK managers, including those in which it is obvious that shots would have to be taken in harassing or private circumstances. We place reliance on the experience of our managers, who have dealt with these issues many times throughout their careers, having previously been with publications such as OK! Magazine and the National Enquirer.

25. We have no records of how often Splash UK has refused to publish a staff photo for harassment or privacy reasons in the last 4 years. I cannot recall any such occasion. However, globally Splash periodically refuses to distribute photos for any number of reasons including these.

Question 9: Your website, www.splashnewsonline.com, encourages individuals to upload photographs and videos, which will then presumably result in payment. What steps do you take to ensure that these have not been taken in a private context, or taken in a situation that has caused distress or fear to the subject of the photograph? How often do you reject photographs from members of the public on the basis that it was taken in the context of harassment or without regard to privacy (as opposed to on the basis that it is of limited commercial value)?

26. As I recount under question 3, nearly all photos submitted by the public are rejected. Those that are accepted are only accepted after the member of the public who has submitted them has been spoken with on the telephone to find out the story behind the photo. This process helps the assessment as to whether or not the photo is genuine and whether or not there are privacy or other issues surrounding the photo that would lead us to conclude that we should not syndicate the photo.
27. We do not keep records of photos taken by the public that are rejected or the reasons that they have been rejected.

Question 10: To what extent do you, or can you, regulate the conduct of freelance photographers?

28. As indicated in my responses to questions 4 and 7, our freelance contributors are independent contractors who provide photographs to Splash on a commission basis. They are highly mobile in the sense that they can readily supply other agencies with photos. We do ask for exclusivity of media uploaded of a particular set, but there is nothing to stop a freelancer uploading media to multiple agencies.
29. The result is that we seek to regulate the conduct of freelancers working with Splash by co-operation and informal communications of our requirements, which themselves reflect the requirements of UK publishers that pictures supplied do not infringe any rights.

Question 11: What sanctions are you able to impose against individual photographers if you discover that photographs have been taken in an

unacceptable context? Do you blacklist individuals known to take photos without regard to privacy or harassment? How many times have you imposed sanctions or blacklisted an individual over the last four years? Please give specific examples.

30. I have addressed this question under questions 7 and 10.

Question 12: You will be aware of the famously faked photograph published in the Mirror newspaper of Diana, Princess of Wales, kissing Dodl al Fayed. What measures are taken to ensure that any photo provided to your agency by a photographer has not been digitally altered? Is digital alteration of photographs ever justified?

31. Digital enhancement of photos to adjust brightness, for example or to crop a photo, is acceptable. Digital alteration of photos such that materially changes the subject matter is never acceptable. There are no automated ways of identifying photos that have been materially changed of which I am aware. We have to guard against this by identification of trusted freelancers and checking of others; by the physical inspection of photos that are provided to us and uploaded; and by the use of contract terms identified under question 7. Even photos from trusted sources that are uploaded by the photographers to the business to business website are reviewed by the news desks constantly: not to check them for alterations, but to see what photos are being made available. Digitally altered photos appear odd and catch the eye, particularly of experienced employees on the news desks.

32. I cannot recall any example of a Splash UK photographer submitting an altered photo to Splash. I can recall one New York based photographer who submitted photos that had been altered. The most extreme example of his alterations was a photo of two people who were known to be dating who in the original photo were either side of a third person; the photo submitted to us in the US had the third person removed so the two people were next to each other. The photographer told us that this alteration had not been known or authorised by him and had been carried out by an assistant whom he had fired as a result of our complaint. We accepted what he told us and did not identify continuing problems with his photos.

Question 13: As noted above, the Inquiry has heard from a number of individuals who have complained about their treatment by paparazzi. The Inquiry would like your comment on these examples:

a. The mother of Hugh Grant's baby

Did your agency instruct any photographer, employed or otherwise, to follow or take photographs of the mother of Hugh Grant's baby (Tinglan Hong) before or after the birth of her child? Did an employed photographer from your agency follow or take photographs of the mother of Hugh Grant's baby at any time before or after the birth of her child? Was an employed photographer from your agency present outside the home of the mother of Hugh Grant's baby in the first two weeks of November 2011? If the answer to any of these questions is yes, please explain why.

