

WIPO Conversation on IP and Frontier Technologies – Panel 1
October 28, 2025

The Right of Publicity

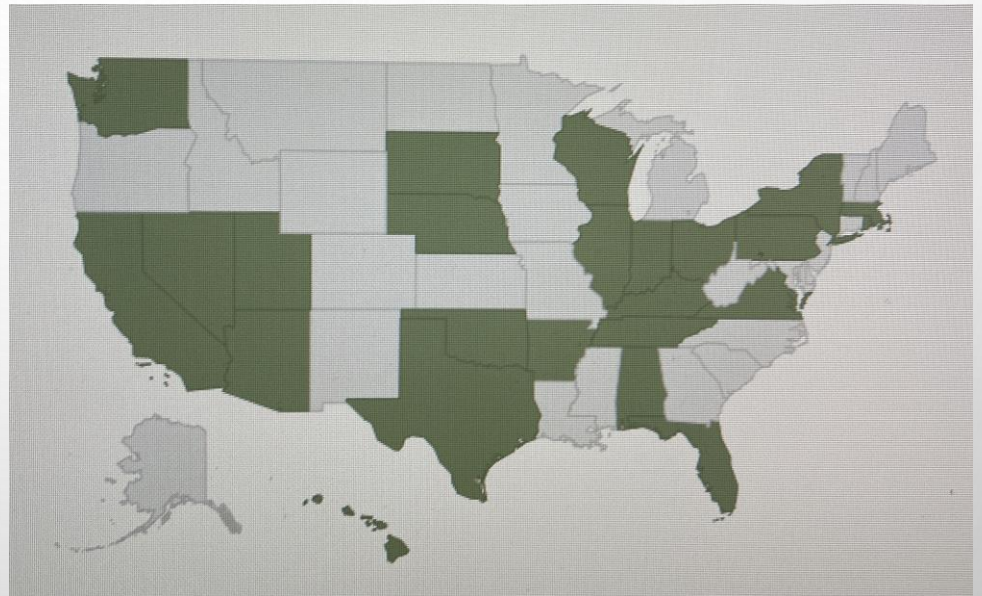
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The Right of Publicity is best defined as:

The right to control the commercial use of some identifiable aspect of one's persona.

In the U.S., 25 States Have Statutory Right of Publicity

Alabama	Nevada
Arizona	Ohio
Arkansas	Oklahoma
California	Pennsylvania
Florida	Rhode Island
Hawaii	South Dakota
Indiana	Tennessee
Illinois	Texas
Kentucky	Utah
Louisiana	Virginia
Massachusetts	Washington
New York	Wisconsin
Nebraska	



*At least 22 other jurisdictions have recognized the Right of Publicity via case law. These statutes can be conveniently accessed at:
<https://rightofpublicity.com/statutes>*

French law for violation of the *right of image* is derived from general tort action under Article 1382 of the French Civil Code. Approach to appropriation of persona disputes in France has roots in the rights of privacy, but is ongoing consideration whether this is a personal or property right.

Italy protects a right of image under sections of its Civil Code. The right is a personal right.

Argentina protects *highly personal rights* derived from international human rights treaties.

Brazil protects similar interests to the Right of Publicity through its constitution, copyright and neighboring rights laws.

Canada recognizes analogous rights through unfair competition law. Four provinces have a statutory right of privacy which encompasses commercial appropriation. Ontario has a *commercial appropriation of personality* tort at common law.

Australian claims for unauthorized use of a celebrity name or likeness proceed under a *passing off* theory under common law or sections 52 and 53 of the Trade Practices Act. Unlike English cases, recent Australian cases have relaxed the *common field of activity* requirement giving plaintiffs a better chance to succeed in showing passing off. It is unclear what degree of confusion is required but a recent case involving a famous swimmer hinged on the swimmer's potential loss of opportunity to exploit his commercial advantage, suggesting less requirement of deception.

