



Right of Publicity State of the Law Survey

Right of Publicity (ROP) Committee

United States

| Country - Team Member | Is there a recognized right of publicity? | Derivation of right | Whose rights protected | Aspects protected | Post-mortem rights? If so, how long? | Remedies | What is the proper forum (court/agency) for raising complaints? | Defenses/Exceptions | Any Additional Comments | Contributing Firm | |
|-----------------------|---|---|---|---|---|--|---|--|--|--|--|
| United States | | | | | | | | | | | |
| Alabama | YES (statutory) | Alabama Right of Publicity Act (AROP Act), Ala. Code §§ 6-5-770 to 6-5-774. Alabama does not expressly recognize a common law right of publicity. | The statute protects any natural persons who at any time resided in Alabama or died while in the state, or whose estate was probated in the state. | The Alabama Right of Publicity Act protects those attributes of a person that serve to identify that person to an ordinary, reasonable viewer or listener, including name, signature, photograph, image, likeness, voice, or a substantially similar imitation of one or more of those attributes | The right of publicity continues 55 years after death, whether or not the person commercially exploited the right during his or her lifetime. Ala. Code § 6-5-771(2). | Monetary and injunctive relief. The monetary relief includes statutory damages of \$5,000 per action or any other damages available under Alabama law, including punitive damages. Ala. Code § 6-5-774(1). | State court or federal court with jurisdiction. | First Amendment, consent, statutory exemptions | Alabama common law recognizes the appropriation invasion of privacy tort. <i>Schifano</i> , 624 So. 2d at 181. Before the Alabama Right of Publicity Act (AROP Act), at least one Alabama court held that the elements for an appropriation invasion of privacy claim were similar to the elements for a traditional right of publicity claim, as both protect an individual from unauthorized commercial use of his name and likeness. <i>Minnifield</i> , 903 So. 2d at 824. | | |
| Alaska | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | | |
| Arizona | YES - For Soldiers Only (statutory) | Statutory. § 12-761; § 13-3726. | n/a | n/a | n/a | n/a | n/a | n/a | n/a | | |
| Arkansas | YES (statutory) | Statutory. A.C.A. § 4-75-1101 to 1113. The statute supplants any common law right of publicity which may have previously existed. A.C.A. § 4-75-1111. | Natural persons | A person's name, voice, signature, photograph, and likeness. | Yes, 50 years after death. A.C.A. § 4-75-1107. Successors in interest to a person's right of publicity must register their interest with the Arkansas Secretary of State as a prerequisite to enforcing the right of publicity. A.C.A. § 4-75-1106. | Injunctive relief, actual damages, and profits attributable to the commercial use may be available. A.C.A. § 4-75-1109. | State court or federal court with jurisdiction. | Consent, statutory exemptions | n/a | | |
| California | YES (statutory & common law) | Statutory. Cal. Civ. Code § 3344 (2016). Common law: <i>Comedy III Prods., Inc. v. Gary Saderup, Inc.</i> , 25 Cal. 4th 387, 391 (2001); <i>Eastwood v. Superior Court</i> , 149 Cal. App. 3d 409 (1983). | Natural persons | Name, voice, signature, photograph, or likeness | Yes, 70 years. Cal. Civ. Code § 3344.1 | Actual damages or \$750 (whichever is greater); profits, punitive, attorneys' fees and costs; equitable relief | State court or federal court with jurisdiction. | Incidental use, newsworthiness, First Amendment, statutory exemptions | Right of publicity is an intellectual property right, in contrast to privacy based misappropriation tort. | | |
| Colorado | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | | |
| Connecticut | YES (common law) | Common law. See, e.g., <i>Hart v. World Wrestling Entm't, Inc.</i> , 2012 WL 1233022 (D. Conn. Apr. 10, 2012) | Natural living persons | Name, likeness, impersonations, photographs, signatures, voice | Uncertain, however, a federal district court decision applying Connecticut law suggests that a postmortem right may be recognized. <i>Jim Henson Prods., Inc. v. John T. Brady & Assocs., Inc.</i> , 867 F. Supp. 175, 190 (S.D.N.Y. 1994) | Compensatory, punitive, possibly injunctive and attorney's fees based on Connecticut torts law | State court or federal court with jurisdiction. | Newsworthiness, consent | In 2009, legislation creating a statutory right of publicity to protect individuals' image, likeness, recorded voice, and performance was introduced in Connecticut, but no laws have been enacted (H.B. 5238, 2009 Leg., Jan. Sess., 2009 (Conn. 2009)) | | |
| Delaware | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | | |
| Florida | YES (statutory) | Statutory. Fla. Stat. Ann. § 540.08. | Natural persons | The statute protects a person's name, portrait, photograph, or other likeness. Common law protects a person's name and likeness. | Yes, post mortem rights are protected for 40 years after death under statute. Fla. Stat. Ann. § 540.08(5). | Injunctive, compensatory, punitive and exemplary | State court or federal court with jurisdiction. | First Amendment, consent, Statutory exemptions | Common law appropriation invasion of privacy (which is "substantially identical" to the statutory right of publicity claim). <i>Fuentes v. Mega Media Holdings, Inc.</i> , 721 F. Supp. 2d 1255, 1260 (S.D. Fla. 2010). | | |
| Georgia | YES (common law) | There is no Georgia statute recognizing the right of publicity. Common law right of publicity. <i>Martin Luther King, Jr., Cir. for Soc. Change, Inc. v. Am. Heritage Prods., Inc.</i> , 296 S.E.2d 697, 703 (Ga. 1982) (MLK1). | Natural persons, regardless of whether the plaintiff is a private citizen, an entertainer or a public figure. <i>MLK1</i> , 296 S.E.2d at 702. | Georgia cases have protected publicity rights in a person's name, likeness and picture. | Yes, uncertain for how long | Injunctive, compensatory, punitive | State court or federal court with jurisdiction. | First Amendment, newsworthiness, consent, innocent publication without knowledge of an advertisement | n/a | | |
| Hawaii | YES (statutory) | Statutory - Haw. Rev. Stat. Ann. §§ 482P-2 to 482P-8 (2016) | Statute provides that "every individual or personality has a property right in the use of the individual's or personality's name, voice, signature, and likeness." Haw. Rev. Stat. Ann. § 482P-2. | Name, voice, signature, and likeness. | Yes, 70 years | Injunction, monetary greater of \$10,000 or actual, profits, reasonable attorneys' fees, expenses, and court costs. § 482P-6 | State court or federal court with jurisdiction. | Statutory exemptions | n/a | | |
| Idaho | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | | |
| Illinois | YES (statutory) | Statutory: 765 ILCS 1075/1-60. The statute explicitly supplanted any common law rights. | Natural persons | Any attribute of an individual that serves to identify that individual to an ordinary, reasonable viewer or listener, including but not limited to (i) name, (ii) signature, (iii) photograph, (iv) image, (v) likeness, or (vi) voice. | Yes, 50 years. ILCS 1075/30. | The greater of (i) actual damages, profits derived from the unauthorized use, or both, or (ii) \$1,000. ILCS 1075/50-40. Punitive damages for willful violation. ILCS 1075/50-40. Injunctive relief. ILCS 1075/50-50. | State court or federal court with jurisdiction. | Consent, non-commercial use including news, statutory exemptions | n/a | | |
| Indiana | YES (statutory) | Statutory. Ind. Code Ann. § 32-36-1 et seq. Indiana also recognizes a common law cause of action for the unauthorized commercial use of name and likeness. This right is considered related to the right of privacy. See, e.g., <i>Cont'l Optical Co. v. Reed</i> , 86 N.E.2d 306 (Ind. Ct. App. 1949), and <i>Felsher v. Univ. of Evansville</i> , 755 N.E.2d 589 (Ind. 2001). | Natural persons | Statute protects name, voice, signature, photograph, image, likeness, distinctive appearance, gestures, or mannerisms. Common law protects name and likeness. | Under the statute, 100 years. Ind. Code Ann. § 32-36-1-8. At common law, there is a postmortem right but uncertain how long. | Under the statute, the remedies include injunctive relief; compensatory damages (i.e., the greater of \$1,000 or actual damages and profits; treble or punitive damages for knowing, willful or intentional violations; attorneys' fees, costs and expenses; impoundment and destruction of violative items. Ind. Code Ann. § 32-36-1-10 to -14. At common law, the remedies include compensatory damages and special damages. | State court or federal court with jurisdiction. | Statutory exemptions, consent | n/a | | |
| Iowa | NO | There is no Iowa statute that recognizes a right of publicity. Iowa state courts have not recognized a common law right of publicity. | n/a | n/a | n/a | n/a | n/a | n/a | n/a | Iowa courts recognize an invasion of privacy tort under state common law and have adopted the invasion of privacy doctrine of the Restatement (Second) of Torts. <i>Howard v. Des Moines Register & Tribune Co.</i> , 283 N.W.2d 289 (Iowa 1979). The Iowa Supreme Court recognized that the invasion of privacy tort covers four types of wrongs, including appropriation of another's name or likeness for one's own use or benefit. <i>Winegard v. Larsen</i> , 260 N.W.2d 816 (Iowa 1977); Restatement (Second) of Torts § 652A (1977)). No Iowa court has addressed a claim for appropriation of name or likeness and, as a result, the case law is not developed in this area. | |
