



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:

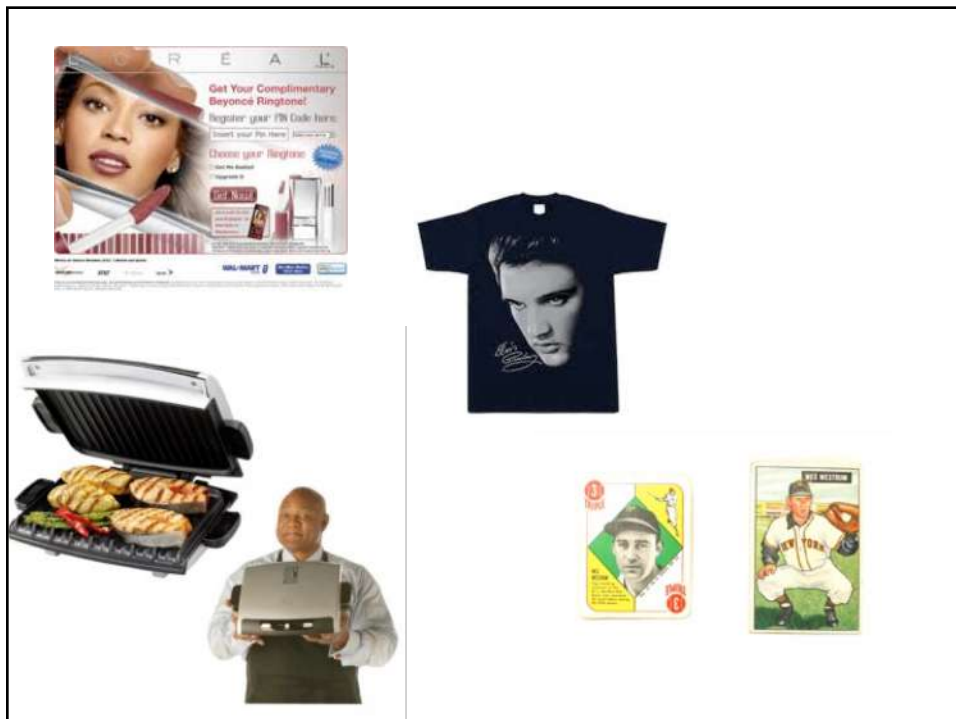
- First Amendment freedom of expression
- Copyright preemption
- Various idiosyncratic ad hoc rationales/spin

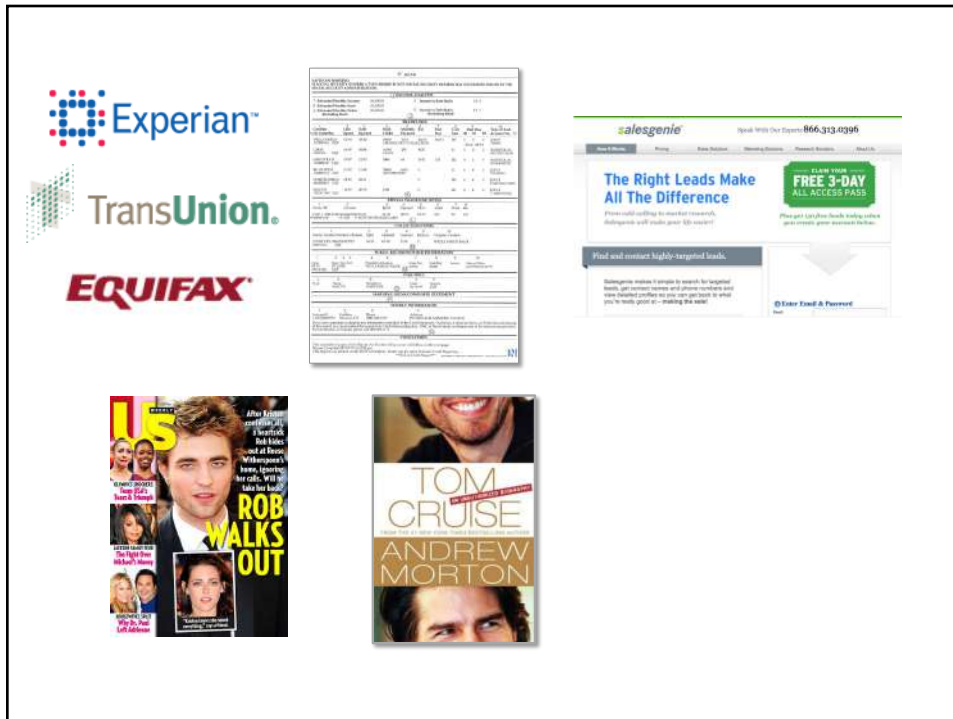
Three circumstances where rights of publicity actions are commonly recognized:

- **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)**





“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.”

