



Publicity Rights State of Play

October 21, 2010 by Bob Tarantino

Eriq Gardner has published a simply excellent article in the *ABA Journal*: "What's In a Name?" explores the history, caselaw and controversies surrounding US "right of publicity" law.

Publicity rights battles are growing exponentially, according to legal practitioners, who point to a host of reasons for the increase. For one, about 18 states have adopted laws giving individuals the right to sue over commercial exploitation of their persona. In addition, changes in technological culture make it both more tempting to use—and easier than ever to spot—an unauthorized use of a celebrity's image.

Most especially, practitioners believe this area has grown hot because of a lack of acknowledged boundaries. A combination of generous laws, ambitious plaintiffs and no consistent bright-line defenses against claims means that attorneys are free to take rights conferred, find jurisdictions where the protections are most generous, and make a claim.

Some critics worry about how expanding publicity rights may chill free speech, but in the meantime, the issue of celebrity publicity rights is giving a lot of work to a new generation of IP lawyers like Faber.

"The sky's the limit," says Indiana University law professor Marshall Leaffer. "Over the years, we've seen publicity rights claims being made on someone's voice, on a golfer's swing, even on a sports car identified with a particular racer. A person's likeness covers a lot. Rights of publicity claims are seemingly impeded only by a lawyer's imagination."

While the article is, as noted, concerned with US law, it offers Canadian lawyers a handy round-up of information for comparative purposes.

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