| Kansas | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | | |
| Kentucky | YES (statutory) | Statutory. Ky. Rev. Stat. Ann. § 391.170. | Natural persons | Name and likeness under both statute and common law. | Yes, 50 years for "public figures" under the statute. | Compensatory and punitive damages | State court or federal court with jurisdiction. | Newsworthiness, First Amendment, incidental use | Some federal courts interpreting Kentucky law have referred to Kentucky's appropriation invasion of privacy tort as a common law right of publicity. See, e.g., <i>Cheatham v. Paisano Pub's, Inc.</i> , 891 F. Supp. 381 (W.D. Ky. 1995). | | |

| Country - Team Member | Is there a recognized right of publicity? | Derivation of right | Whose rights protected | Aspects protected | Post-mortem rights? If so, how long? | Remedies | What is the proper forum (court/agency) for raising complaints? | Defenses/Exceptions | Any Additional Comments | Contributing Firm |
|-----------------------|---|--|---|---|---|---|--|---|--|-------------------|
| Louisiana | YES - For Soldiers Only (statutory) | Statutory. LA. STAT. § 14:102.21. | Soldiers may claim the statutory right of publicity. A "soldier" means any active-duty member or former member of the armed forces of the United States, including any member who was killed in the line of duty. | Name, portrait, or picture of any soldier | Yes, uncertain for how long | Up to \$1,000 fine, up to 1 year imprisonment or both | State court or federal court with jurisdiction. | First Amendment | Louisiana courts recognize a common law right of privacy and the tort of misappropriation. Claims under the misappropriation tort have thus far been held not to survive death. See <i>Tatum v. New Orleans Aviation Bd.</i> , 102 So. 3d 144 (La. Ct. App. 2012). | |
| Maine | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | There is no right of publicity in Maine. <i>McBee v. Delco Co., Ltd.</i> , 2004 WL 2634465, at *14 (D. Me. Aug. 19, 2004) However, Maine recognizes the tort of appropriation invasion of privacy, which includes the commercial appropriation of an individual's name or likeness | |
| Maryland | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | Maryland courts have not decided whether a common law "right of publicity" exists, however, they recognize the common law appropriation invasion of privacy tort | |
| Massachusetts | YES (common law) | MASS. GEN. L. Ch. 214 §63A, 1B. No common law right (<i>Blugers, Inc. v. United States</i> , 736 F. Supp. 2d 936, 342 (D. Mass 2010)) | Any person | Name, portrait, or picture | Uncertain, Massachusetts "trial" court in unpublished opinion has ruled that the right of publicity only applies to living persons. <i>Hanno v. Ken's Foods, Inc.</i> , 2007 WL 1695311, at *1 n. 4 (Mass. App. Ct., June 12, 2007) | Injunctive, compensatory, discretionary triple damages (if defendant actions were done knowingly) | State court or federal court with jurisdiction. | Newsworthiness, incidental use, consent, first amendment, statutory exemptions | n/a | |
| Michigan | YES (common law) | Common law. See, e.g., <i>Pallas v. Crowley, Miller & Co.</i> , 33 N.W.2d 911 (Mich. 1948); <i>Herman Miller, Inc. v. Polzetti Imports and Exports, Inc.</i> , 270 F.3d 298 (6 th Cir. 2001). | Natural persons | Name and likeness | Yes, uncertain for how long | Actual damages and injunctive relief | State court or federal court with jurisdiction. | Newsworthiness, consent, First Amendment | n/a | |
| Minnesota | YES (common law) | Minnesota state courts have not explicitly recognized or rejected a right of publicity, but federal courts interpreting Minnesota law have concluded the right exists under Minnesota law. <i>Ventura v. Titan Sports, Inc.</i> , 65 F.3d 725 (8th Cir. 1995); <i>Hillierich & Bradbury Co. v. Christian Bros., Inc.</i> , 943 F. Supp. 1136 (D. Minn. 1996). | The common law right of publicity is extended to individuals whose identity holds commercial value. <i>Hillierich & Bradbury Co. v. Christian Bros., Inc.</i> , 943 F. Supp. 1136 (D. Minn. 1996). | The common law right of publicity is extended to individuals whose identity holds commercial value. | Not considered | Injunctive, compensatory | State court or federal court with jurisdiction. | First Amendment, consent, copyright preemption | Minnesota recognizes a right to privacy, including the tort of appropriation for the unauthorized use of another's name or likeness for the defendant's own benefit. <i>Lake v. Wal-Mart Stores, Inc.</i> , 582 N.W.2d 231 (Minn. 1998). In 2016, following the death of Prince, the "Personal Rights in Names Can Endure" (or PRINCE) Act was introduced, which would codify the right of publicity law in Minnesota and also allow for a post-mortem right of publicity. The bill was ultimately pulled from consideration after it was met with scrutiny. Media reports indicate that a new bill will be introduced. | |
| Mississippi | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| Missouri | YES (common law) | Missouri courts recognize the right of publicity under state common law and look to the Restatement (Third) of Unfair Competition for guidance in right of publicity claims. <i>Doe v. TCI Cablevision</i> , 110 S.W.3d 363 (Mo. 2003); Restatement (Third) of Unfair Competition § 10(3), 46-49 (1995). However, the right to privacy protects against intrusion on an individual's private self-esteem and dignity and is a separate and distinct cause of action from the right to privacy. See <i>Bear Foot, Inc. v. Chondler</i> , 965 S.W.2d 386, 389 (Mo. Ct. App. 1998). | Natural living persons | n/a | Name and physical likeness. Missouri courts have not addressed whether the right of publicity may be violated through the use of an individual's voice or signature. | Not considered | Injunctive relief and general, or compensatory, damages. | State court or federal court with jurisdiction. | First Amendment, consent | n/a |
| Montana | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| Nebraska | YES (statutory & common law) | Statute. Neb. Rev. St. § 20-207. Nebraska's privacy statutes acknowledge a common law right of publicity, which therefore embodies a common law right of publicity. Neb. Rev. Stat. § 20-206(3), 51. Thomas McCarthy, <i>McCarthy on Trademarks and Unfair Competition</i> § 28.16 (4th ed. 2012). | Natural persons | n/a | Exploitation of natural persons, names, pictures, portraits, or personalities for advertising or commercial purposes | Most rights of action under Nebraska's privacy statutes do not survive the death of the subject of the invasion of privacy. However, postmortem rights are recognized for right of publicity actions based on exploitation of a person's name or likeness. See Neb. Rev. Stat. § 20-208. No Nebraska court has addressed the duration of the postmortem right of publicity. | General damages, mental suffering, special damages and nominal damages | State court or federal court with jurisdiction. | Consent, statutory exemptions | n/a |
| Nevada | YES (statutory) | Statutory - Nev. Rev. Stat. Ann. § 597.790 to 597-810 (2015). | Natural persons | Name, voice, signature, photograph or likeness | Yes, 50 years § 597.790 | Injunctive, monetary: actual damages, but not less than \$750; and exemplary or punitive damages (if knowingly made use without consent) § 597.810 | State court or federal court with jurisdiction. | Statutory exemptions | n/a | |
| New Hampshire | YES (common law) | Common law: See, e.g., <i>Remsburg v. Docusearch, Inc.</i> , 816 A.2d 1001, 1009 (N.H. 2003); <i>Thompson v. C&C Research and Development LLC</i> , 898 A.2d 495 (N.H. 2006); <i>Doe v. Friendfinder Network, Inc.</i> , 540 F. Supp.2d 288, 302-04 (D.N.H. 2008) | Natural living persons | Name, likeness, identifiable aspects of a person's persona | Not considered | Not considered | State court or federal court with jurisdiction. | Purposes other than to exploit the value of a person's reputation or prestige. | n/a | |
| New Jersey | YES (common law) | Common law: <i>Edison v. Edison Polyform Mfg. Co.</i> , 73 N.J. Eq. 136, 142, 67 A. 392, 394 (Ch. 1907) | Natural living persons | Name, photograph, image, likeness, performance characteristic, biographical data, vocal style, screen persona | Yes, uncertain for how long | Injunctive, compensatory | State court or federal court with jurisdiction. | First amendment, consent, de minimis, incidental, fleeting use, traditional equitable defenses (fiches, acquiescence) | n/a | |
| New Mexico | YES (common law) | <i>Moore v. Sun Pub. Corp.</i> , 881 P.2d 735 (N.M. 1994) ("invasion of the "right of publicity," also known as "appropriation," consists of the exploitation of the plaintiff's name or likeness, usually for commercial gain, as in the unauthorized use of the plaintiff's name in an advertising endorsement for a product."); see also <i>McNitt v. New Mexico State Tribune Co.</i> , 538 P.2d 804 (N.M. 1975). | Natural persons | Name or likeness | Not considered | Not considered | State court or federal court with jurisdiction. | Newsworthiness, noncommercial purposes | n/a | |

| Country - Team Member | Is there a recognized right of publicity? | Derivation of right | Whose rights protected | Aspects protected | Post-mortem rights? If so, how long? | Remedies | What is the proper forum (court/agency) for raising complaints? | Defenses/Exceptions | Any Additional Comments | Contributing Firm |
