



Identity & Origin
Right of
Publicity

Right of Publicity

Eric E. Johnson
ericejohnson.com



Konomark
Most rights sharable



Right of Publicity



Right of Publicity Infringement

(a/k/a "Appropriation" or "Commercial Misappropriation")

The Elements:

1. A commercial use
2. Of a person's name, likeness, voice, or other indicia of identity

NOTE: This blackletter formulation is overbroad.

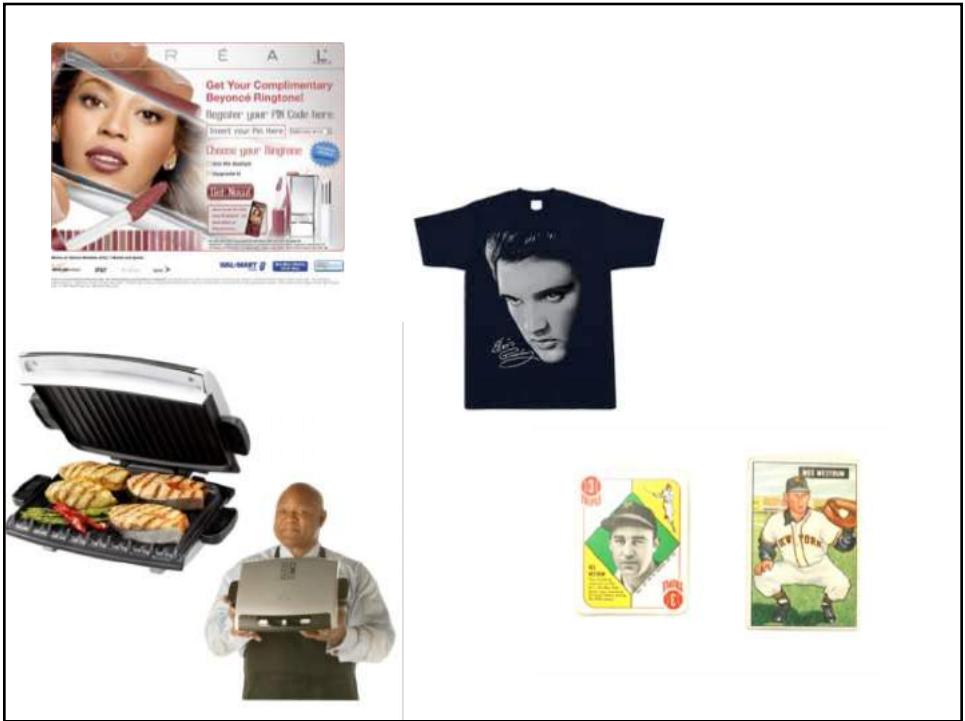
The scope of the doctrine is greatly limited by:

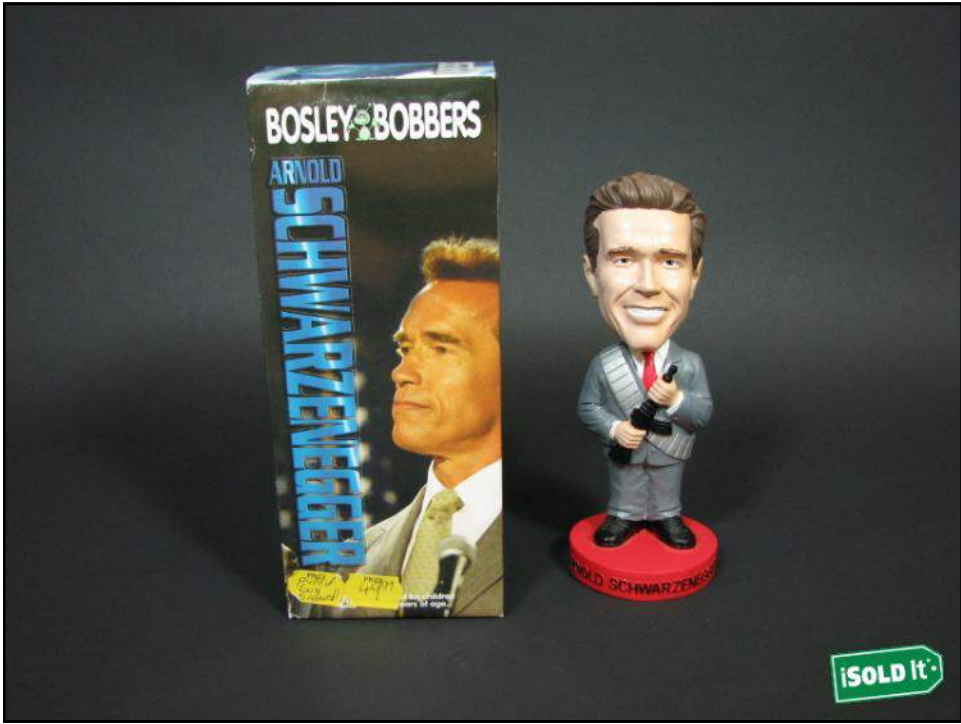
- First Amendment freedom of expression
- Copyright preemption
- Ad-hoc "spin"

"The elements of a common law action are the unauthorized use of the plaintiffs identity to the defendant's advantage by appropriating the plaintiffs name, voice, likeness, etc., commercially or otherwise, and resulting injury."

