



Right of Publicity

Torts
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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"

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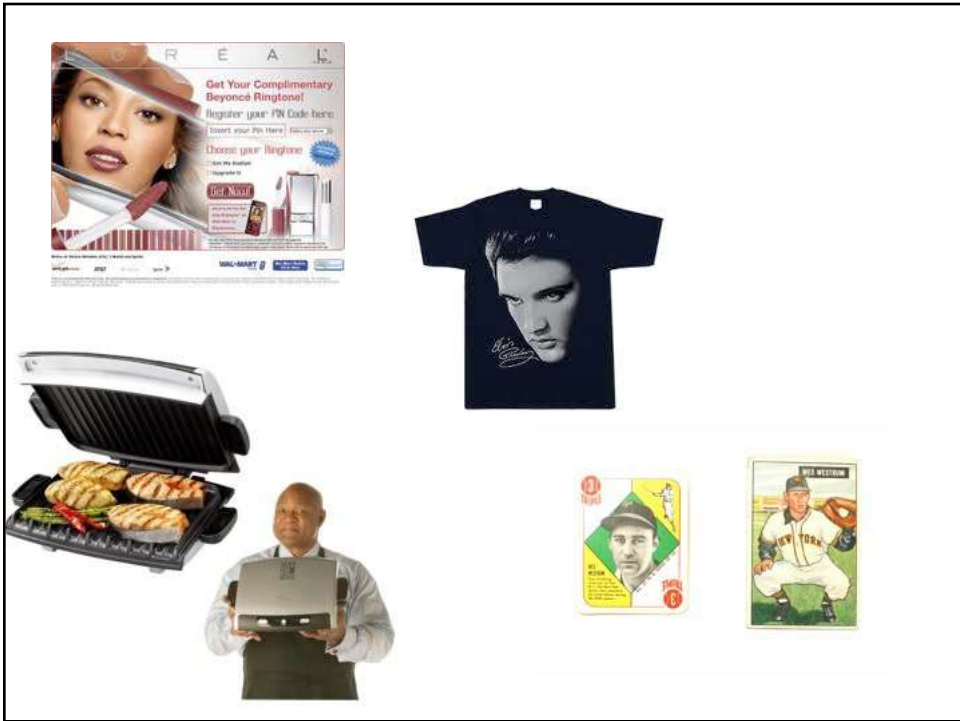
- “The elements of a common law action are the unauthorized use of the plaintiff’s identity to the defendant’s advantage by appropriating the plaintiff’s name, voice, likeness, etc., commercially or otherwise, and resulting injury.”

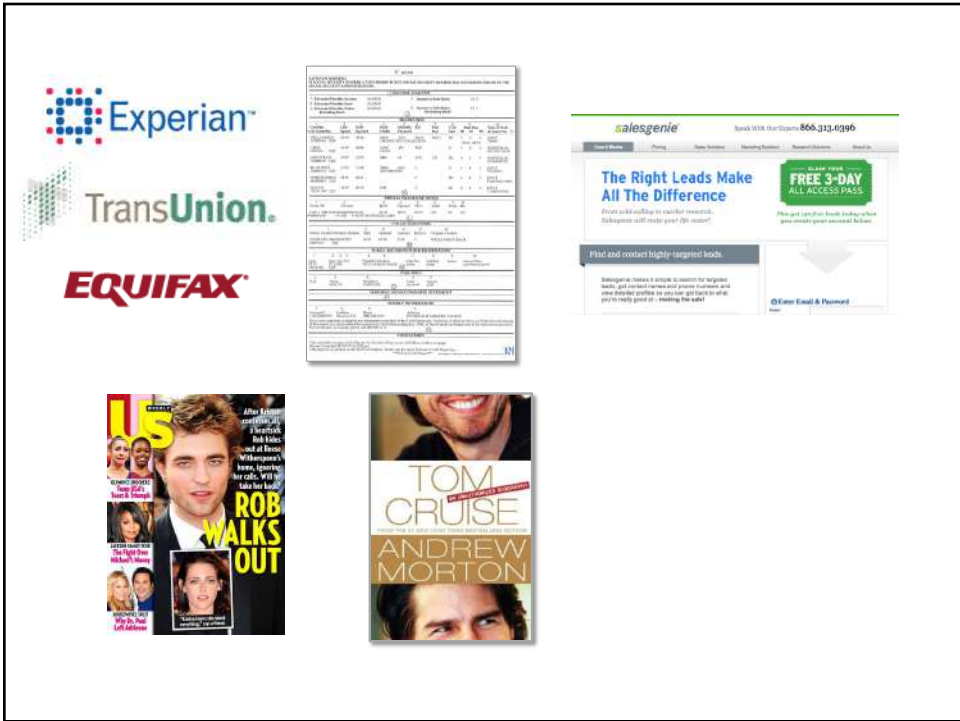
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Reality check: The
blackletter scope is
much broader than
the real scope.