|-----------------------|---|---|--|---|--|---|---|--|---|-------------------|
| New York | YES (statutory) | N.Y. CIV. RIGHTS LAW §§50-51. No common law right (<i>Stephano v. News Grp. Pub'ns, Inc.</i> , 474 N.E.2d 580, 584 (N.Y. 1984)) | Natural living persons | Name, portrait, picture, voice | No | Injunctive, compensatory, exemplary | State court or federal court with jurisdiction. | Newsworthiness, comedic entertainment, artistic use, incidental, fleeting use | n/a | |
| North Carolina | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | North Carolina does not currently recognize a common law right of publicity. However, North Carolina recognizes an appropriation invasion of privacy tort for which a plaintiff is entitled to nominal damages | |
| North Dakota | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| Ohio | YES (statutory & common law) | Statutory. Ohio Rev. Code §§ 2741.01 to 2741.09. Common law rights exist in addition to the statutory rights. Ohio Rev. Code § 2741.08. See, also, <i>Zacchini v. Scripps-Howard Broad. Co.</i> , 351 N.E.2d 454 (Ohio 1976), rev'd on other grounds, 433 U.S. 562 (1977). | Natural persons | The statute covers an individual's name, voice, signature, photograph, image likeness, or distinctive appearance if they have "commercial value." Under common law, name, photograph, likeness and identity. | Yes, under statute but not common law. 60 years after the date of death. Ohio Rev. Code § 2741.02(A)(2). 10 years after the date of death of a deceased member of the Ohio national guard or the armed forces of the United States, for which there are also criminal penalties. Ohio Rev. Code § 2741.02(A)(3); Ohio Rev. Code § 2741.99. | Remedies of actual damages, profits, treble damages punitive damages, costs and fees are authorized, as well as injunctive relief. In lieu of actual damages, statutory damages between \$2,500-\$10,000. Ohio Rev. Code § 2741.07. Actual damages are available at common law. | State court or federal court with jurisdiction. | Newsworthiness, consent, First Amendment, statutory exemptions | n/a | |
| Oklahoma | YES (statutory & common law) | Statutory - Okla. Stat. Ann. tit. 12, §§ 1448 and 1449 (2016); Okla. Stat. Ann. tit. 21, § 839.1 (2016). Common law: McCormack v. | Natural persons | Name, voice, signature, photograph, or likeness | Yes, 100 years. OKLA. STAT. 12, § 1448. | Monetary, punitive, and attorney's fees and costs; criminal misdemeanor | State court or federal court with jurisdiction. | Newsworthiness, consent, statutory exemptions | n/a | |
| Oregon | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| Pennsylvania | YES (statutory & common law) | 42 Pa.C.S.A. §8316; Common law: <i>Hogan v. A.S. Barnes & Co.</i> , 114 U.S.P.Q. 314, No. 8645, 1957 WL 7316 (Pa. Comm. Ct. June 19, 1957) | Natural living persons | Name, signature, photograph, image, likeness, voice, a "substantially similar imitation" of the other aspects protected | Yes, 30 years after death | Injunctive, compensatory | State court or federal court with jurisdiction. | First amendment, newsworthy public figures, incidental use, statutory exemptions | n/a | |
| Puerto Rico | YES (statutory) | P.R. Law tit. 32, §§ 3151 to 3158 | Natural living persons | Name, photograph, voice, signature, characteristic, any representation that identifies the person, to an average observer or listener, through any means of reproduction | Yes, 25 years after death | Injunctive, compensatory, statutory | State court or federal court with jurisdiction. | News reports, political repression, sporting or artistic event, presentation of legitimate public interest, parody or satire, academic or investigative critique or commentary | n/a | |
| Rhode Island | YES (statutory) | R.I. GEN. LAWS §69-1-28-9-1-28.1 | Any person whose name, portrait or picture is used without written consent | One statute protects "name, portrait or picture [for] commercial purposes." R.I. GEN. LAWS §69-1-28. A separate statute provides a "right to be secure from an appropriation of one's name or likeness" when the use "benefit[s] someone other than the claimant." R.I. GEN. LAWS §69-1-28.1 | Not considered | Injunctive, compensatory, treble | State court or federal court with jurisdiction. | Consent, resale of goods, use in connection with political speech or matters of public concern. | Rhode Island courts look to interpretations of New York's right of publicity statute for guidance because the Rhode Island statute was modeled after it. (<i>Mendonso v. Time Inc.</i> , 678 F. Supp. 967, 971 (D.R.I. 1988); <i>Day v. Pringore</i> , 2011 WL 2170414, at *9-14 (R.I. Super. Ct. May 26, 2011)). | |
| South Carolina | YES (common law) | Common law: <i>Gignilliat v. Gignilliat, Savitz & Berris L.P.</i> , 684 S.E.2d 756 (S.C. 2009) | Natural living persons | Name, likeness, identity | Yes, uncertain for how long | Compensatory, nominal, punitive | State court or federal court with jurisdiction. | n/a | n/a | |
| South Dakota | YES (statutory) | Statutory. SDCL § 21-64-2 | The statute protects any "personality" living or deceased who is a citizen of South Dakota or who died domiciled in the state of South Dakota. | The statute recognizes and protects property rights in any aspect (name, voice, signature, photograph, image, likeness, distinctive appearance, gesture, or mannerism that identifies a specific person and has commercial value, whether or not the person uses or authorizes the use of the person's right of publicity for a commercial purpose that serves to identify a specific person) of a personality's right of publicity for a commercial purpose. | Yes, 70 years for "personality" or a living or deceased natural person who is a citizen of the state of South Dakota or who died domiciled in the state of South Dakota under the statute. SDCL § 21-64-2 | Temporary or permanent injunctive relief; monetary damages amounting to \$1K or actual damages, whatever is greater; punitive damages. SDCL § 21-64-5 | State court or federal court with jurisdiction. | Statutory exemptions | n/a | |
| Tennessee | YES (statutory & common law) | Statutory. T.C.A. §§ 47-25-1101 to 47-25-1108 (2016). Common law. <i>State ex rel Elvis Presley International Memorial Foundation v. Crowell</i> , 733 S.W.2d 89 (Tenn. App. 1987). | Natural persons | The statute protects use of another's name, photograph, or likeness in any medium for commercial or advertising purposes. Common law covers at least name and likeness. | Yes, 10 years after death. T.C.A. § 47-25-1104(a). After the 10 year term, the right can last indefinitely if continuously exploited. Rights extinguish if not exploited for a 2 year period after the initial 10 year term. T.C.A. § 47-25-1104(b)(2). | Injunctive relief, including confiscation, impoundment and destruction of materials made or used to violate the right of publicity. T.C.A. § 47-25-1106(a)-(c). | State court or federal court with jurisdiction. | Newsworthiness, public affairs or sports broadcast or account | n/a | |
| Texas | YES (statutory & common law) | Statutory - Tex. Prop. Code § 26.001 Common law: <i>Kimbrough v. Coca-Cola/USA</i> , 521 S.W.2d 719 (Ct. Civ. App. Tex. 1975) (holding that there is a claim for misappropriation of one's name or likeness even if a person is a public figure and has no or a limited right to privacy); see also <i>Henley v. Dillard Dept. Stores</i> , 46 F. Supp. 2d 587 (N.D. Tex. 1999) (summary judgment for plaintiff for infringement of Texas right of publicity); <i>Express One-Intern., Inc. v. Steinbeck</i> , 53 S.W.3d 895 (Ct. App. Tex. 2001). | Statutory - post-mortem only and limited to individuals who died on or after January 1, 1937. Common law - Natural persons. | Name, voice, signature, photograph or likeness | Yes, 50 years. TEX. PROP. CODE § 26.002. | Actual damages. Statutory damages of \$2,500 | State court or federal court with jurisdiction. | Statutory exemptions, newsworthiness, First Amendment | n/a | |
| Utah | YES (statutory) | Statutory. Utah Code Ann. § 45-3-3 to 45-3-6 (2016); U.C.A. 1953 § 76-9-407 (2016) | Natural persons | Personal identity of an individual "used in a manner which expresses or implies" approval or endorsement. U.C.A. 1953 § 76-9-407. | Not considered | Injunctive, monetary 76-9-407 | State court or federal court with jurisdiction. | Consent | n/a | |
| Vermont | NO | n/a | n/a | n/a | n/a | n/a | n/a | n/a | No court has recognized a right of publicity under Vermont law, but the state supreme court has indicated that there may be a separate cause of action, called a right of publicity, when a plaintiff is famous and has a name or likeness with commercial value. <i>Staruski v. Continental Telephone Co. of Vermont</i> , 581 A.2d 266 (Vt. 1990) | |
| Virginia | YES (statutory) | VA. CODE ANN. §§ 8.01-40 & 18.2-216.1; No common law right (<i>Brown v. Am. Broad. Co.</i> , 704 F.2d 1296, 1302 (4th Cir. 1983)) | All natural living persons, applied equally to ordinary persons and celebrities. | Name, portrait, picture | Yes, 20 years after death | Compensatory, nominal, punitive | State court or federal court with jurisdiction. | Newsworthiness or public interest, incidental use, first amendment and parody, traditional equitable defenses (laches, waiver, acquiescence) | n/a | |
| Washington | YES (statutory) | Statutory. Wash. Rev. Code Ann. §§ 63.60.040 to 63.60.080 (2016) | Natural living persons | Name, voice, signature, photograph, or likeness | Yes, 10 year for individual & 75 years for personality. § 63.60.050 | Greater of \$1,500 or actual damages, and any profits, reasonable attorneys' fees, expenses, and court costs. | State court or federal court with jurisdiction. | Newsworthiness, consent, incidental use, statutory exemptions | n/a | |