**Kirby v. Sega of Am., Inc.,
144 Cal.App. 4th 47 (2006)**













CREDIT REPORT		10/20/2014	
PERSONAL INFORMATION			
Full Name	Arnold Schwarzenegger	Aliases	Arnold Schwarzenegger
DOB	07/03/1947	Gender	M
SSN	000-00-0000	Current Address	1234 Main St, Los Angeles, CA 90001
EMPLOYMENT HISTORY			
Company Name	Arnold Schwarzenegger Productions	Start Date	01/2008
Company Name	Arnold Schwarzenegger Productions	Start Date	01/2008
FINANCIAL INFORMATION			
Bank Name	Wells Fargo Bank	Account Type	Checking
Bank Name	Wells Fargo Bank	Account Type	Savings
DEBT INFORMATION			
Credit Card	Chase Freedom	Balance	\$1,200.00
Mortgage	Bank of America	Balance	\$150,000.00
INQUIRY INFORMATION			
Requester Name	Experian	Request Date	10/20/2014
Requester Address	2455 Channel View Blvd, Brea, CA 92620	Requester Phone	(714) 851-7000
ADDITIONAL INFORMATION			
Public Records	0	Bankruptcy	0
Liens	0	Judgments	0

salesgenie Speak With Our Experts 866.313.0396

How It Works Pricing Sales Solutions Marketing Solutions Research Solutions About Us

The Right Leads Make All The Difference

From cold-calling to market research, Salesgenie will make your life easier!

Find and contact highly-targeted leads.

Salesgenie makes it simple to search for targeted leads, get contact names and phone numbers and view detailed profiles so you can get back to what you're really good at – **making the sale!**

CLAIM YOUR
FREE 3-DAY
ALL ACCESS PASS

Plus get 150 free leads today when you create your account below.

Enter Email & Password

Email:

US WEEKLY

ROB WALKS OUT

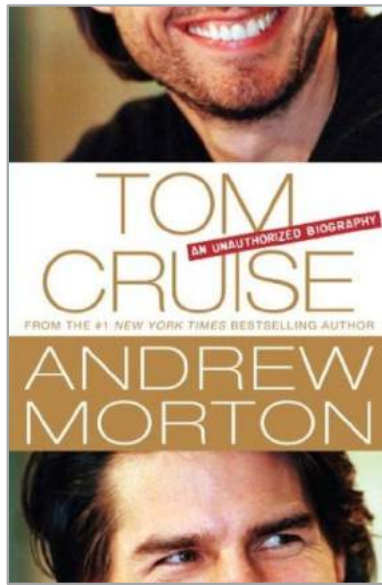
After Kristen confesses all, a heartsick Rob hides out at Reese Witherspoon's home, ignoring her calls. Will he take her back?

OLYMPICS SHOCKERS
Team USA's Tears & Triumph

JACKSON FAMILY FEUD
The Fight Over Michael's Money

HOUSEWIVES SPLIT
Why Dr. Paul Left Adrienne

"Kristen knows she ruined everything," says a friend.



“The elements of a common law action are the unauthorized use of the plaintiffs identity to the defendant's advantage by appropriating the plaintiffs name, voice, likeness, etc., commercially or otherwise, and resulting injury.”

Right of Publicity

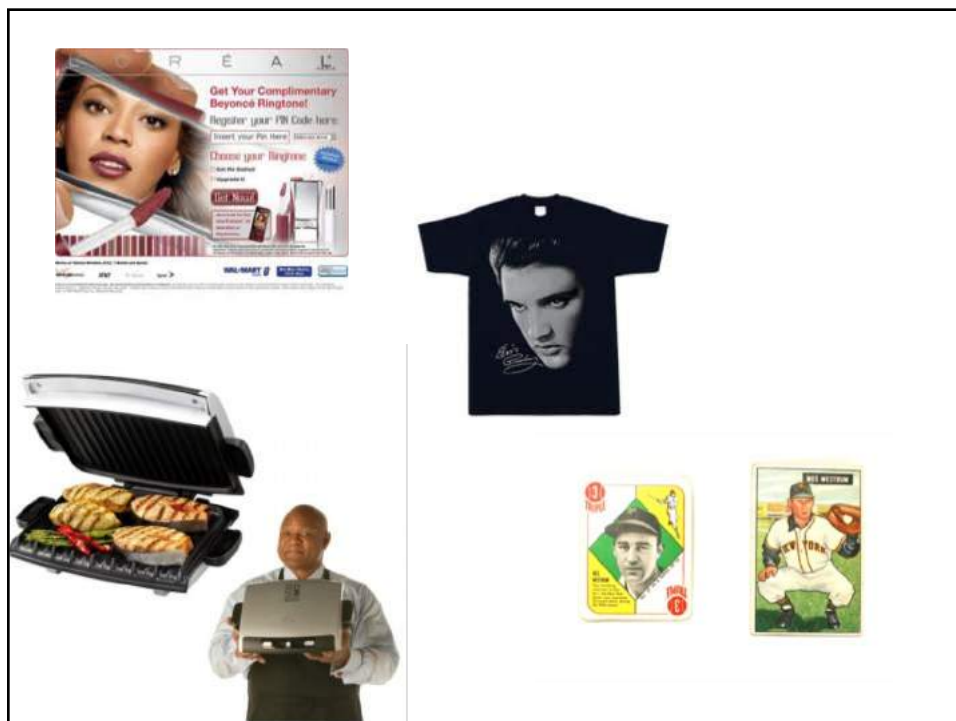
Kirby v. Sega of Am., Inc.,
144 Cal.App. 4th 47 (2006)

