



Right of Publicity

Torts
Eric E. Johnson
ericejohnson.com



Kononmark
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:

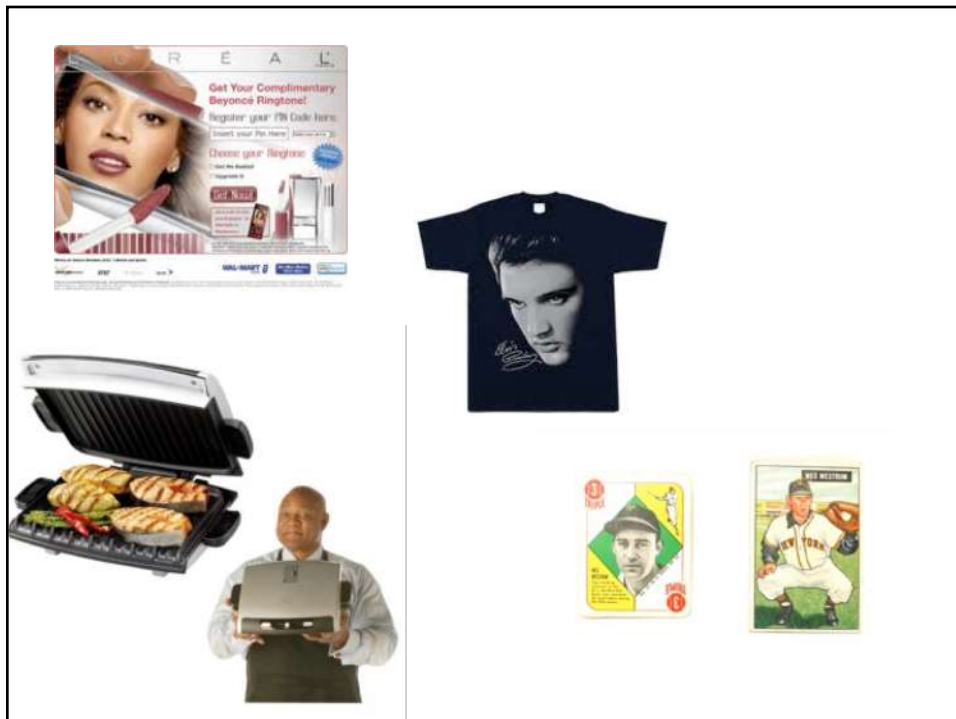
- First Amendment freedom of expression
- Copyright preemption
- Ad-hoc "spin"

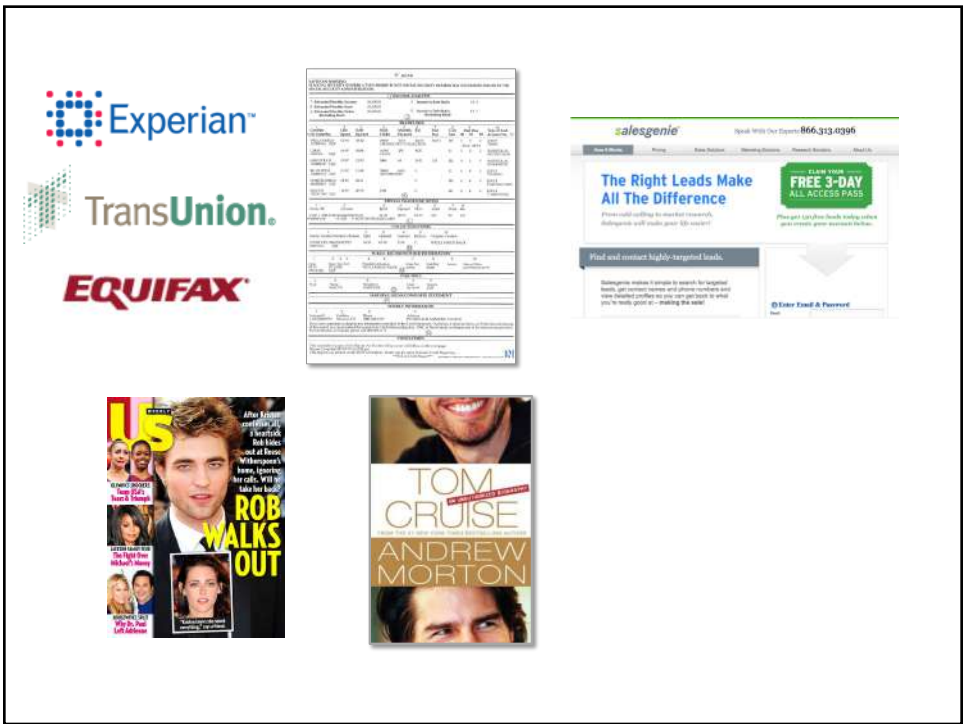
Three circumstances where rights of publicity actions are commonly recognized:

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

“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)**





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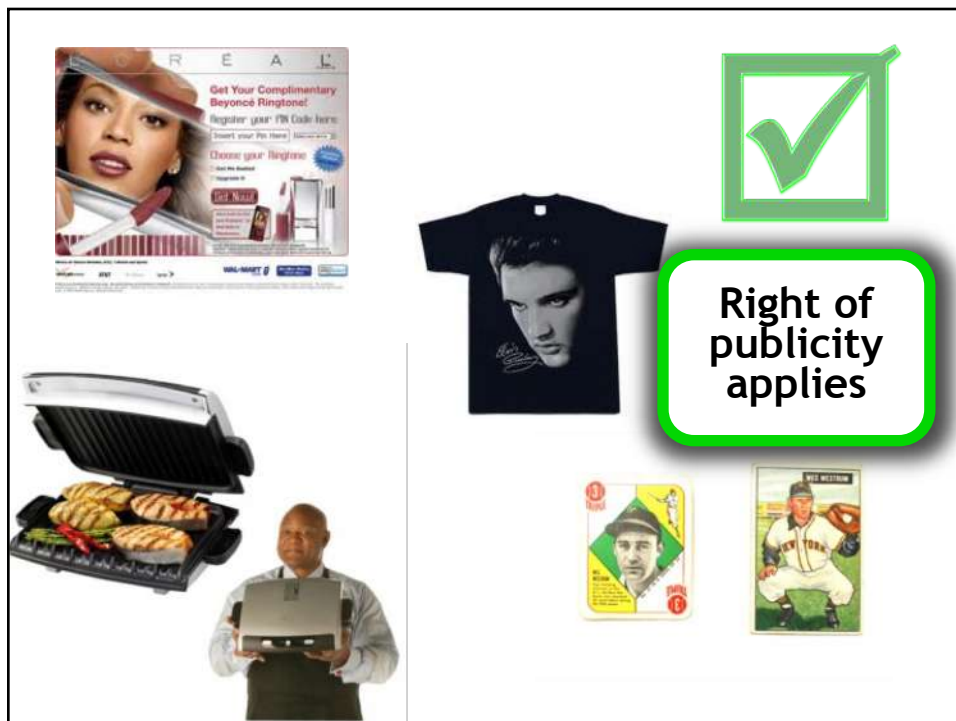
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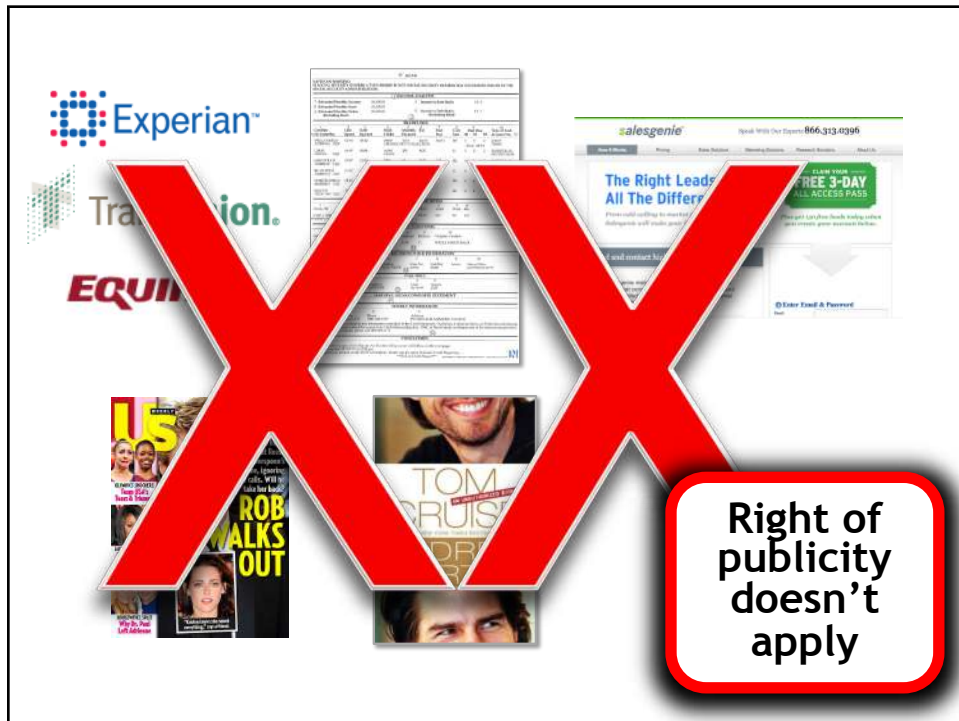
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- # Right of Publicity

