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Regulating Social Media Specially Facebook in the light of the First Amendment Rights of US Constitution

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Abstract: The First Amendment to the United States Constitution is an essential part of the Bill of Rights. The amendment prohibits making of any law respecting an establishment of religion, obstructing the free exercise of religion, infringing on the freedom of speech, infringing on the freedom of the press, interfering with the right to peaceably assemble or prohibiting the petitioning for a governmental redress of grievances. The guarantees of this Bill of Rights were subject to the limitation imposed by the free speech and press provisions of the First Amendment to the US Constitution as interpreted and applied by the Supreme Court and other courts. The application of First Amendment supplies the specific elements as well as the burdens of proof with respect depending upon whether the plaintiff is a public or private figure. Again, depends whether the defendant is media or non-media, and the character of the statement(s) at issue. The right of publicity can be referred to as publicity rights or even personality rights. However, though the Federal Government was banned from violating the freedom of the press, States were free to regulate the press.

1. Introduction

The United States Constitution is what the courts say it is; presidents, congressmen, State officials, bureaucrats, and all other Americans are obligated to act in accordance with court interpretations of the Federal and State Constitutions. However, in *Nebraska Press Association v. Stuart* (1976)[1] the United States Supreme Court held that State courts were bound by the Supreme Court decisions on judicial matters.[2] If the courts interpret the Constitution to say that judges may not exclude the press from open hearings, no judge may do so.[3] The First Amendment right is "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." First Amendment is incorporated into the Due Process clause of the Fourteen Amendment and applies to

State / Local Government. An abridgment is anything that chills, penalizes, or unduly burdens. Special problems with First Amendment issues are: vagueness, over breadth, and prior restraints. The right to speak is not absolute and speech is anything that is expression; distinguish from conduct.

2. Main Features of First Amendment Rights

Since *Marbury v. Madison*[4] in 1803, United States courts have asserted the right to be authoritative interpreters of the Constitution, and the other political bodies have conceded them that power. Now the Supreme Court is the arbiter of what the Constitution proclaims with regard to the powers of the Executive and Legislative branch. The main feature of this amendment right is Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances.[5] The speech is any form of communication. This will includes,

- verbal communication
- actions
- written words
- art and literature (painting, singing, dance)

Freedom of speech means people can speak freely, people can be free. Free speech serves three values[6]:

1) Advances truth and knowledge in the marketplace of ideas
2) Facilitates representative democracy and self governing
3) Promotes autonomy and self-fulfillment

Sec. 51 of the Civil Rights Law goes on to provide civil remedies for violation as well, including injunction and damages.[7] Again the definition of 'picture' is as:

'– An image or likeness of an object, person or scene produced on a flat surface, especially by painting, drawing, or photography.
– A printed reproduction of any of these.
– anything closely resembling or strikingly typifying something else; perfect likeness; image.'

According to Webster's New Twentieth Century Dictionary, Second Edition a 'portrait' is defined as:

'– A painting, photograph or other likeness of a person is especially one showing the face.
– A verbal picture or description, especially of a person.

– Any close likeness of one thing to another.'

American Heritage Dictionary of the English Language, New College Ed. 1976 says the statute is in the disjunctive; here need not be, as defendants suggest, a coupling of name *and* picture. The essence of what is prohibited, as the statute, the cases, and the dictionary definitions make clear, is the exploitation of one's identity as that is conveyed verbally or graphically. A photograph may be a depiction only of the person before the lens, but a "portrait or picture" gives wider scope, to include a representation which conveys the essence and likeness of an individual, not only actuality, but the close and purposeful resemblance to reality. That is how it was defined in *Binns v. Vitagraph Co. of America*, as any representation, including the picture of another, which was intended to be, and did, in fact, convey the idea that it was the plaintiff.

There are many aspects of identity. A person may be known not only by objective indicia-name, face, and voter ID or social security number, but by other characteristics as well-voice, movement, style, combing, typical phrases, as well as by his or her history and accomplishments. Thus far, the legislature has accorded protection to those aspects of identity embodied in name and face. Imitators are free to simulate voice or hair-do, or characteristic clothing or accessories, and writers to comment on and actors to re-enact events. No one is free to trade on another's name or appearance and claim immunity because what he is using is similar to but not identical with the original. Defamation to be actionable in a lawsuit, defamation is a communication which is so damaging. Defamation that can do harms a person's reputation; or deprives a person of a right to enjoy social contacts; or harms a person's ability to work or make a living.