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

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- # Right of Publicity

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

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

REAL

Get Your Complimentary Beyoncé Ringtones!

Register your PIN Code here:

Smart your Pin Here:

Choose your Ringtones

Get Now!

Right of publicity applies

Experian™

Transition.

EQUI

salesgenie

The Right Leads All The Differences

FREE 3-DAY ALL ACCESS PASS

US

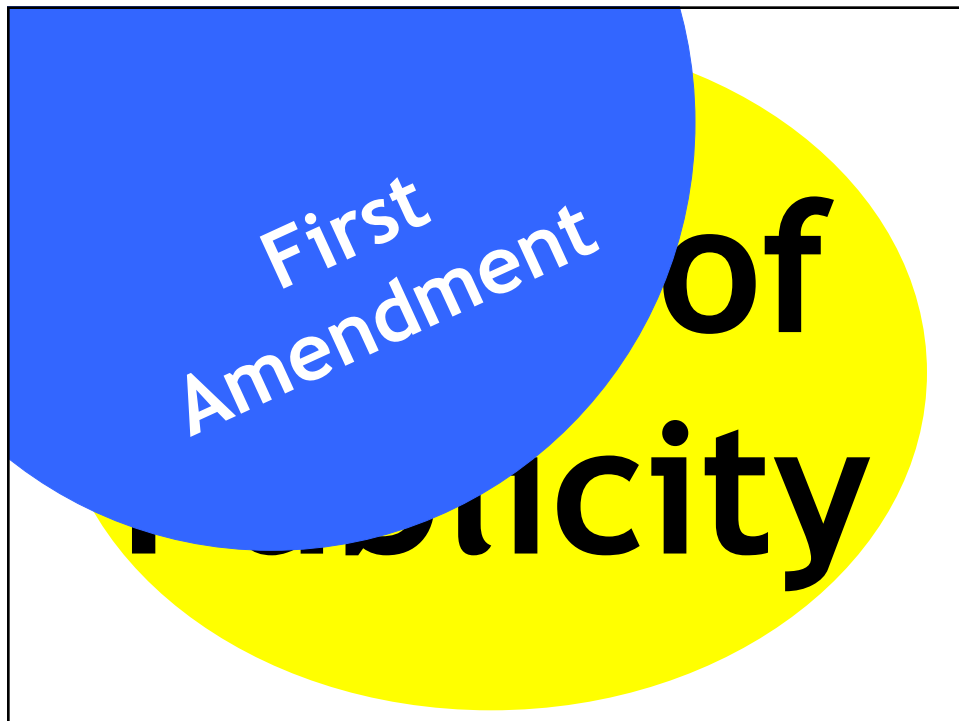
ROB WALKS OUT

TOM CRUISE

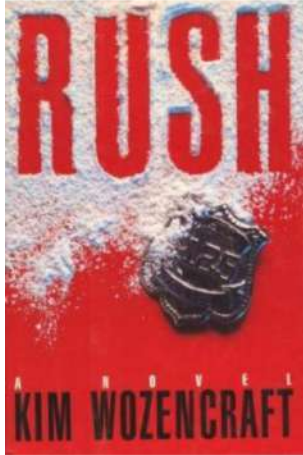
Right of publicity doesn't apply

Observation:

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

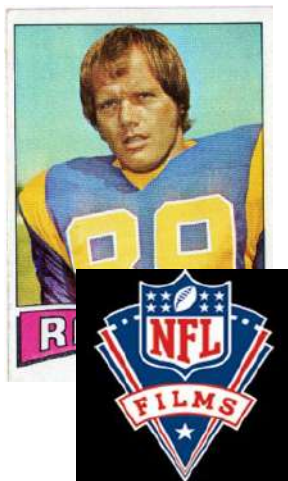


Matthews v. Wozencraft,
15 F.3d 432 (5th Cir. 1994)