Were you offered pictures of the mother of Hugh Grant's baby by any individual photographer? Were any pictures purchased?

To the best of your knowledge, did any newspaper publish any photographs of the mother of Hugh Grant's baby bought from your agency? If so, which one?

33. I understand from my investigations that a Splash staff photographer was instructed to attend outside the house of Tinglan Hong on 10 November 2011 to take photos of Tinglan Hong and her baby. I understand that the staff photographer waited outside the house but left without taking any photos of Tinglan Hong or her baby.
34. Splash UK subsequently was served with a copy of the injunction dated 11 November 2011 prohibiting attendance outside the house within 100 metres or taking photos in circumstances identified in the order. No other attempt has been authorised by Splash to take photos of Tinglan Hong or her baby, they have been added to the Splash no shoot list to seek to ensure that photographers do not attempt to take photos of them, and Splash has given undertakings to the court in this regard.
35. Splash has not been offered photos of Tinglan Hong or the baby by freelancers.
36. No such photos were syndicated by Splash.

b. Kate McCann

Did your agency instruct any photographer, employed or otherwise, to follow or take photographs of Kate McCann on her return from Portugal in September 2007? Did your agency buy any photographs of Kate McCann or her family during this period? Did any newspaper publish any photographs of Kate McCann bought from your agency in this period? Did you inquire into the context in which

the photos were taken? If so, what in your view justified the buying and publication of these photos?

37. Splash UK had an agreement with a Scandinavian syndication agent to provide a photographer to work with a journalist from a Norwegian magazine over two days and for that reason our photographer was in the McCann's village in September 2007 taking background shots of the village. The Splash photographer then found that the McCanns had returned from Portugal and he was one of the group of photographers on the street and took a photo of Kate McCann driving away from her house.
38. The photo taken of Kate McCann was published in the Norwegian magazine. Whilst the photos were permitted to be syndicated by Splash a week after publication by the magazine, the photos were not bought in the UK then as they were too old to be of interest to publishers. Our recording system is showing only two sales of those photos, one made in Sweden and one in Germany. We did not buy or receive for syndication any photographs of Kate McCann or her family during that period.
39. We did not enquire into the context in which the photos have been taken but I believe that the buying and publication of the photo was justified on the grounds that it was newsworthy, and bearing in mind that it was in the interests of the McCanns to keep the case public in an effort to find their daughter. Of course, I accept that newsworthiness does not justify harassment or breach of privacy, but I do not believe that the Splash photo did so.

c. Charlotte Church

Did your agency instruct any photographer, employed or otherwise, to follow or take photographs up the skirt of Charlotte Church? Has your agency ever taken or bought photos taken up the skirt of Charlotte Church or up the skirt of any other individual? Have such photographs been sold to newspapers? What is the justification for such photographs?

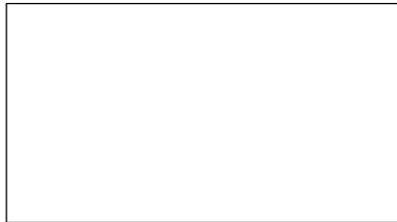
40. Splash did not give instructions to take photos up the skirt of Charlotte Church and did not receive or syndicate any such photos.
41. We have been supplied with photographs of various celebrities revealing their underwear. Many of those photographs have been syndicated.
42. The issue that Splash has needed to address in relation to these types of photos is whether or not the subject intended the photo to show what it did. Many celebrities have

a symbiotic relationship with the press and some celebrities willingly reveal themselves as part of the promotion of their image. Where it is clear that the celebrity has knowingly and willingly been photographed in this way then we take the view that such photographs are justified.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed



Full name **Gary Morgan**

Dated 1st, February 2012