- “The elements of a common law action are the unauthorized use of the plaintiffs identity to the defendant's advantage by appropriating the plaintiffs name, voice, likeness, etc., commercially or otherwise, and resulting injury.”
- # Right of Publicity

Kirby v. Sega of Am., Inc.,
144 Cal.App. 4th 47 (2006)

Right of Publicity

Reality check:
The blackletter
scope is much
broader than the
real scope.



Right of publicity applies

Experian
TransUnion
EQUIFAX

salesgenie Speak With Our Experts: 866.313.0395

The Right Leads Make All The Difference
FREE 3-DAY ALL ACCESS PASS

ROB WALKS OUT

TOM CRUISE
ANDREW MORTON

Touching Cover Darts



Observation:

As an analytical matter,
the scope is primarily
determined subtractively.

Right of Publicity

First
Amendment

of
Publicity

First Amendment

City

TREASURY BONDS


Redemption questions and why Treasury Bonds is the league's most valuable player:

1. Having Bonds on your team is like having money in the bank.
2. He plays so hard he gives 110 percent, compounded daily.
3. He turned down the chance to play other sports because he has a high interest rate in baseball.
4. He deposits the ball in the bleachers.
5. He is into male bonding.
6. He is a money player.
7. He has a 24-karat Gold Glove.
8. He always cashes in on the payroll pitch.

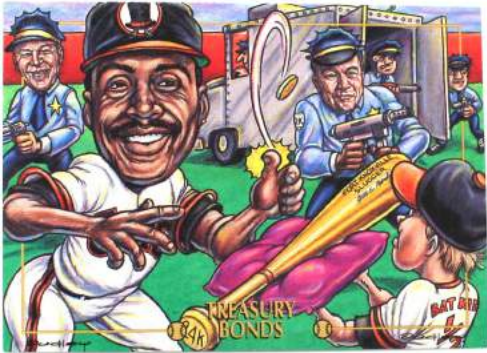
NOTICE: Bonds is not tax-free in all states but is double exempt.

Cartoons
Cartoons based on a game and is NOT Licensed by Major League Baseball Properties or Major League Baseball Players Association.
 © Cartoons 1993

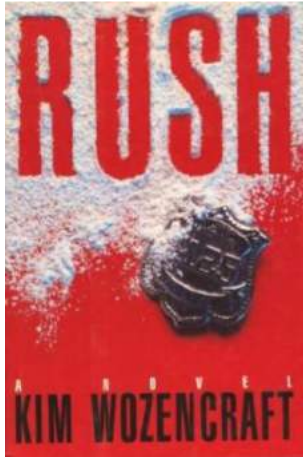
GENTS



8



Matthews v. Wozencraft, 15 F.3d 432 (5th Cir. 1994)



First Amendment barred a right-of-publicity claim by a former law-enforcement officer for portraying his life in a book and movie.