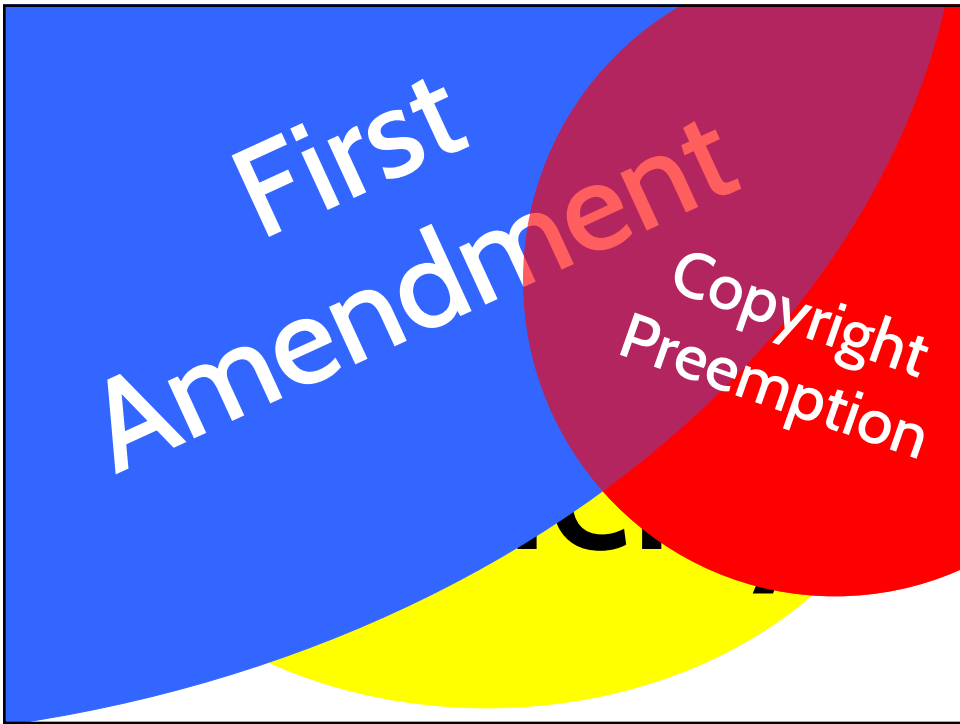
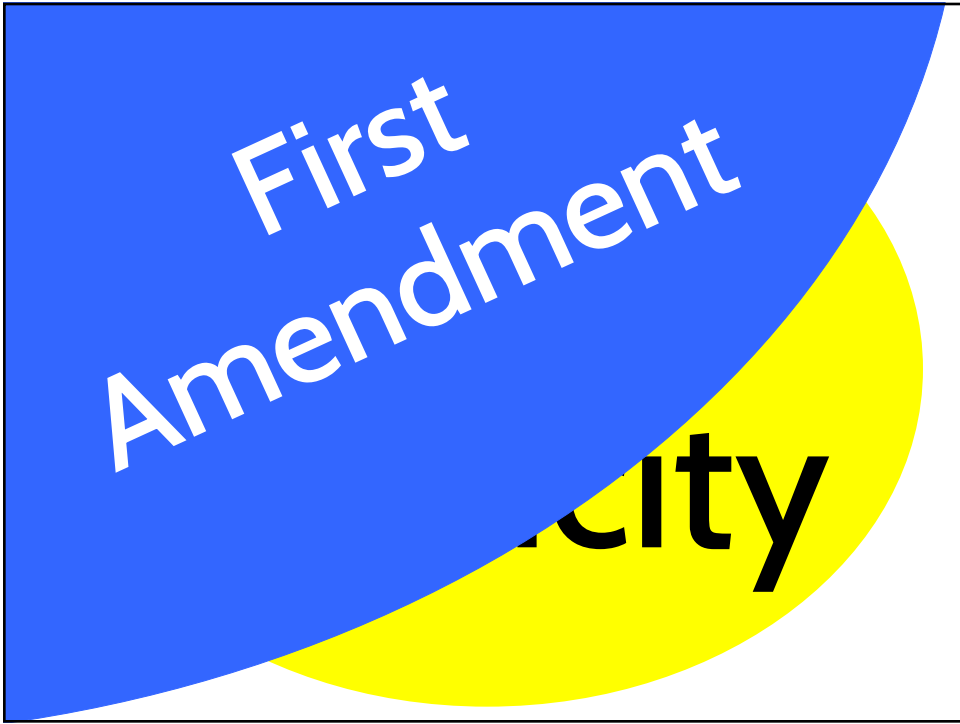


