

State Right to Publicity Laws

Intertwined within privacy law, the **Right to Publicity** might be described as the flip-side of that coin. Many states have long recognized the value and importance of an individual's "15 minutes of fame" and have explicitly codified a property right in an individual's identity. As digital recording and distribution becomes more widely available and the public's desire for "reality TV" grows, these rights will likely play an important and continuing role in the commercialization of not only celebrities, but also regular Joes and Janes.

At least 19 states currently recognize the right to publicity to some degree in their laws. Many of these states explicitly recognize a right to publicity, while others have enacted broad privacy statutes that encompass unauthorized commercial exploitation of an individual. Most states continue to recognize these publicity rights even after the individual's death and allow them to be transferred to others, just like real property. However, because significant variability exists in the scope and term of the rights, conflicts are likely to arise, as different jurisdictions offer varying degrees of protection. For example, some states offer no protection after death, others offer 10, 20, 50, 75 and even up to 100 years of protection. Some states will protect the name and picture, while others protect "persona," gestures, voice, signature, and so forth. States that provide exemptions in their laws for certain activities, such as news reporting, are less likely to run afoul of possible First Amendment issues. Eleven states have recognized the right to publicity in case law only.

State Statutes (19 states):

California

Cal Civil Code § 3344-3344.1. Prohibits the unauthorized commercial use of name, voice, signature, photograph or likeness. The rights of a deceased personality (the Astaire Celebrity Image Protection Act) provides for a right that continues for 70 years after the death of the personality.

Florida

Fla. Stat. § 540.08. Prohibits the unauthorized publication or use for commercial or advertising purposes, of the name or likeness of any person. This right continues for 40 years after death.

Illinois

Ill. Rev. Stat. ch. 765 § 1075/1 et seq. Each individual is recognized as having a right in controlling whether and how to use their identity for commercial purposes. The right continues for 50 years after death.

Indiana

Ind. Code § 32-36. Prohibits the unauthorized "commercial use" of a personality's name, voice, signature, photograph, image, likeness, distinctive appearance, gestures or mannerisms. Several exceptions are listed, e.g. literary works, musical compositions, fine art. The right continues for 100 years after death.

Kentucky

Ky. Rev. Stat. § 391.170 - Prohibits the unauthorized commercial use of the name or likeness of a "person who is a public figure." This right continues for 50 years after death.

Massachusetts

Mass. Gen. Laws Ann. ch. 214, § 3A - Prohibits the unauthorized use of name, portrait or picture of a person for advertising or trade purposes. The law does not appear to grant rights after death.

Nebraska

Neb. Rev. Stat. § 20-202 - Prohibits the exploitation of a natural person's name, picture, portrait, or personality for advertising or commercial purposes, as an invasion of privacy. The law does not appear to grant rights after death.

Nevada

Nev. Rev. Stat. § 597.770-597.810 - Prohibits the unauthorized commercial use of any person's name, voice, signature, photograph or likeness during life and continuing for 50 years after death.

New York

N.Y. Civil Rights Law § 50, 51 - Prohibits the unauthorized use for advertising or trade purposes, of the name, portrait or picture of any living person. The law does not appear to grant rights after death.

Ohio

Ohio Rev. Code Ann. § 2741.01 et seq. Prohibits the unauthorized use of “any aspect of an individual’s persona” for commercial purposes during life and 60 years after death.

Oklahoma

Okla. Stat. tit 12, § 1448, 1449. Prohibits the unauthorized use of another’s name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods for the purposes of advertising or selling. This right continues for 100 years after death.

Pennsylvania

Pa. Cons. Stat. tit. 42, § 8316. Unauthorized use of name or likeness.

Rhode Island

R.I. Gen. Laws § 9-1-28, 9-1-28.1(a)(2) - Prohibits unauthorized use of any person’s name, portrait, or picture for advertising or trade purposes. The law does not appear to grant rights after death.

Tennessee

Tenn. Code Ann. § 47-25-1102, -1103, -1104, -1105, -1106, -1107 Prohibits the unauthorized use of an individual’s name, photograph or likeness in any medium for the purposes of advertising, fund raising, or solicitation of donations or purchases. The right continues for 10 years after death.

Texas

Tex. Property Code Ann. § 26.001 et seq. Prohibits the unauthorized use of a deceased individual’s name, voice, signature, photograph, or likeness in any manner, including commercial and advertising uses. This right continues for 50 years after death. Strangely, the law is written to specifically address a deceased individual’s rights, but does not apply to living individuals

Utah

Utah Code Ann. § 45-3-1 et seq. Prohibits unauthorized commercial use of an individual’s personal identity in a way that expresses or implies approval or endorsement of a product or subject matter. The law does not appear to grant rights after death.

See also, § 76-9-407 (misdemeanor)

Virginia

Va. Code § 8.01-40. Prohibits the unauthorized use of a persons name, portrait or picture for advertising or trade purposes. The right continues for 20 years after death.

See also Va. Code § 18.2-216.1 (misdemeanor);

Washington

Wash. Rev. Code § 63.60.010 et seq. Recognizes that every individual or personality has a property right in the use of their name, voice, signature, photograph or likeness. This law distinguishes between an *Individual*: a natural person; and a *Personality*: any individual whose “publicity” has commercial value. The rights of an Individual continue after death for 10 years, but the rights of a Personality continue for 75 years after death.

Wisconsin

Wis. Stat. § 895.50(2)(b). Prohibits the unauthorized use for advertising or trade purposes of the name, portrait or picture of any living person. The law does not appear to grant any rights after death.

States that Recognize the Right to Publicity in Common Law Only (11 states):

Alabama
Arizona
Connecticut
Georgia
Hawaii
Maine
Michigan
Minnesota
Missouri
New Jersey
Oregon