| West Virginia | YES (common law) | Common law: <i>Curran v. Amazon.com, Inc.</i> , 2008 WL 472433, *4 (S.D. W. Va. Feb. 19, 2008) | Natural living persons | Name, likeness | Not considered | Compensatory, possibly punitive (generally available in West Virginia) | State court or federal court with jurisdiction. | First amendment, consent, traditional equitable defenses (laches, waiver, acquiescence) | n/a | |

Other Countries

| Country | Is there a recognized right of publicity? | Derivation of right | Whose rights protected | Aspects protected | Post-mortem rights? If so, how long? | Remedies | What is the proper forum (court/agency) for raising complaints? | Defenses/Exceptions | Any Additional Comments | Contributing Firm |
|-----------|---|--|---|--|--|--|--|---|--|--|
| Australia | The Right of Publicity is not recognized in Australia. The laws that protect goodwill and reputation will provide an individual with the right to prevent the unauthorised use of his or her image or likeness, provided the unauthorised use of the image or likeness is likely to cause confusion. | Australian Consumer Law s 18 prohibits conduct that is misleading or deceptive or likely to mislead or deceive. Australian Consumer Law s29 prohibits the making of false or misleading representations that goods or services have sponsorship, approval or affiliation. The remedies for a contravention of s 18 or 29 include an injunction and damages. The common law action of passing off provides the remedies of account of profits or damages and injunctive relief where one person appropriates the goodwill and reputation of another. Registration of an individual's name or elements of an individual's likeness or image as a trademark will also provide a means of control over the individual's image or likeness. Unauthorised use of a registered trademark constitutes infringement for which the remedies provided by Trade Marks Act 1995 (Cth) include an account of profits or damages and an injunction. | The protection available in Australia is available to two categories of individual. The first is any individual whose name, image or likeness is well known in Australia so that it can be established that unauthorised use of the name, image or likeness will likely cause confusion or deception. The second category is any individual with a registered trademark consisting of the individual's name, or elements of the individual's image or likeness. | The nature of the protection provided is based on the likelihood of confusion or the rights provided by a registered trademark. Where protection is based on the likelihood of confusion, the aspects that may be protected are not limited or proscribed as these will be determined on a case by case basis as the need for protection arises. Where the aspects of an individual's image or likeness that are used without authority cause confusion, their use will be prohibited and therefore protected. Where protection is based on a registered trademark, the aspects protected will be those that have been registered. The broad definition of a trademark provides opportunities to register various elements of an individual's image or likeness. | Rights in an individual's image or likeness based on a trademark registration may last in perpetuity, provided the corresponding registration is renewed. Rights in an individual's image or likeness based on the ability to establish that unauthorised use will result in confusion will be available as long as the individual, or his or her estate, is able to establish the existence of goodwill and reputation. I represented Hemingway Ltd in successfully opposing an unauthorised application for registration of the trademark HEMINGWAY for fishing tackle in Class 28. Although Ernest Hemingway died in 1961, the editor of an Australian fishing publication gave opportunities to register various elements of Ernest Hemingway remained well known and respected in the sport fishing community in Australia. Evidence of sales of Hemingway's novel The Old Man and the Sea and the broadcast of the 1958 film based on the novel on cable television in Australia assisted in establishing the existence of current goodwill and reputation. This was held sufficient to conclude that unauthorised use of HEMINGWAY in relation to fishing tackle would result in confusion. | Injunction, damages | The Federal Court would be the proper forum for applications in relation to <i>Australian Consumer Law</i> ss 18 and 29 and <i>Trade Marks Act 1995</i> (Cth). Passing off, being a common law matter, is within state jurisdiction but may be heard by the Federal Court if related to a claim under the <i>Australian Consumer Law</i> or <i>Trade Marks Act</i> . | The most relevant defence is that unauthorised use of the individual's image or likeness is not likely to cause confusion. The defence would succeed where the individual's goodwill and reputation is not well established in Australia or where the individual is, for example, an historical figure such that consumers are unlikely to assume use of the image or likeness represents sponsorship or affiliation. (Alexander the Great Motel or Shakespeare's Pie) | That Australia does not have an established and specific Right of Publicity results from the fact that there are relatively few cases where celebrities are required to protect their images or likenesses before Australian courts. While Australia is well represented as far as celebrities are concerned, instances of misappropriation of images or likenesses are more likely to occur in countries other than Australia. | Mr. Albert Terry Terry Trade Mark Attorneys PO Box 613 Windsor NSW, Australia 2756 www.terrytrademarks.com |
| Brazil | Yes | Article 18 of the Brazilian Civil Code states that "without authorization, it is forbidden to use a third party's name in commercial advertisement." Article 1197 of the Brazilian Civil Code says that pseudonyms have the same protection of personal names. The IP Law says that the registration of personal names or famous nicknames/artistic names as a trademark, without the consent of the relevant owners or their successors or heirs, is prohibited (article 124, XV and XVI). | Citizens (Brazilians or not) and their successors and heirs. | Personal names or famous nicknames/artistic names, personal image. | Yes, for as long as there are successors or/and heirs. | Lawsuits and administrative proceedings (in case of TM applications, for example). | Local, if Federal authorities (such as the Brazilian TM Office) are not involved. Federal if the Brazilian TM Office is involved in the lawsuit (e.g. in cancellation actions of TM registrations). It is possible to discuss the matter before the Brazilian TM Office if someone tries to register a trademark protected by publicity rights. | Use in a journalist or descriptive/non-commercial way. | None | MARIA SOERENSEN GARCIA. SOERENSEN GARCIA ADVOGADOS ASSOCIADOS. http://www.soerensengarcia.com.br/sem/mario-augusto-soerensen-garcia-2/ |
| Canada | Yes, the rights of an individual's personality is protected under tort law; the <i>Trade-Marks Act</i> ; <i>Privacy Acts</i> of BC, Manitoba, Newfoundland, and Saskatchewan, and the Quebec <i>Charter of Human Rights and Freedoms</i> . Under tort law, the Right of Publicity is known as Misappropriation of Personality. Under the statutory Privacy Acts, the protection is referred to as the unauthorized use of name, portrait, likeness or voice of an individual, and is protected under the individual's privacy interest. Under the Quebec Charter of Human Rights and Freedoms, the protection is referred to generally as the right to one's honour and reputation, as well as the respect of one's private life. | The tort of misappropriation of personality is derived from common law. The remaining rights arise under statute. Misappropriation of Personality was first recognized in <i>Krouse v. Chrysler Canada Ltd</i> in 1973. The Defendant used the personality of the Plaintiff, who was a professional football player, in conjunction with the advertising of various vehicles. The Ontario Court of Appeal held that it was possible for the professional reputation of the celebrity status of an individual to be misappropriated for commercial gain. However, the Court ultimately held that use of the Plaintiff's image did not infringe his personal ability to exploit his image, and there was no proof of damages as there was no endorsement suggested by the Defendant's actions. | Everyone has protection of their personality, though there may be little/no damages available for non-famous individuals (the infringement does not affect their ability to market their personality). | At common law, the protection is broad and extends to the individual's "personality." This includes his or her name, reputation, likeness or other components of individuality or personality which the public would associate directly with the plaintiff. Under the provincial Privacy Acts, the following rights are protected: • BC: name, portrait, likeness (still or moving), caricature. • Manitoba: likeness or voice. • Newfoundland: likeness or voice. | It is unclear to what extent these rights extend post-mortem, and the case-law has not clearly defined the issue. However, the tort of misappropriation of personality was raised in relation to the use of photos and interview notes of a deceased concert pianist in <i>Gould Estate v. Stoddart Publishing Co.