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



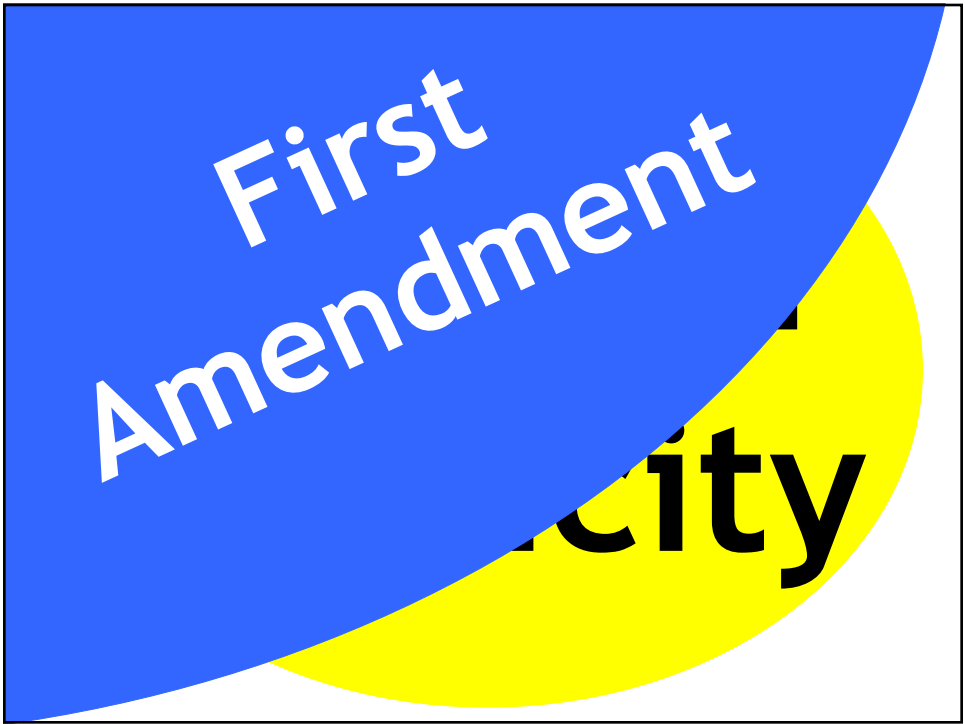


Observation:

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



**Right of
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**First
Amendment**

**Right of
Publicity**