There are two kinds of Appropriation Right[8]:

1. Right to privacy: protects against humiliation and embarrassment when a name or likeness is published without consent (not so celebrated people)
2. Right to publicity: protects against exploitation of name and likeness for commercial purposes (famous people)

Advertising/ commercial includes using a person's likeness for:

– an advertisement on TV, radio, in newspapers, magazines, billboard
– displaying a person's likeness in the window of photographer's shop to show customers the photographer's work
– a testimonial falsely suggesting an individual eats a chocolates or drives a certain car
– a web site banner or another commercial message on the web.

Consent to publish a likeness doesn't work when[9]:

- Consent is valid for a certain period of time, but not for the distant future
- Minors (below age of 18) cannot give consent
- If the image is materially altered or changed, consent is invalid

3. Media Law and Freedom of Speech

Media law covers an area of law which involves media of all types TV, film, music, publishing, advertising, internet and facebook or blog etc., and stretches over various legal fields, including but not limited to corporate, finance, intellectual property, publicity and privacy. Media law is a legal field and it refers to the following:

- Advertising
- Broadcasting
- Censorship
- Confidentiality
- Contempt
- Copyright
- Corporate law
- Defamation
- Entertainment
- Freedom of information
- Internet
- Information technology
- Privacy
- Telecommunications

A case was brought against the Government by the Free Speech Coalition, a California Trade Association for the adult-entertainment industry. The case was included with Bold Type, Inc., a 'publisher of a book advocating the nudist lifestyle'. *Jim Gingerich* who paints nudes and Ron Raffaelli is a photographer who specialized in erotic images.[10] In the *Ashcroft v. Free speech Coalition* case 'the Child Pornography Prevention Act of 1996 (CPPA)' prohibits 'any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture' that is appears to be, of a minor engaging in sexually explicit conduct. Also, any sexually explicit image that is 'advertised, promoted, presented, described, or distributed in such a manner that conveys the impression' and it depicts a minor engaging in sexually explicit conduct.[11] The Free Speech Coalition, an adult-entertainment trade association, and others filed suit, alleging that appear to be and conveys the impression provisions are overbroad and vague. Thus, restrain works otherwise protected by the First Amendment. Reversing the District Court, the Court of Appeals held the CPPA invalid on its face, finding it to be substantially overbroad because it bans materials that are neither obscene under *Miller v. California*,[12] nor produced by the exploitation of real children as in *New York v. Ferber*,[13] 458 U.S. 747. So, the deciding question is about the Child Pornography

Prevention Act of 1996 abridge freedom of speech.

The Court found the CPPA to have no support in *Ferber* since the CPPA prohibits speech that records no crime and creates no victims by its production. Provisions of the CPPA cover 'materials beyond the categories recognized in Ferber and Miller, and the reasons the Government offers in support of limiting the freedom of speech have no justification in our precedents or in the law of the First Amendment' and that abridge the freedom to engage in a substantial amount of lawful speech.[14]

Again, litigation arises out of Defendant Facebook INS of Plaintiff J. N., a minor, by and through his parent *Scott Nastro*, on behalf of himself in May 3, 2011. This is an action pursuant to New York Civil Rights Law Sec. 51 for misappropriation of the names and likenesses of children, seeking compensatory damages, injunctive relief, and exemplary damages due to violations by Facebook, Inc. of New York Civil Rights Law Sec. 50. The complaint is an action brought by the parent of a minor user of the Facebook social networking site, alleging that the minor's name and likeness was appropriated for commercial advantage without the consent of his parents, as required by New York Civil Rights Law. Section 50 provides that a living person's name, portrait or picture may not be used for advertising purposes without the person's written consent, "or if a minor of his parent or guardian." The complaint targets the functionality of Facebook's "like" button, which offers users the ability to indicate their endorsement or approval of a Facebook page or event. The complaint alleges that when a minor user "likes" a Facebook brand page or RSVPs to an event, the service displays the minor's name and likeness both on the "liked" page and in an advertisement displayed on the home page of the minor's friends. This, the complaint asserts, violates Section 50, and entitles the plaintiff (or plaintiffs, if a class is certified) to relief under New York Civil Rights Law Sec. 51, including gross revenue and profit attributable to violations of Sec. 50.[15] In *J.N. v. Facebook, Inc.*, No. 11-cv-2128 (E.D.N.Y.) is filed putative class action asserts a right of publicity claim against Facebook in connection with the service's "Like" and "Friend Finder" features. J.N. is a minor residing in the County of Kings, State of New York, and is a member of the Facebook social networking site ("Facebook") whose name and likeness has been appropriated by Facebook, Inc. for commercial advantage without the consent of his parents. *Scott Nastro* is the parent and general guardian of J.N., and is a resident of the County of Kings, State of New York.[16]