</i> While the case was ultimately decided under copyright on appeal, the trial Judge was willing to apply the tort to a deceased individual as the action was brought by the deceased's estate. Under the provincial Privacy Acts, the right to sue is extinguished upon death in BC, Newfoundland and Saskatchewan. The Privacy Act of Manitoba is silent on the issue, and no cases have sought to exercise post-mortem rights under the Act. The exact duration of any post-mortem rights has not been decided. However in <i>Gould Estate</i> the court suggested that any protection should extend at least for 14 years. | Damages are available provided that they can be proven. Often it is difficult to establish that the misappropriation impaired the individual's ability to market themselves, and only nominal damages will be awarded. An injunction is also available if the individual's personality is still being used by the Defendant. | The proper forum is the Superior Court of the individual's jurisdiction. | For the tort of misappropriation of personality, consent of the individual is a defence. Additionally, if the matter is one of public interest, the use in that manner will not be considered to be to the commercial benefit or exploitation of the defendant and therefore this acts as a defence to the tort action. There are various defences specified under the provincial <i>Privacy Acts</i> , including: public interest or fair comment on a matter of public interest, consent of the individual, being incidental to the exercise of a lawful right or defence, and being authorized or required by law. | There is not a requirement to prove damages in order to successfully bring a claim. However, failure to prove damages could result in the only remedy available being an injunction. | |
| China | Although the "Right of Publicity" is not a statutory right in China, it has been recognized in the judicial practice in China, mostly under the names such as "right of commercialization" or "merchandising right". | The right is not directly derived from statutes, while it can be enforced by combining with related statutes such as 2017 <i>General Principles of the Civil Law</i> 1987 <i>General Rules of the Civil Law</i> , <i>Trademark Law</i> , <i>Copyright Law</i> , <i>Anti-unfair Competition Law</i> or Judicial Interpretations by Supreme Court. The most related regulation about right of publicity can be found in the Interpretation of the Supreme People's Court on Several Issues Concerning the Adjudication of Administrative Cases on Granting and Affirming Trademark-related Rights (the "2017 Interpretation", effective from Mar. 1 2017), Article 22: "As regards a piece of work within the term of copyright protection, if the title of the work, the name of a character in the work, etc. enjoy high awareness, and the use of such title or name as a trademark on relevant products is likely to mislead the relevant public to believe that such products are licensed by, or have specific connections to, the right holder, the competent people's court shall uphold the claim by the party concerned on the foregoing grounds that prior rights and interests have been constituted." | Copyright holder or personal right holder | The name, portrait, image of famous natural persons, film characters etc. | Copyright can survive death by inheritance, so post-mortem rights can be recognized. As regards personal right, according to judicial practice in China, some are recognized, such as rights of name and reputation, while some are in dispute, such as right of portrait. | Remedies can be injunction of infringement, rehabilitation of reputation, elimination of effect of infringement, compensation for loss, public apology etc. | The complaint can be filed to TRAB in trademark administrative procedures and competent courts in civil actions. | As there are no specific provisions in law regulating this right, there are no specific exceptions either. | Exemplary Case: The plaintiff Yao Ming is the basketball super star of China. In 2011, Yao brought litigation to Wuhan Intermediate Court against Wuhan Yun He Sports Products Ltd, claiming that Yun He used the name and portrait of Yao Ming on their products "姚明一代" (Yao Ming 1st Generation) and infringed the personal right of Yao, which also constituted unfair competition under Anti Unfair Competition law. The court of first instance held that Yun He had infringed the right of name and portrait of Yao, and their action also constituted unfair competition. The court ordered Yun He to stop infringement immediately, make a public apology and compensate 0.3 million RMB for Yao's damages. The court of second instance added the monetary compensation to 1 million and expressly indicated that without the right holder's permission, its name, portrait, signature and related marks should not be put into commercial use. | |

| Country | Is there a recognized right of publicity? | Derivation of right | Whose rights protected | Aspects protected | Post-mortem rights? If so, how long? | Remedies | What is the proper forum (court/agency) for raising complaints? | Defenses/Exceptions | Any Additional Comments | Contributing Firm |
|-------------------|---|--|--|---|---|---|--|--|---|-------------------|
| England and Wales | No, but there are a number of other legal rights which could be used to achieve a similar effect, including: (1) the intellectual property rights of copyright, trade marks and passing off; (2) the common law provisions on misuse of private information and confidential information; (3) statutory provisions on data protection; and (4) industrial regulation through advertising standards codes. | The intellectual property rights of copyright and trade marks are derived from the Copyright, Designs and Patents Act 1988 and Trade Marks Act 1994 respectively, together with the corresponding EU legislation. Whilst copyright subsists automatically in qualifying works that are recorded, trade marks rights must be actively registered to be protected. The common law rights regarding privacy and confidential information have developed through extensive case law, which in recent years has been heavily influenced by the Human Rights Act 1998, particularly articles 8 and 10. The data protection regime is currently governed by the Data Protection Act 1998, which implemented the EU Data Protection Directive. As of May 2017 the new Data Protection Regulation is now in force and will be implemented in May 2018. The advertising industry has a number of self-regulatory codes administered by the Advertising Standards Authority (ASA). The key | Any individual | Copyright: Can protect copying of the expression of an individual's ideas as recorded (e.g. in written or visual form). Can also protect photographs of individuals. Trade Marks: It is possible to register trade marks for numerous aspects including an individual's name, signature, specific images, voice etc. These rights provide a monopoly on the use of the relevant aspect. Passing Off: This right protects goodwill which has been accumulated in the use of an individual's name. Misuse of Private Information: This common law right protects an individual's private information (e.g. information about their health), which can include photographs. Whilst it can protect information already in the public domain, this must be balanced against the right to freedom of expression. Confidential Information: This common law right protects information which is deemed to be confidential due to its inherent nature and the circumstances in which it is received. This | Copyright: These rights subsist for a fixed time after the individual's death, depending on the type of work involved. For artistic and literary works this is 70 years. Trade Marks: A trade mark can theoretically be renewed indefinitely subject to payment of the appropriate renewal fees. As an object of property, the ability to enforce the right will pass in accordance with normal inheritance laws. Passing Off: In theory, the goodwill protectable via passing off can survive death. Other: Rights under confidential information, privacy and data protection laws will cease upon the individual's death. | The remedies available depend on the basis upon which the personality is sought to be protected. As regards infringement of intellectual property rights, remedies include damages, an injunction to prevent further infringement and delivery up of infringing articles. The claimant may elect for an account of profits made from the infringing activity as an alternative to damages. In respect of privacy and confidential information, it is possible to obtain injunctions to prevent the publishing of the information, and damages for the harm caused. For breaches of data protection legislation, the data controller can be forced to stop processing the data and provide limited monetary compensation. | Intellectual property right infringements, and breaches of common law rights, can be dealt with by way of proceedings in the civil courts, usually the High Court of England and Wales. For lower value intellectual property claims (i.e. under £500,000) these can be dealt with in a more streamlined, cost-efficient process through the specialised Intellectual Property Enterprise Court. Complaints related to data protection issues are normally adjudicated by the Information Commissioner's Office, and (as a last resort) the civil courts. Breaches of advertising standards codes are initially raised through the ASA which has some investigative powers in relation to such matters. Enforcement (and the provision of injunctions) is ultimately dealt | The defences and exceptions available depend on the type of right relied on. Copyright: The main exception is that exploitation of the relevant work is acceptable where it is in the course of fair dealing for the purpose of criticism or review or reporting current events. Equally, it is not an infringement to copy insubstantial parts (for example, quotations) of a work. Trade Marks: The key defences/exceptions regarding trade mark infringement for these purposes are: (1) use of one's own registered trade mark for the goods/services for which the mark is registered. (QUERY not in EU Trade Mark Directive and therefore some doubt on whether this can be relied on as a valid defence) (2) use of one's own name and address; (3) use of indications concerning the | None | |