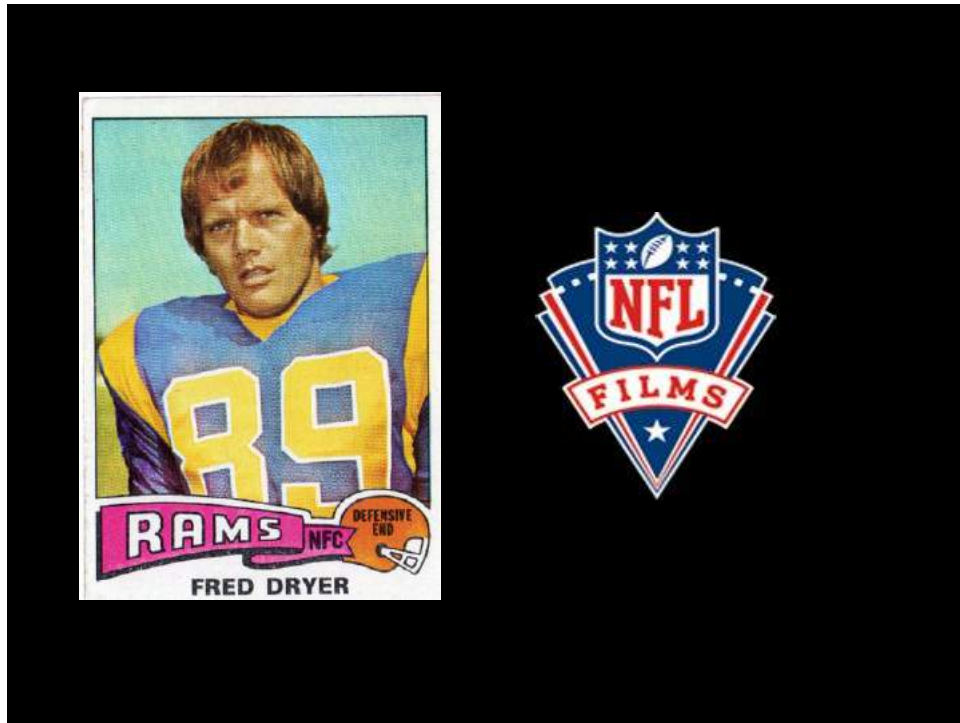




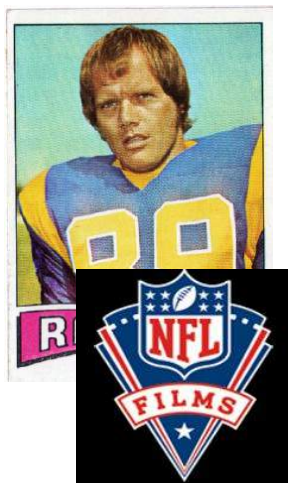
**Stephano v. News Group Publications,
 474 N.E.2d 580 (N.Y. 1984)**



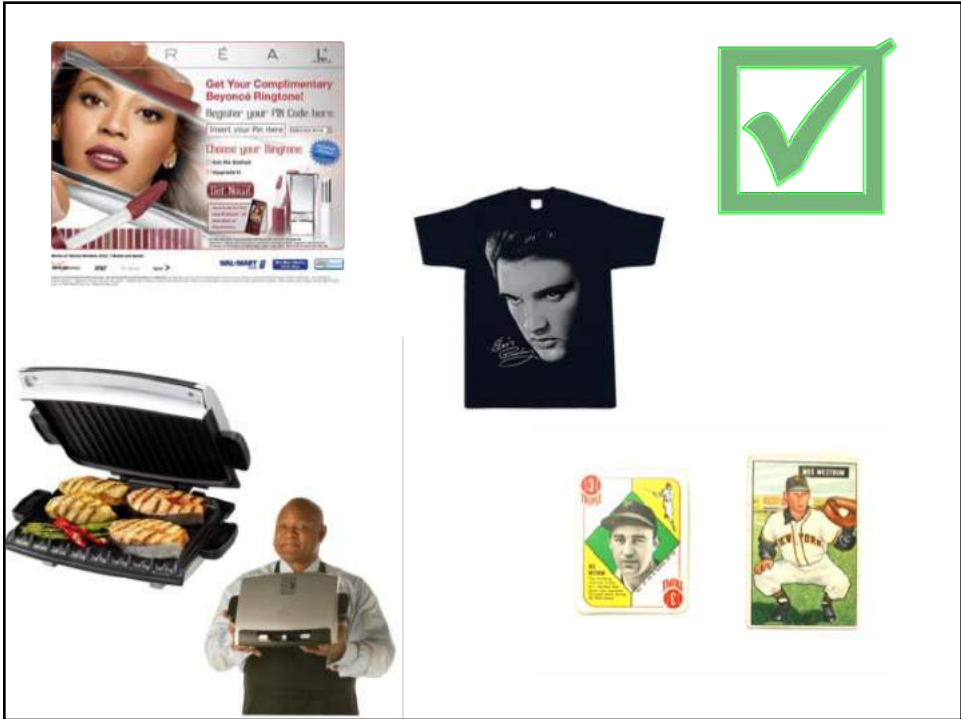
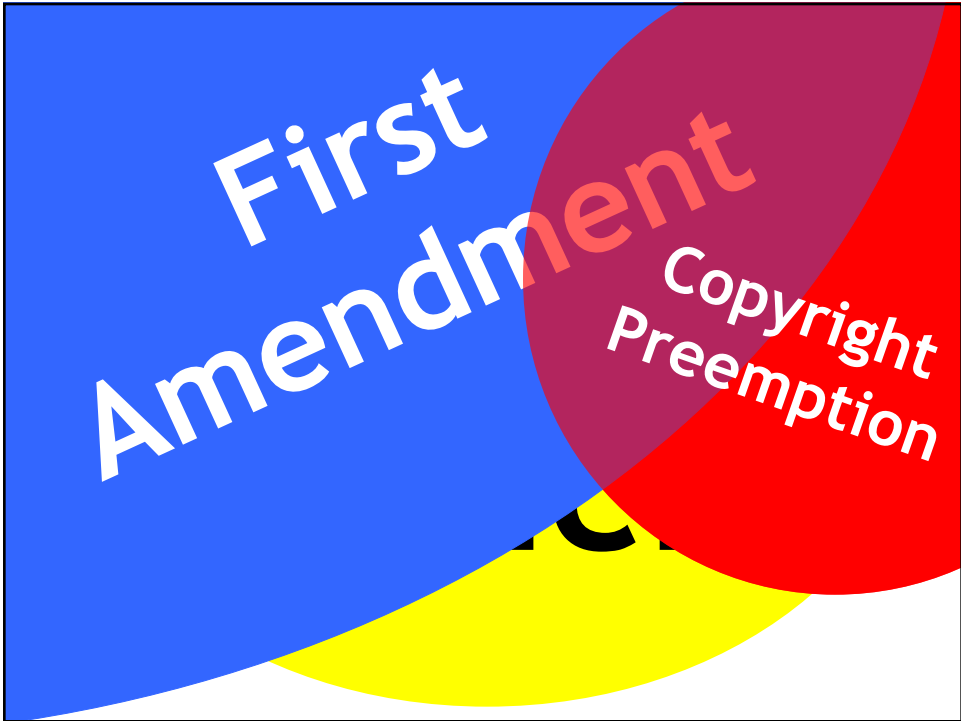
A “newsworthiness exception” defeated a model's right-of-publicity claim where the photos he posed for were used for more than the one article he'd authorized.