4. Media Law against Facebook

Facebook was founded in February, 2004 by Facebook, Inc., the social utility has garnered world-wide success, reporting over 2.07 billion monthly active

users.[17] In violation of Facebook's requirement that members be at least 13 years old to open an account, about 7.5 million users in the U.S. are under the age of 13, and about 5 million are under the age of 10.[18] Facebook, Inc. is a privately held company, figures regarding its use and sources of revenue are not publicly available. Because younger persons are generally seen to be early adapters to new technologies for communication, the number of users under the age of 18 is believed to be equal to or greater than their proportionate share of the population at large.

In *Meth v. Facebook, Inc*.,[19] case it claims as to a minor user of Facebook. This case is about a potential class of minor Facebook users in California whose names and/or likenesses were used by Facebook for commercial purposes without the prior consent of their parents or legal guardians, in violation of guaranteed privacy protections. Facebook Inc. misappropriated user information to promote its Friend Finder service, while this suits claiming Facebook used underage users' names and likenesses in ads without parental consent. Facebook leverages user-generated information to produce hundreds of millions of dollars in revenue and the legal risks it runs in the process. A Facebook service is that searches a user's email accounts to identify acquaintances with whom the user is not yet Facebook friends.

The exploitation of a user's name and likeness constitutes illegal misappropriation under the law if the user is a minor and if Facebook does not first obtain parental consent. Facebook makes no effort to obtain such consent, the complaints assert. The suits also allege violation of constitutional right to privacy. Once the violation is established, the plaintiff may have an absolute right to injunction, regardless of the relative damage to the parties.[20] For all of the reasons Facebook, Inc. did not first obtain the consent of plaintiff and members of the Class before using their names or likenesses for commercial and marketing purposes. Even if Facebook, Ins had obtained consent of minor class members such consent is inadequate under New York Civil Rights Law, Sec. 50. Moreover, Facebook, Inc did not obtain consent of the parents or legal guardian of the plaintiff and members of the class before using their names or likenesses for commercial and marketing purposes which is violation of New York Civil Rights law Sec.51.

5. Case Law Issues for Privacy Rights

As a general proposition, Section 50 and 51 of the Civil Rights Law, which created a new statutory right, being in derogation of common law, receive a strict, if not necessarily a literal construction.[21] However, "since its purpose is remedial ... 'to grant recognition to the newly expounded right of an

individual to be immune from commercial exploitation'[22] section 51 of the Civil Rights Law has been liberally construed over the ensuing years." [23] Facebook should be treated just like any other entertainment products, like movies, books, magazines and Cartoons. Should Court can ban cartoons for being too violent or rap music for its lyrics? The right of publicity, which is merely a common law or statutory right and not a constitutional right, cannot be interpreted to invalidate the constitutional protections of free speech and expression. Rather, the right of publicity is merely a narrow limitation that applies to false or misleading advertisements. Many courts have recognized the priority of First Amendment rights. *Valentine v. CBS, Inc.*,[24] it says a statute that broadly prohibits the use of a person's name or likeness raises grave constitutional concerns. *Parks v. LaFace Records*,[25] is says the right of publicity cannot be applied when the work is entitled to First Amendment protection, which would be any expression except a "disguised commercial advertisement". *New Kids on the Block v. Gannett Satellite Information Network, Inc.*,[26] it said First Amendment takes precedence over Lanham Act or misappropriation law, as long as the use does not falsely denote sponsorship or endorsement. *Ann-Margret v. High Society Magazine, Inc.*,[27] it said the First Amendment transcends the right of publicity. *Current Audio, Inc. v. RCA Corp.*,[28] it said the First Amendment supercedes any private pecuniary interest; attempting to control the use of a person's name or likeness would constitute an impermissible restraint on free expression. *Paulsen v. Personality Posters, Inc.*,[29] Court said any right of publicity must be construed in light of the primacy of constitutional protections for speech and press; *Rosemont Enter., Inc. v. Random House, Inc.*,[30] Court said there are definite limits on the right of publicity; namely, it applies only to advertising and not to expressive works protected by the First Amendment. In fact, the court in Paulsen specified that the right of publicity applies only to advertising, and any other use would be constitutionally protected and supercede any private pecuniary interest. Even those scholars who argue that the right of publicity should be treated as a property right recognize that freedom of expression takes precedence.[31]