| France | Yes. | Section 9 of the Civil Code does provide for a right of privacy as it states that: "Anyone has the right to respect for his private life. Without prejudice to the indemnification for injury suffered, judges may prescribe any measures, such as escrow, seizure and others, suited to the prevention or the ending of an infringement of the intimate character of private life; in case of emergency those measures may be provided for by summary proceedings". The scope of Section 9 of the civil Code has been used, by French courts, for the protection of the right of publicity (image, likeness...) and is also used as a ground of action destined to control the commercial use of someone's persona. "The right of privacy allows anyone (including an artist) to oppose the publication, without his consent, of his image, same being one of his personality's rights" (Court of appeal of Paris, October 25, 1982). | Anyone is entitled to benefit from the right of privacy and the image right. | Right of privacy: personal related elements (emotional life, health, identity and identification such as the residence, religion, philosophical opinions, etc.), material elements (patrimony, correspondence) and professional related elements (right to privacy of the employees). Image right: right of someone to oppose the use of his/her image/likeness without his/her consent. | Right of privacy does not survive death: the heirs can only bring a legal action based on their own prejudice that they suffered in connection with the violation of the "de cujus" right of publicity (prejudice to be evidenced) Image right: the right of someone on his/her image/likeness has already been deemed having both patrimonial and moral elements: the patrimonial element (i.e., the right of someone to receive a payment for the commercial use of his/her likeness) can be transmitted to the heirs (first degree Tribunal of Aix en Provence, November 24, 1988: photo of a deceased man published in a magazine; the legal action brought by the heirs has been admitted). | Monetary damages based on the prejudice suffered: the violation of someone's privacy and someone's image are two different prejudices allowing to receive monetary damages based on these two different grounds of violation (High court, December 12, 2000). Conservatory measures: Irrespective of the monetary damages that could be allocated, conservatory measures can be pronounced such as (i) the discontinuation of the publication, (ii) the publication of part of the decision, (iii) and/or the submission of documents under a civil penalty per late day (e.g., to provide the plaintiff with the negative of a photo taken without the plaintiff's consent). | Civil courts or public court (in the event the plaintiff is a public authority/person). The court having jurisdiction is the one located where the prejudice has been suffered. | The freedom of speech is also a right to be protected in France. The balance of the interest can sometimes tip the balance in favor of the right to inform the public. Indeed, the freedom to publish information allows the reproduction of the image of individuals involved in an event provided that the dignity of the individual concerned is preserved. Similarly, French courts already held that the right to privacy can be altered by the right to be informed and the freedom of speech as set forth in Article 10 of the European Convention of Human Rights; in which case the judge must strike a balance between these two competitive rights (the politician's status of the individual at stake can be taken into consideration while | French judges already held that the authorization to use someone's likeness to promote his/her works must be obtained; i.e., the reproduction of the likeness of the artist to support the promotion of his/her work is not an "information" the public would be necessarily entitled to be provided with, on the ground of the freedom of speech (High court, July 9, 2009). | |
| Germany | General right to privacy; right regarding one own's image; name right; right to own's data | a) Art. 1 and 2 German Constitution; Art. 8 European Convention on Human Rights b) No common law c) § 12 Civil Code, § 22 KUG, § 29 ff German Data Protection Law; § 823 para. 2 Civil Code in connection with § 185 Criminal Code; § 823 para. 1 Civil Code in connection with § 1004 Civil Code; § 824 and § 826 Civil Code d) "Herrnreiter" – decision of the Federal Supreme Court (first important decision granting damages because of an illegal use of a picture), "Stolpe" – decision of the Federal Constitutional Court (in relation to the ambiguity of statements), "Caroline" – decision of the European Court of Human Rights and the Federal Supreme Court (in relation to when pictures of a "public figure" are legal or not) | Individuals and entities (including foreigners) | Pictures; statements about the private sphere; statements about the commercial parts of own's general privacy right; personal data | a) Yes, but not more than 70 years; mostly shorter b) Commercial parts of the privacy rights and the core of one's privacy sphere and infringements of human dignity | Cease and desist, counterstatements, rectification and damages | Civil courts, with the possibility to appeal, ending at the Federal Constitutional Court or European Court for Human Rights; complains with the press counsel | Freedom of press; freedom of information; freedom of expression | n/a | |

| Country | Is there a recognized right of publicity? | Derivation of right | Whose rights protected | Aspects protected | Post-mortem rights? If so, how long? | Remedies | What is the proper forum (court/agency) for raising complaints? | Defenses/Exceptions | Any Additional Comments | Contributing Firm |
|-----------|---|---|--|---|--|---|--|--|--|--|
| Guernsey | Yes. | <p>Under Guernsey's image rights legislation introduced in 2012, a person may register their image rights. The image right becomes a property right capable of protection under Guernsey law through the act of registration. Registration enables the image right to be protected, licensed and assigned.</p> <p>The right is derived from statute, namely the Image Rights (Balliwick of Guernsey) Ordinance, 2012 (the "Ordinance").</p> <p>The Guernsey courts would also follow existing English authorities which recognise there is property and value in image rights which merits protection. However, these cases show that there is no clear common law recognition of image rights per se, rather that existing legal concepts are used to protect aspects of a person's image or brand. These include a number of English tax tribunal cases, including those involving prominent professional footballers (e.g. David Platt and Dennis Bergkamp in 2000, and Wayne Rooney in 2011). Additionally, the judgments in the English courts in relation to the disputes</p> | The Ordinance provides that a 'personage' may register their image rights. The definition of 'personage' under the Ordinance includes any natural or legal person, a group of two or more natural or legal persons or personalities, and a fictional character (human or non-human). | <p>The Ordinance is very flexible and is designed to enable the recognition of any indicia of personality. This includes not only a person's name, but also other characteristics such as Usain Bolt's lightning bolt gesture, or Sir Bruce Forsyth's catch-phrases.</p> <p>The elements of the image right which are protected by registration enable the proprietor of the right to commercially exploit the following personal attributes: name; voice; signature; likeness; appearance; silhouette; feature; face; expressions (verbal or facial); gestures; mannerisms; any other distinctive characteristics or personal attribute of a personage; and any photograph, illustration, image, picture, moving image or electronic or other representation ("picture") of the personage and of no other person (except to the extent that the other person is not identified or singled out or in connection with the use of the picture).</p> | <p>Yes. An application to register the image right of a 'natural person' can be made in respect of a person who died within the period 100 years preceding the date of filing the application. Additionally, an application to register the image right of a 'legal person', being a body corporate or other body having legal personality, can be made in respect of a body which has ceased to be in existence, registered or incorporated, within the period 100 years preceding the date of filing the application.