In Japan, publicity-like rights distinct from privacy were recognized in *Mark Lester v. Tokyo Daiichi Film*. English actor Lester was used in a TV ad for Lotte chocolate without permission stating *Mark Lester likes it, too*. More recently, the Tokyo High Court recognized right of publicity interests as a property right. In the *Oniyanki Club* case, a group of TV actors was used in a calendar without permission. Court granted injunction and damages for economic harm saying “analogous to property rights, it should be the artists’ exclusive right to control commercial exploitation....” These cases brought under Article 709 of the Japanese Civil Code which provides liability for damages for intentional or negligent acts.

In Spain, Organic Law of 1982 provides civil protection for the “fundamental right to honor, personal and family privacy, and one’s own image” guaranteed by Article 18 of the Spanish Constitution of 1978. Article 7 lists acts considered illegitimate interferences with this fundamental right, including the taking of a person’s image captured in places or moments of private life. Article 7.6 then lists as additional illegitimate conduct “the use of the name, voice, or picture of a person for purposes of advertising, business or of a similar nature. The Organic Law provides that the right to one’s image can be enforced by family members alive at the time of the image-owner’s death. In absence of heirs, the right can be enforced by the Ministry of Justice for up to eighty years after death.

Germany may be moving toward an approach like the US Right of Publicity. Celebrities may pursue unauthorized use of their identity citing commercial value at stake. Statutes provide for protection of identity and on a case by case basis have recognized a “general right of personality.” This is considered a personal right.

Cornerstone points to the Right of Publicity

- In the U.S., Right of Publicity is state-based right, not federal.
- Legal sources for Right of Publicity are primarily common law and state statutes.
- The US Supreme Court has recognized the Right of Publicity as a distinct doctrine serving important policy purposes in *Zacchini v. Scripps-Howard Broadcasting*, 433 U.S. 562, 205 U.S.P.Q. 741 (1977).
 - Outside the U.S., many countries source analogous rights through its Constitution or through equitable doctrines like passing off and unfair competition.
- In most jurisdictions that recognize Right of Publicity-like interests, it appears to be regarded consistently as a right every individual possesses.
 - But commercial use most often involves public figures due to their recognizability and value.

Cornerstone points to the Right of Publicity

- Right of Publicity originally sprang from the right of privacy (a personal right) in the early Twentieth Century.
 - However, Right of Publicity evolved as a commercial interest.
- Right of Publicity today is generally regarded a property right, not a personal right.
 - Therefore, Right of Publicity generally is transferable during life or after death.
 - Right of Publicity is a member of the intellectual property family.
- Right of Publicity is distinct from interests covered by copyright and trademark, and is supported by its own critical policy purposes.
 - Falsity generally is not a required element for Right of Publicity infringement.
 - A useful analytical tool: is a specific person identifiable from the use?

The Right of Publicity generally applies to commercial uses in which a specific person is identifiable. By statute and case law, the protectible elements of persona is necessarily flexible. Indiana's statute specifies:

- Name
- Voice
- Signature
- Photograph
- Image
- Likeness
- Distinctive appearance
- Gestures
- Mannerisms

Indiana Code §32-36-1-6

<https://rightofpublicity.com/statutes/indiana>

Some of 2024's Top Earning Dead Celebrities according to Forbes

1. Michael Jackson	\$600,000,000
2. Freddie Mercury	\$250,000,000
3. Dr. Seuss	\$ 75,000,000
4. Elvis	\$ 50,000,000
5. Ric Ocasek	\$ 45,000,000
6. Prince	\$ 35,000,000
7. Bob Marley	\$ 34,000,000
8. Charles Schulz	\$ 30,000,000

A measurable portion of this income is Right of Publicity.

The Highest-Paid Dead Celebrities 2024, Oct. 29, 2024

Lisette Voytko-Best

<https://www.forbes.com/sites/lisettevoytko/2024/10/29/the-highest-paid-dead-celebrities-of-2024/>

***Prima Facie* elements of RoP infringement**

1. Validity: Plaintiff owns an enforceable right in the identity or persona of a human being.
2. Infringement:
 - A. Defendant, without permission, has used some aspect of identity or persona in such a way that plaintiff is identifiable from defendant's use.
 - B. Defendant's use is likely to cause damage to the commercial value of that persona.

The legal elements to establish infringement in the context of synthetic media should be no different. There should be no need for a “Tik Tok statute” or “AI amendment” when existing provisions are sufficient to address synthetic media. Flexibility has long been a virtue of the Right of Publicity.