An Ohio appellate court case addressed a similar issue. In *Vinci v. American Can Co.*,[32] several former Olympic athletes sued the maker of "dixie" cups who used images of such athletes along with information about their place in Olympic history on a series of disposable cups. The court found in favor of the defendants, ruling that the right of publicity was not applicable because the cups contained merely historical information, which included the likeness of the athlete. Preventing the reproduction and distribution of historical information was not the intent of the right of publicity.[33]

In *Ali v. Playgirl, Inc.*,[34] the portrait or picture was not an actual photo, but a composite photo-drawing depicting a naked black man in a boxing ring, with the recognizable facial features of the former world's heavyweight champion. The Southern District court, again applying New York law, held that the phrase "portrait or picture" as used in Section 51 of the Civil Rights Law is not restricted to actual photographs, but comprises any representations which are recognizable as likenesses of the complaining individual. In that case, the picture represented something short of actuality-somewhere between representational art and a cartoon.

From issues of free speech, voluntary opt-in and parent consent, especially where the individual is a minor and their name, image or likeness is used in an "ad". Though it's not clear or settled that these are all "advertisements".

6. Right to Privacy in United States

The right of publicity in the United States is rooted in both privacy and economic exploitation.[35] The rights are based in tort law, and the four causes of action are: 1) Intrusion upon physical solitude; 2) public disclosure of private facts; 3) depiction in a false light; and 4) appropriation of name and likeness. The right of publicity has evolved rapidly, with a history of reported cases in the United States and worldwide.

The Lanham Act directs federal protection of personality rights, and the doctrine has much in common with the laws defining federal protection of trademarks.[36] In fact, both trademark and publicity rights appear to be designed somewhat to combat infringement for the sake of consumers. A cause of action for false descriptions, false representations, and false endorsement may claim in certain situation. A product when it really does not, there is a cause an action if a celebrity's identity is used to imply endorsement for a product they are not, in actuality, affiliated with. Courts will typically consider eight factors when weighing a false endorsement claim, in order to determine the likelihood of consumer confusion. These eight factors have their origins in the case *Polaroid Corp. v. Polarad Elects*[37], but are similarly used by courts to analyze false endorsement claims by celebrities.[38]

Indiana State is believed to have the most far-reaching right of publicity providing recognition of the right for 100 years after death, and protecting not only the usual "name, image and likeness," but also signature, photograph, gestures, distinctive appearances, and mannerisms.

Some states recognize the right through statute and some others through common law. California has both statutory and common-law strains of authority protecting slightly different forms of the right. The right of publicity is a property right, rather than a tort, and so the right may be

transferable to the person's heirs after their death. The Celebrities Rights Act was passed in California in 1985 and it extended the personality rights for a celebrity to 70 years after their death. Previously, the 1979 *Lugosi v. Universal Pictures* decision by the California Supreme Court held that Bela Lugosi's personality rights could not pass to his heirs.[39]

In 1977, in the case of *Zacchini v. Scripps-Howard Broadcasting Co.*, the U.S. Supreme Court held that the First Amendment did not immunize a television statio from liability for broadcasting Hugo Zacchini's human cannonball act without his consent. This was the first, and so far the only, U.S. Supreme Court ruling on rights of publicity.[40] In September 2002, *Tom Cruise* and *Nicole Kidman* sued luxury goods company Sephora for allegedly using a picture of them without permission in a brochure promoting perfumes.[41] They are seeking damages for violation of the Lanham Act, a US law designed to protect against trademark infringement and unfair competition such as false advertising. The stars also want punitive damages "considering the vast wealth and income of Sephora and its owner".