</p> <p>If the registration is accepted as being within the 100 year time limit referred to at 5.a. above, the protected image rights of the deceased natural person or a legal person which has ceased to be in existence, registered or incorporated, will be the same as those for a natural or legal person who is alive or in existence.</p> | <p>An infringement of a protected image right is actionable as a breach of a registered property right owed to the person entitled to the right. The remedies available to the court will include the granting of injunctive relief (prohibiting any act) which are considered to infringe the registered image right and for delivery up and/or disposal of any infringing goods, materials, publications or articles. The court may also award damages (including aggravated damages in relation to any flagrant infringements of image rights) or an account of profits.</p> | <p>Infringement proceedings would be commenced before the Royal Court of Guernsey, including specialist Intellectual Property judges from the UK, if necessary, to deal with such matters.</p> | <p>It is a potential defense for a person accused of infringing an image right to prove that it took all reasonable precautions and exercised all due diligence in order to avoid the commission of such an offence by itself and by any person under its control.</p> <p>"Fair dealing" defense, including news reporting current events, news commentary (including criticism or review), publishing or broadcasting journalistic material for general or public interest, parody or satire, education and for inclusion in artistic works (including literary, musical, theatrical, radio or television, or original works of fine art).</p> <p>Limitation to protection are in place if: It is contrary to public policy or to accepted principles of morality; it is of such a nature as to deceive the public; the</p> | <p>An individual may assert his or her moral rights, and the Ordinance provides that a 'natural person' has the right to be identified as the rights holder whenever a person uses a protected image associated with, or registered against, that registered personality which is then made available to the public.</p> | |
| Hong Kong | Yes | In Hong Kong right of publicity is protected by the common law tort action of passing off. | Famous personalities | Goodwill and reputation | Unclear. The only case in Hong Kong did not specifically address the issue. It is believed that under the common law of action it is arguable to say that as long as the individual can prove goodwill and reputation, misrepresentation, and damage (required under passing off action) the protection can be post mortem. | Injunctive relief and monetary damages. | Court of First Instance | No specific defences/exceptions | <p>Notable case:</p> <p>Lau Tat Wah Andy vs Heng Seng Bank - In this case, the Plaintiff is a popular Chinese singer/actor and the Defendant is a dominant local bank. In its credit-card and phone-card promotion campaign, Defendant used Plaintiff's image and likeness which were copyrighted works licensed from a television station previously holding an artist contract with Plaintiff. Plaintiff sued Defendant for passing off and misrepresentation and applied for an interim injunction to stop Defendant from using his image.</p> <p>The hearing judge refused the application on ground of the existence of serious questions to be tried on the law and no balance of convenience in favour of Plaintiff. This case did not proceed to a full trial. Accordingly, the case only serves to assert the protection of personal rights over personal image and likeness but no decisive legal principles can be derived therefrom.</p> | |
| Israel | Yes. | <p>The right, though not clearly mentioned in the Unjust Enrichment Law - 1979, was recognized in a few court cases as a right which derives from that law.</p> <p>Section 2 of the Unjust Enrichment Law: Duty of Restitution - 1(a) any person who unlawfully obtains any property, service, or other benefit (Hereinafter – the beneficiary) which extends to him from another person (Hereinafter – the benefactor) must return to the benefactor such benefit, and if restitution in kind is not possible or unreasonable – pay him in value. (b) It is of no consequence whether such benefit was obtained due to an act by the benefactor, an act of the beneficiary or any other way.</p> <p>Case: District Court Jerusalem, Civil Case 6157/04 David Dvash Vs. Adler Chomski et El. - It was held that if an individual's image/attributes has an economical value, a third party may not benefit from that value.</p> | Any individual with economic worth attached to his/her image/attributes. It is not exclusive to famous individuals. | Currently, there are court precedents concerning only the name and likeness protected by the right of publicity. However, theoretically, the right is not limited to name and likeness. For example, if a certain characteristic, such as voice is so famous that it can identify the specific celebrity, such famous characteristic may be protected by the right of publicity. | Not clear. The courts left this issue open. | Injunctions and monetary awards. | Civil courts/usually District Courts. | Estoppel, no real damage caused to plaintiff. | None. | |
| Japan | Yes | In Japan, there is no statutory law which defines the right of publicity. Case law has established that the right of famous persons to exclusively use the commercial value of their names, likeness and other identification to attract customers. The Supreme Court held that a right of publicity is derived from his/her personal right, and that the infringement of a right of publicity may be found only when the commercial value of the likeness, etc. is "mainly" exploited without authorization. | Likely only "famous" personalities | Currently, there are court precedents concerning only the name and likeness protected by the right of publicity. However, theoretically, the right is not limited to name and likeness. For example, if a certain characteristic, such as voice is so famous that it can identify the specific celebrity, such famous characteristic may be protected by the right of publicity. | Likely no. As the right of publicity was found to be derived of the personal rights, which are theoretically not assignable nor inheritable, and will cease to exist upon the death of the persons. There is no court precedent on this issue. | Injunction and damages | Any District Courts which have jurisdiction over legal action. In case of a small amount of claim (1.4 million yen or less), Summary Court may have jurisdiction. | Violations may be denied in news reporting context. Considering the freedom of reporting and expression, which are constitutional rights, the court tends to deny the infringement of the right of publicity if the likeness and the name of the celebrity are used in news reporting. According to the Supreme Court judgment, the important criterion is whether or not the user's purpose is "mainly" to exploit the economic value of the name or the likeness. | None | <p>Contributing Firm:</p> <p>Ms. Mitsuho (Mimi) MIYAGAWA (Mitsuho_Miyagawa@tmi.gr.jp) Mr. Shosuke MIYAZAWA (Shosuke_Miyazawa@tmi.gr.jp) Mr. Yoshiyuki INABA (Yoshiyuki_Inaba@tmi.gr.jp)</p> <p>TMI Associates 23rd Floor, Roppongi Hills Mori Tower 6-10-1 Roppongi, Minato-ku Tokyo 106-6123, Japan</p> |

| Country | Is there a recognized right of publicity? | Derivation of right | Whose rights protected | Aspects protected | Post-mortem rights? If so, how long? | Remedies | What is the proper forum (court/agency) for raising complaints? | Defenses/Exceptions | Any Additional Comments | Contributing Firm |
|--------------|--|--|--|--|---|--|--|--|--|---|
| Mexico | Yes (but it is not known as the Right of Publicity). | Mexican Law recognizes the right to control one's image, name and likeness, and the right to the exclusive use of artistic names. The Right of publicity is not recognized as such in Mexico. However, the Mexican Copyright Law regulates the use of a person's image (Sections 87 and 231-II of the Mexican Copyright Law). It has to be mentioned that the provisions contained in the Mexican Copyright Law confusingly use the notions of image and portrait as synonyms. Furthermore, under Mexican legal framework, certain provisions regulate the right to control the use of one's image as a personality right. These provisions are contained in Section 1916 of the Civil Code, and more recently in a local law of Mexico City, which regulates personality rights (Articles 7-V, 16, 17, 18, 19, 20, 21, 26, Ley sobre Responsabilidad Civil para la Protección del Derecho a la Vida Privada, el Honor y la Propia Imagen en el Distrito Federal). The exclusive right of an artistic name is regulated in Articles 173-V, 174, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 190, 191, 231-VII and VIII and 232. | The owners and their successors or heirs. | Personal image, personal names and likeness, and artistic names. | Yes. Life of the holder of the right, plus 50 years after his/her death. | Lawsuits; trademark oppositions; administrative invalidity actions; administrative infringement actions. | The Mexican Institute of Industrial Property, which is an administrative authority, or local civil Courts. | Defenses include the following: (i) Use of the image of a person when captured in a public space and for journalistic and investigative purposes; (ii) use of a person's image when it is a minor part of the set of elements captured in a picture or recording; (iii) use of the name of a person for journalistic and informative purposes; (iv) use of the image of a person for journalistic and informative purposes, provided that the said person is well-known, is a public officer, or the image is captured in ceremonies or events carried out in public places. | Notable cases: (1) Diego Perez García. Amparo lawsuit (1121/2007). This jurisprudence was issued by the Mexican Supreme Court of Justice, ruling that as a condition for collecting damages derived from the violation of any provision of the Mexican Copyright Law, it was necessary first to obtain the final ruling from the administrative authority, declaring that a violation of the Mexican Copyright Law had occurred. This requirement has been eliminated by a recent amendment to the Mexican Copyright Law, which now allows plaintiffs to file a civil lawsuit in order to collect damages derived from the violation to any provision of the Mexican Copyright Law, without the need of previously having prosecuted an administrative infringement action. (2) Amparo suit 48/2015. Unauthorized use of the image of the newborn daughter of an actor, in a gossip magazine. In this case complainant filed an administrative complaint with the Mexican Institute of Industrial Property, based on Article 87 of the | |