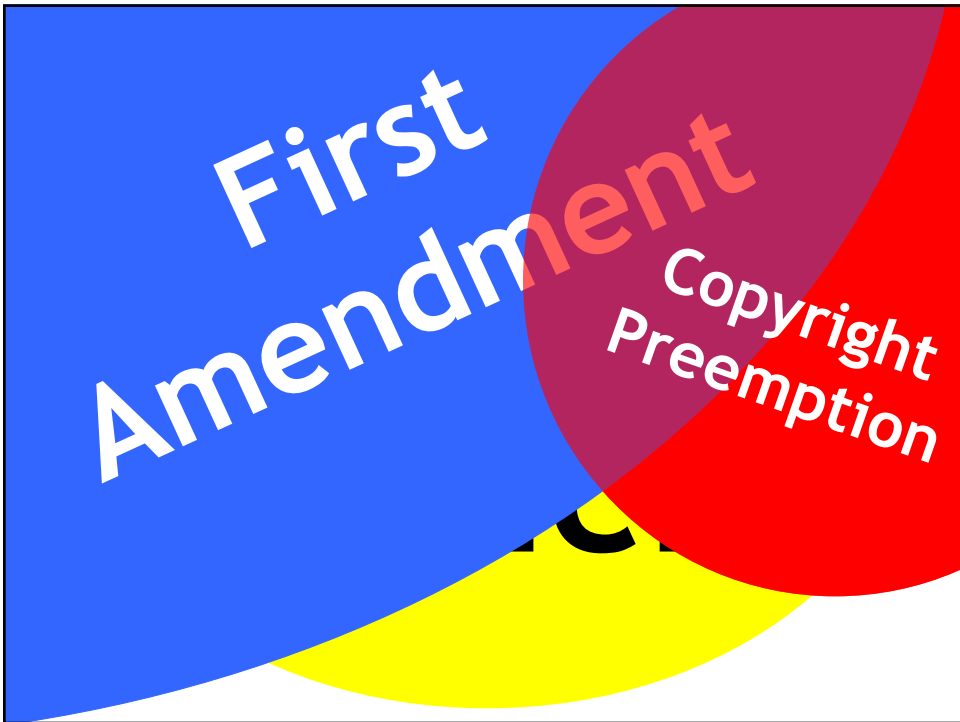
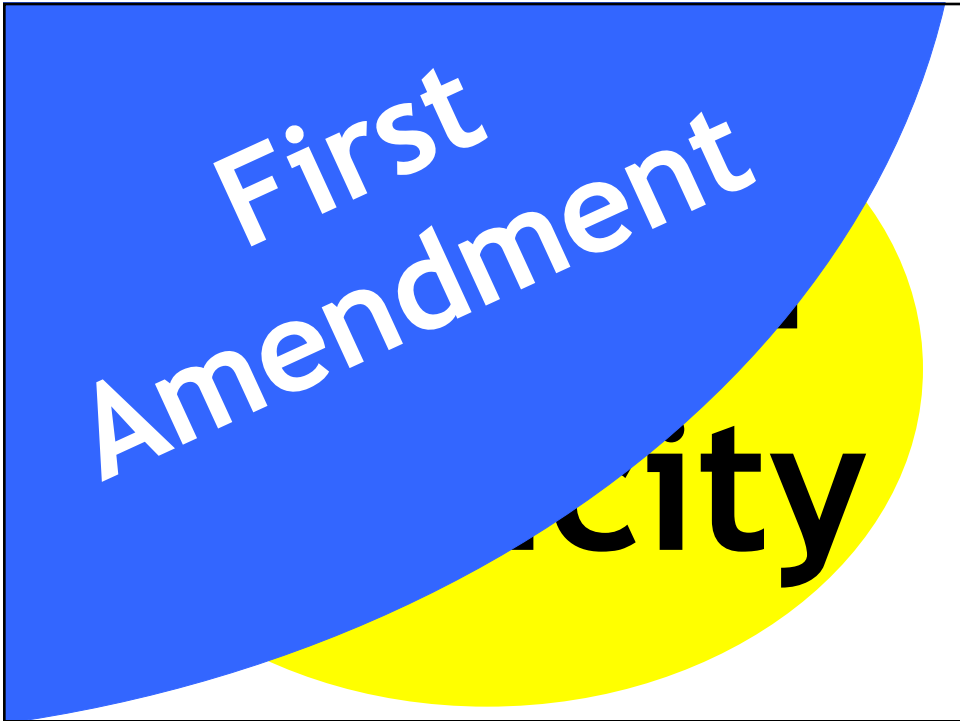