Dryer v. NFL,
55 F. Supp. 3d 1181 (D. Minn. 2014)

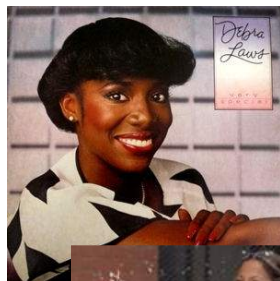


Right of publicity claim for use of old film footage of athlete in new documentary-style television production was barred on by the “newsworthiness exception” - notwithstanding that the passage of three or four decades.

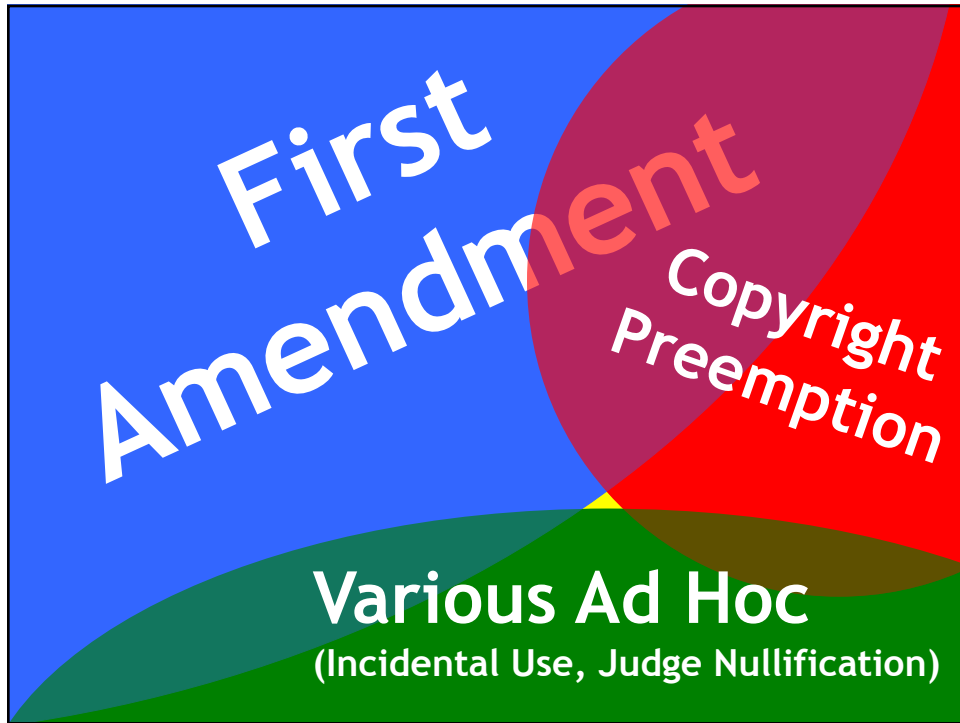


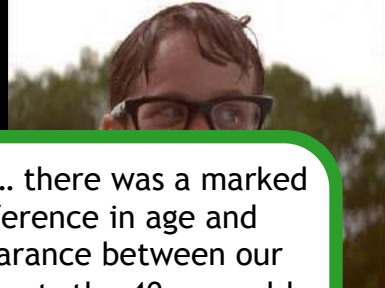


Laws v. Sony Music, 448 F.3d 1134 (9th Cir. 2006)

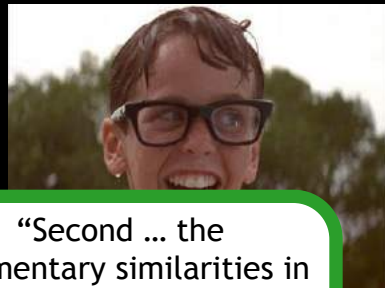


Right-of-publicity claim for unauthorized use of Debra Laws' voice from 1981 "Very Special" in 2002 Jennifer Lopez song "All I Have" held preempted because of copyright preemption on the basis that Laws' voice was lifted from a copyrighted recording.