| Russia | Yes | Civil Code Articles 152.1, 152.2, 1198 and 1483.9(2). An individual's right to a name, use and protection of a name are determined pursuant to lex personalis of the individual. | Any individual (both Russian citizens and foreign citizens). | i) Image/likeness (any visual reproduction, including photographs, video, graphical works of art); ii) name & pseudonym (protection against unauthorized use of the name or pseudonym in artistic, commercial or other economical activity, including as part of a trademark); iii) privacy (information about the individual's private life, including his/her origins, place of residence, family life); iv) signature of a person famous in Russia. | Certain aspects are protected post mortem. Law is silent on duration of protection. Post mortem use of likeness is subject to consent of descendants and surviving spouse or, in their absence, consent of parents. Registration of a famous person's name, pseudonym or derivative words, portrait or signature as a trademark is subject to heirs' consent. Descendants, parents and surviving spouse are entitled to claim post mortem protection of person's private life. | i) Injunctive relief; ii) damages and compensation of moral damage; iii) withdrawal (including withdrawal from the internet) and destruction of objects bearing the reproduction of the person's image; iv) cancellation of the trademark registered in violation of an individual's right to publicity. | i) Forum domicilii rei (court of general jurisdiction of the defendant's residence); ii) if defendant is a foreign entity – court of the residence of the defendant's Russian representative office or branch; and iii) in absence of such local office – court of the plaintiff's residence). | The consent to use image/likeness is not required if: (i) image is used in State, social or public interests; (ii) image obtained during footage at public places or events, except for cases when individual is the primary object of the photo/video; (iii) a natural person was paid to pose as a model. The authorized use of the name/pseudonym must not create confusion or abuse of rights. | On 23 June 2015 the Russian Supreme Court has issued important guidelines for lower courts to clarify the law relating to an individual's right to image/likeness. The Supreme Court clarified that even if an individual's image is publicly available, including as a result of its publication on the internet by the individual him/herself, the general rule is that any further use of the image by a third party is still subject to the individual's consent to such a use. The Supreme Court stated that it is possible to publish and use an individual's image without consent if (1) there is a public interest, for instance if such individual is a public figure (e.g. a state or municipal official, because he/she plays significant part in public political or economical life, art or sports); and (2) the publication and use of the image are related to political or public discussion, or the interest to this personality is important for society. However the consent would be required if the image is published and used solely to satisfy the curiosity with regard to the individual's private life or to make economic profit. | |
| South Africa | Yes | The South African Constitution, which recognizes the rights of dignity and privacy, and the law of delict (common law), specifically, <i>actio iniuriarum</i> (infringement of personality interests), which protects a person's <i>dignitas</i> , among other things. " <i>Dignitas</i> " is a collective term embracing privacy, dignity, and identity (see Grutter), through which South African courts have protected personality rights. South African law does not recognize a specific proprietary interest or property rights in the image, likeness, voice or other aspects of individual's personality rights. | All individuals. South Africa's Constitutional Bill of Rights, as well as its common law, provide bases for the protection of personality rights in South Africa and protect each individual's right to dignity and privacy. In <i>Kumalo v. Cycle Lab</i> , the South Gauteng High Court asserted that "personality rights are inseparably bound up with one's personality" and that "they do not exist independently of the human personality and are incapable of being transferred." | In South Africa's leading personality rights case, <i>Grutter v. Lombard</i> , the Supreme Court of Appeal pointed to Johann Neethling's explanation that identity is "uniqueness which identifies each person as a particular individual... Identity manifests itself in various <i>indicia</i> by which the person involved can be recognized: that is, facets of his personality which are distinctive or peculiar to him, such as his life history, his character, his name, his creditworthiness, his voice, his handwriting, his outward shape, etc." This suggests that the court defined the right to identity broadly. The court also pointed to Professor McQuoid-Mason's explanation that "appropriation of a person's image or likeness" is "a violation of a person's right to decide for herself who should have access to her image and likeness... something that goes to the root of individual autonomy or privacy." | None. Personality rights cease to exist when the individual dies. | Damages, injunctive relief (interdict) (see <i>Grutter</i> , where court ordered an individual's former law firm to stop using his name). | Courts | Consent, public policy, truth if publication is for the public interest, fair comment, just | Courts have noted that this is highly fact-specific field. A violation typically involves a finding that (1) a person's image was used without authorization and some kind of misrepresentation concerning the individual, such as that the individual approves or endorses a particular product or service or is affiliated with an organization or brand, or (2) the attributes of a person were used without his/her authorization for commercial gain (e.g., for promoting a service or product or soliciting clients or customers). | |
| Spain | Yes. | Admitted by case law. Spanish Supreme Court Decision dated 20 June 2016 | Any individual, not only celebrities or persons with economic worth attached to his/her image. May apply to companies as well. It also covers foreigners. | Image and honor. Physical & moral | Only honor/moral aspects, no patrimonial right. Free use of name when no damage is caused to reputation/honor. | Civil classical remedies: cessation, removal, compensation for damages (moral included). | Civil Court, public prosecutor participation is compulsory. | Limited rights for popular persons acting in public open situations. Not applicable when they perform private life activities. | | IGNACIO TEMIÑOS CENICEROS. ABRIL, ABCGADOS. abril@abrilabogados.com |
| UAE | Yes | It is enforced according to Federal Law No. (5) of 1985 on the Civil Transactions Law of the United Arab Emirates. The relevant language of the law states: Article (90). Whoever has been subject of an unlawful infringement to one of the rights intrinsic to his personality may ask for the cessation of such infringement and payment of damages for the prejudice sustained. Article (91). Whoever is unjustifiably disputed in the use of his name, surname or both or if his name or surname, or both, are misappropriated, may ask the cessation of this infringement and payment of damages for the prejudice sustained. | Any living individual | Unauthorized commercial use of the name, photographs, and other likeness rights. | None | Compensation for damages suffered because of the infringement brought by civil action. | Civil disputes must be filed before the Civil Court of First Instance. The Civil Court handles cases related to the financial rights of individuals. | The majority view is that the Right of Publicity extends to every individual, not just those who are famous. But as a practical matter, Right of Publicity disputes usually involve celebrities, since it celebrities possess the names and images that are more commonly used in advertisements. | None | |