Right of Publicity in relation to Copyright and Trademarks

Copyright exists in the protected *work*.

A person's face or identifiable features is not a work susceptible to copyright. The rights can co-exist, such as a picture taken of a notable person to be used in an advertisement or on product. In such instance, a license from both the copyright owner of the work, and the person depicted could be required.

Trademark concerns a distinctive symbol associated with the source of origin, and relies on *use*. It protects consumers and the expectation of quality and goodwill associated with the source of the trademark. Elements of a person's identity can be trademarked, assuming the criteria for trademark protection are met (consistent use, source identifier).

The Right of Publicity is neither a trademark nor a copyright. A person does not have to engage in commercial activity to have a Right of Publicity. Protectible elements of persona are not subject to or reliant upon any particular work or symbol. The right to decide if a person will be commercialized, and if so, by whom, and on what terms and conditions, is a natural impulse of justice.

New York's 2020 amendment to New York Civil Law §§50 & 51 finally recognized Right of Publicity for deceased personalities, and addressed emerging concerns of synthetic media including digital replicas and deepfakes.

*s.50-f (1) (c) defines digital replica as “a newly created...computer-generated ...performance” in a “newly created, original expressive sound recording or audiovisual work in which the individual did not actually perform, that is so realistic that a reasonable observer would believe it is a performance by the individual being portrayed and no other individual.”

*s. 50-f (1) (2)(b) prohibits digital replicas in scripted audiovisual work as a fictional character, or live performance of a musical work if use is “likely to deceive” the public that the use was authorized

*s. 50-f (1) (2)(b) says a use “shall not be considered likely to deceive” if the use includes a “conspicuous disclaimer in the credits of the scripted audiovisual work” (or any advertising for work in which a digital replica appears) “stating that the use has not been authorized” by the rightsowner

*s. 50-f (1) (8) sets the post-mortem term of protection at forty years

*Section 2 dedicated to sexually explicit depictions

*s. 50-f (2) (2)(b) provides that a disclaimer in such instances or works is not a defense

The 2023 fake AI Drake/the Weeknd song *Heart On My Sleeve* presaged Tennessee's 2024 amendment addressing synthetic media.

Tennessee's ELVIS Act: Ensuring Likeness, Voice, and Image Security Act of 2024 to provide broader protection against AI, enhancing the concept of voice.

Section 3: “Voice” means a sound...readily identifiable and attributable to a particular individual, regardless of whether the sound contains the actual voice or a simulation....

Section 4 (a) Every individual has a property right in the use of that individual's name, photograph, voice, or likeness in any medium in any manner.

Section 5 (2)(B) “Use” includes commercial availability of a sound recording or audiovisual work in which the individual’s name, photograph, voice, or likeness is readily identifiable.

Section 6 (a)(2) A person is liable...if the person...makes available to the public an individual’s voice or likeness, with knowledge that use of the voice or likeness was not authorized...

(3) A person is liable...if the person...makes available an algorithm, software, tool, or other technology, service, or device, the primary purpose...of which is the production of an individual’s photograph, voice, or likeness without authorization from the individual...

<https://rightofpublicity.com/statutes/tennessee>

NO FAKES ACT – NURTURE ORIGINALS, FOSTER ART, AND KEEP ENTERTAINMENT SAFE ACT

Proposed in 2024, the NO FAKES Act is a federal bill with similarities to Right of Publicity, specific to digital versions of living or deceased people and new works or other potential uses. Not passed in 2024, re-introduced April 2025 as H.R. 2794. It does not seem to take into account existing state-based Right of Publicity, and has preemption provisions which could create issues for New York and Tennessee’s recent amendments (among others).

Section 2 Voice and Visual Likeness Rights

(a) definitions

(2) The term *digital replica*—

(A) means a newly created, computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that—

(i) is embodied in a sound recording, image, audiovisual work, including an audiovisual work that does not have any accompanying sounds, or transmission—

(I) in which the actual individual did not actually perform or appear; or

(II) that is a version of a sound recording, image, or audiovisual work in which the actual individual did perform...in which the fundamental character of the performance or appearance has been materially altered....

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