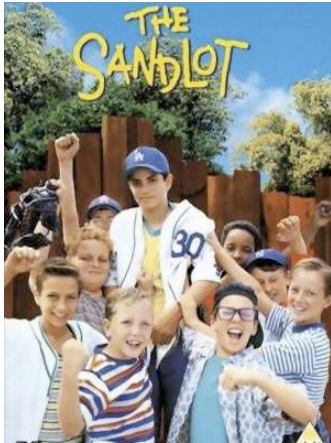


“First ... there was a marked difference in age and appearance between our appellant, the 40-year-old Michael Polydoros, and the 10-year-old character of Squints Palledorous.”

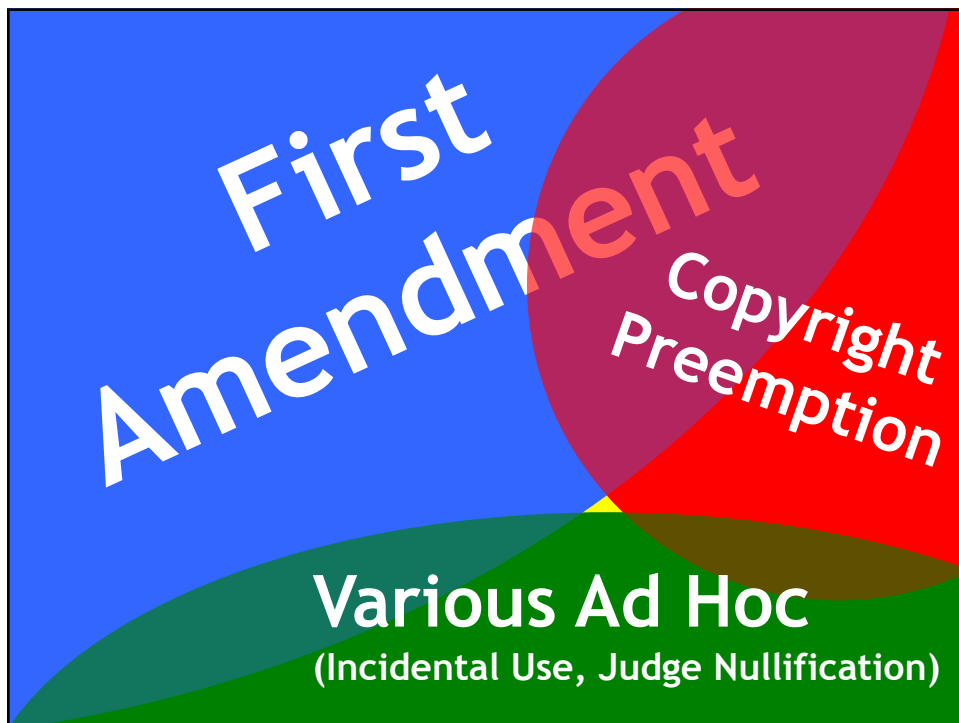


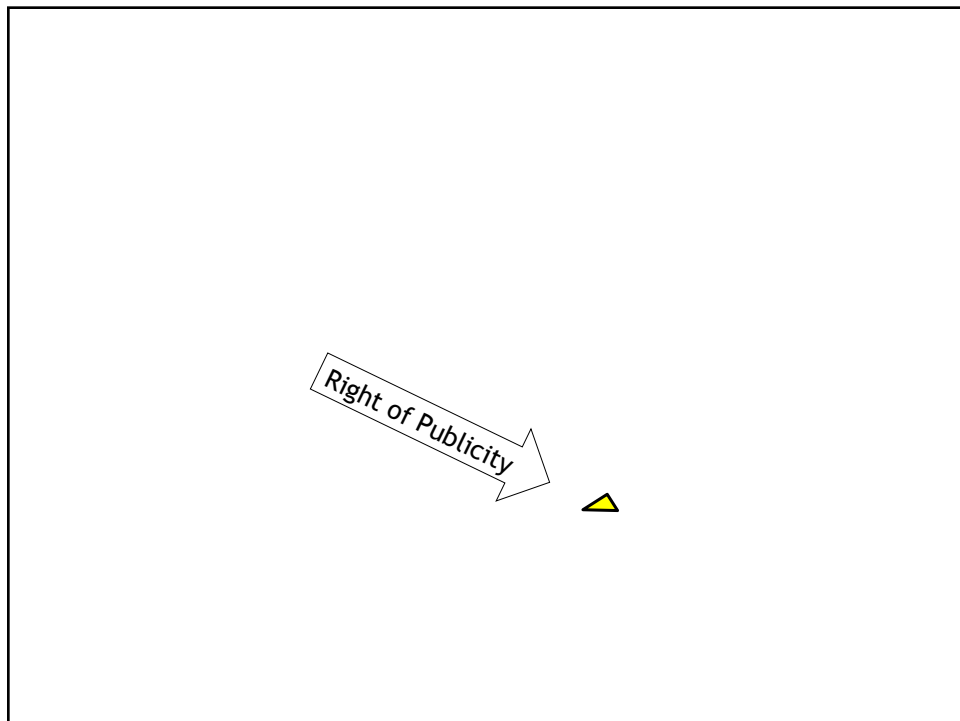
“Second ... the rudimentary similarities in locale and boyhood activities do not make *The Sandlot* a film about appellant’s life.”