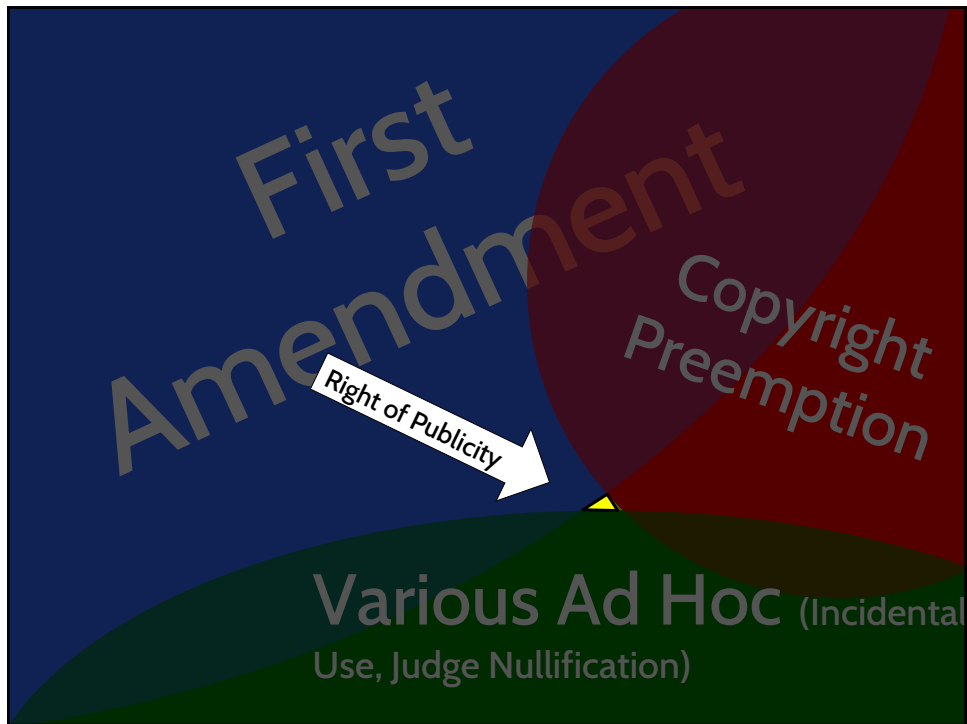
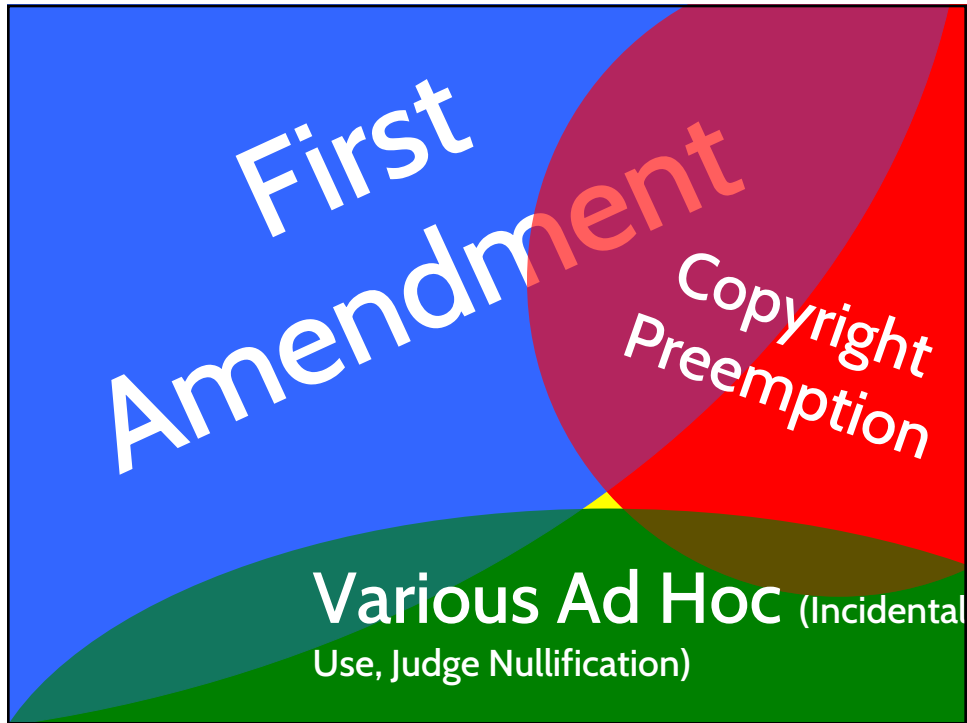


Observation:

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

**Right of
Publicity**





The Indignancy Matrix

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	Communicated to how many?	Communicated statement is true or false?	Must it be highly offensive?	State-of-mind requirement?	Cause of action after death?
Intrusion	N/A	N/A	yes	intent	N/A
Disclosure	public	true	yes	intent	no
False light	public	false	yes	actual malice	no
Defamation	one person	false	no <small>(instead, must be reputation harming)</small>	<small>[it's complicated!]</small>	no
IIED	N/A	N/A	yes+ <small>(extreme & outrageous)</small>	intent or recklessness	N/A
Right of publicity	<small>the usual requirement is just that it be</small> commercial	either	no	none	often

**See the Defamation Flowchart.*