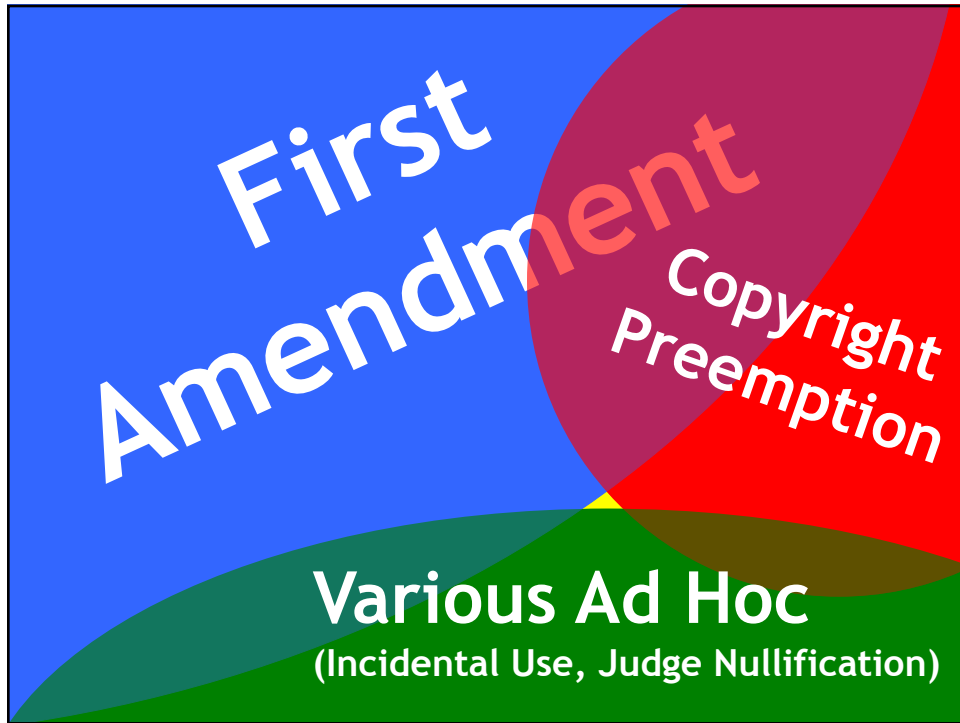
First Amendment barred a right-of-publicity claim by a former law-enforcement officer for portraying his life in a book and movie.

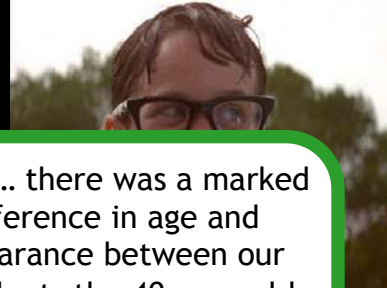
Dryer v. NFL,
55 F. Supp. 3d 1181 (D. Minn. 2014)



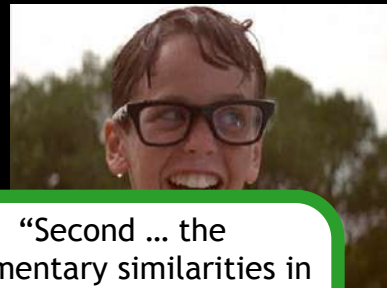
Right of publicity claim for use of old film footage of athlete in new documentary-style television production was barred by the “newsworthiness exception” - notwithstanding the passage of three or four decades.





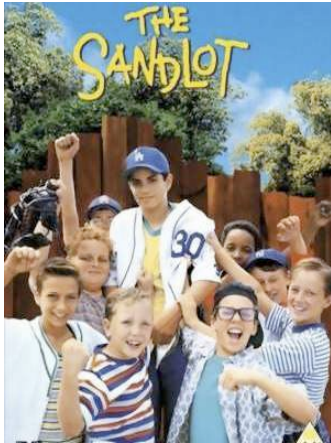


“First ... there was a marked difference in age and appearance between our appellant, the 40-year-old Michael Polydoros, and the 10-year-old character of Squints Palledorous.”



“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.