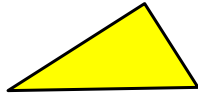
Polydoros v. 20th Century Fox, 79 Cal. Rptr. 2d 207 (Cal. Ct. App. 1997)



Where writer used a whole constellation of the plaintiff's indicia of identity, including name and likeness, and where people recognized the plaintiff as being portrayed in the film, the court rejected the right-of-publicity claim on summary judgment because of "a marked difference in age and other awkward characterizations of the facts and assertions irrelevant to the law.

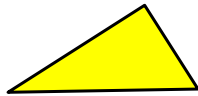






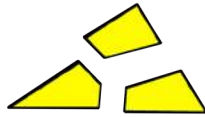
We know what this is not:

- First Amendment protected
 - (or newsworthiness excepted)
- Copyright preempted
- Ad hoc excluded



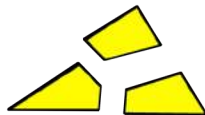
But what is it?

Right of publicity violations tend to come in three varieties. If the claim doesn't fit one of these three varieties, chances are a court will reject it on some basis (whether that be First Amendment, copyright preemption, or something else).



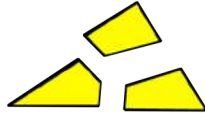
But what is it?

Right of publicity violations tend to come in three varieties. If the claim doesn't fit one of these three varieties, chances are a court will reject it on some basis (whether that be First Amendment, copyright preemption, or something else).



Three patterns of rights of publicity claims that are successful:

- **Endorsement/advertising**
- **Merchandising**
- **Virtual impressment**



Three patterns of rights of publicity claims that are successful:

- **Endorsement/advertising**
- **Merchandising**
- **Virtual impressment**

EEJ's way of looking at this ... FWIW

claims for unauthorized endorsement/advertising use

Courts seem to recognize that a person has a right not to be represented as making a commercial endorsement or appear in an advertisement in such a way that suggests endorsement absent that person's specific consent.



claims for unauthorized merchandizing

Courts seem to recognize that persons have the exclusive privilege to exploit their name and likeness in merchandising.

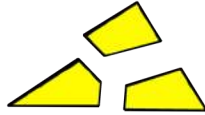
The sale of t-shirts or coffee mugs with the person's name or likeness violates.



claims for virtual impressment

Many (but not all) courts recognize claims against defendants who exploits a plaintiff's name, likeness, or voice in such a way that the plaintiff has been unwittingly employed to produce a performance that might otherwise require voluntarily supplied labor.



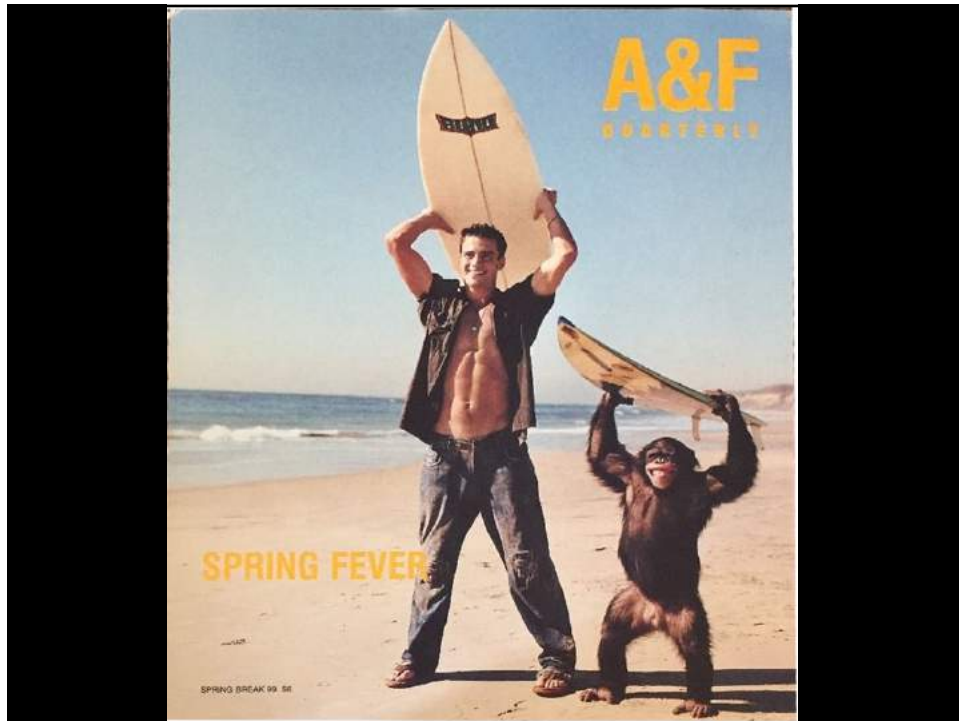


How this might make sense of the cases ...

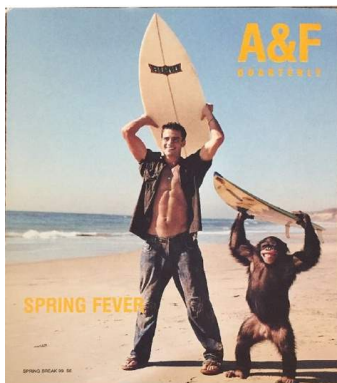
Stephano v. News Group Publications, 474 N.E.2d 580 (N.Y. 1984)



A “newsworthiness exception” defeated a model's right-of-publicity claim where the photos he posed for were used for more than the one article he'd authorized.



Downing v. Abercrombie & Fitch, 265 F.3d 994 (9th Cir. 2001)



Rejected First Amendment defense and upheld right of publicity violation for a 700-word story, “Your Beach Should Be This Cool,” describing the history of surfing at a California beach. The court noted “The following page exhibits the photograph of Appellants. The two pages immediately thereafter feature [clothing for sale].”



Right of Publicity Realotheticals

Infringement



TV commercial used stock photo of Motschenbacher's car, altering 11 to 71, attaching spoiler, and adding Winston logo. Some viewers recognized the car and thought Motschenbacher was sponsored by Winston.
Motschenbacher v. R.J. Reynolds Tobacco Co., 498 F.2d 821 (9th Cir.1974)

No infringement



Lane v. MRA Holdings, 2002 U.S. Dist. LEXIS 24111 (M.D. Fla. Nov. 26, 2002)
Gritzke v. MRA Holdings, 2003 U.S. Dist. LEXIS 9307 (N.D. Fla. Mar. 22, 2002)

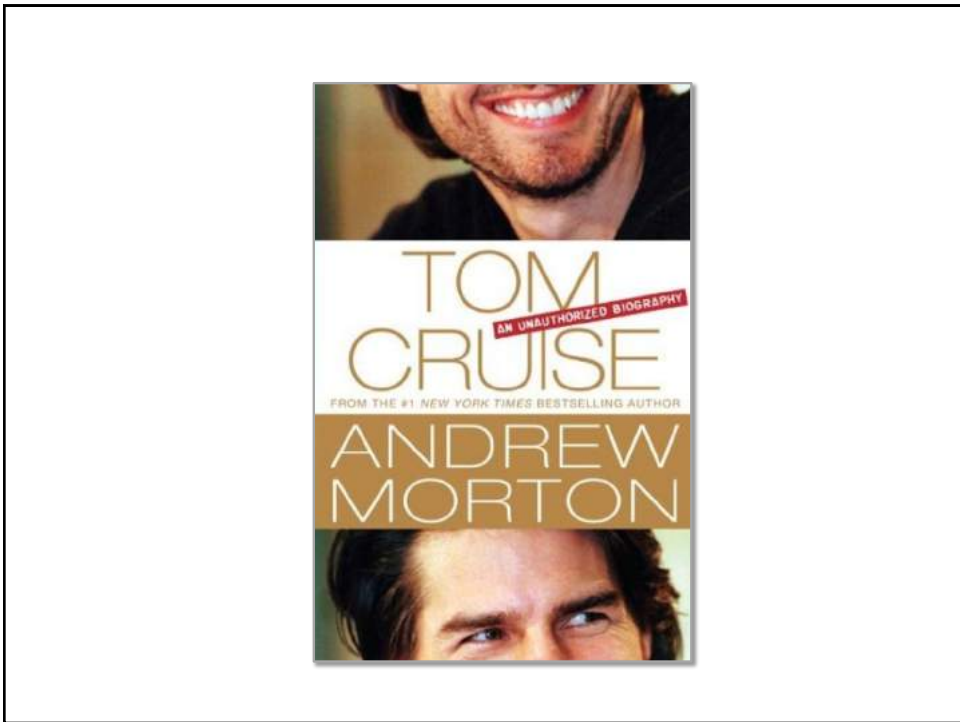
Infringement



Infringement

Zacchini v. Scripps-Howard Broadcasting Co.,
433 U.S. 562 (1977)










WAZE DIGITAL | COMMERCE | START YOUR PROJECT | 866.815.6599 | Sign In | Register

Categories | Collections | Services | Packages | Company | Search for footage...

Sports Collection

- NCAA® March Madness®
- Extreme Sports
- Former College Pros
- Vintage Sports
- US Open Tennis Championships
- Pro Golf Champions
- Professional Soccer Collection

Contact us: 866.815.6599 | Chat



BIG | **MW** | **RAYCOM Sports** | **NCAA** | **ACC** | **U.S. Soccer** | **US OPEN**

National, International, and Collegiate Sports Footage

License sports footage from renowned sports institutions including Big Ten Conference, Mountain West Conference, NCAA®, Raycom Sports - ACC, US Open Tennis Championships, U.S. Soccer, and more.

Our sports footage collections give you access to full game footage, pre-clipped highlights, and other sports video clips with multiple camera angles not shown in broadcast.

To request free research, license sports video clips, or learn more about our Rights and Clearances services contact: 866.815.6599 or email sales@wazedigital.com.

- Big Ten
- Mountain West
- NCAA
- Professional Bull Riders
- Raycom Sports - ACC
- UK Football League
- US Open Tennis Championships
- U.S. Soccer