Another example is John Dillinger's rights of publicity, as seen in *Ken Phillips, Mark Phillips and Dillinger's, Inc. v. Jeffrey G Scalf*, a 2003 Indiana Court of Appeals case. The operators of Dillinger's restaurant are alleged to have violated the right of publicity of Jeffrey G. Scalf, the grandnephew of the 1930s gangster and bank robber John Dillinger, in using without authorization Dillinger's name, image, and likeness in connection with the restaurant. In a later case, a U.S. district court ruled in 2011 that Indiana's publicity rights statute did not protect people who died before the law's enactment in 1994.[42] In March 2003, eight members of the cast of The Sopranos alleged that electronics retailer Best Buy used their images in newspaper ads without permission.[43] In the July 2003 case of *ETW Corp. v. Jireh Publishing*, however, a painting of the famous golfer Tiger Woods and others is protected by the US Constitution's First Amendment and treads neither on the golfer's trademarks nor publicity rights. Similarly in the July 2003 case of *Johnny and Edgar Winter v. DC Comics,* a depiction of blues music duo the Winter brothers in a comic book as worms called the Autumn Brothers obtained First Amendment protection from publicity rights suit. The 6 May 2005 *Toney v. L'Oreal and Wella* opinion clarified the distinction between the purview of copyright versus the nature of publicity rights. The 2006 New York County Supreme Court case *Nussenzweig v. DiCorcia* determined that personality rights do not trump legitimate First Amendment rights of artistic free expression.] In March 2007, the decision was upheld by the New York Supreme Court, Appellate Division, and in November 2007, the New York Court of Appeals upheld all previous decisions based, in part, on "artistic expression".[44] In 2008, a federal judge

in California ruled that *Marilyn Monroe's* rights of publicity were not protectable in California. The court reasoned that since Monroe was domiciled in New York at the time of her death, and New York does not protect a celebrity's deceased rights of publicity, her rights of publicity ended upon her death. [45] In the 2009 case of James "Jim" *Brown v. Electronic Arts, Inc.*, the District Court of the Central District of California dismissed athlete Jim Brown's theory of false endorsement under theLanham Act and determined that the First Amendment protects the unauthorized use of a trademark in an artistic work when the mark has artistic relevance to the work and does not explicitly mislead as to the source or content of the work. Applying this test, the court found a lack of implied endorsement and held that the First Amendment protected Electronic Arts in its use of a virtual football player that resembled *Mr. Brown*.[46]

7. Conclusions

The term "right of publicity" was coined by Judge Jerome Frankin the 1953 case *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866 (2d Cir.). Publicity rights or personality rights is the right of an individual to control the commercial use of his or her name, image, likeness. It should apply only to those areas that are not protected by the First Amendment; namely, false and misleading advertisements that improperly use a celebrity's name, image or likeness to endorse a product or idea. In all other contexts, the constitutionally protected rights of free speech and expression must be given greater weight. In the United States, the Right of Publicity is a state law-based right, as opposed to federal, and recognition of the right can vary from state to state. Personality rights are generally considered to consist of two types of rights: the right of publicity, or to keep one's image and likeness from being commercially exploited without permission or contractual compensation, which is similar to the use of a trademark; and the right to privacy, or the right to be left alone and not have one's personality represented publicly without permission. In common law jurisdictions, publicity rights fall into the realm of the tort of passing off. By the broadest definition, the right of publicity is the right of every individual to control any commercial use of his or her name, image, likeness, or some other identifying aspect of identity, limited (under U.S. law) by the First Amendment.

Notes

1. *Nebraska Press Association v. Stuart* [1976] 427 U.S. 539.
2. The state courts were *de jure* subordinate to the Supreme Court in Federal matters; they retained a great measure of *de facto* independence.

3. *Nebraska Press Association v. Stuart* (1976) 427 U.S. 539.
4. *Marbury v. Madison* [1803] 5 U.S. 137. The case resulted from a petition to the Supreme Court by William Marbury, who had been appointed Justice of the Peace in the District of Columbia by President John Adams but his appointment papers was not delivered by the new Secretary of State James Madison. The Court, with John Marshall as Chief Justice, found firstly that Madison's refusal to deliver the commission was both illegal and remediable. Chief Justice Marshall wrote the opinion of the court. In deciding whether Marbury had a remedy, Marshall stated: "The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right." One of the key legal principles on which Marbury relies is the notion that for every violation of a vested legal right, there must be a legal remedy. Marshall next described two distinct types of Executive actions: political actions, where the official can exercise discretion, and purely ministerial functions, where the official is legally required to do something. Marshall found that delivering the appointment to Marbury was a purely ministerial function required by law, and therefore, the law provided him a remedy.
5. Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (Newyork: Aspen's Introduction to Law Series, 2010), p. 203.
6. *Ibid.*
7. Sec. 51 of the Civil Rights Law is as follows:

   > Any person whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait or picture, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait or picture in such manner as is forbidden or declared to be unlawful by section fifty of this article, the jury, in its discretion, may award exemplary damages.
8. Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (Newyork: Aspen Treatise Series, 2010) p. 89-96.
9. *Ibid.*
10. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).
11. *Ibid*.
12. *Miller v. California*, 413 U.S. 15.
13. *New York v. Ferber*, 458 U.S. 747.
14. That was the viewed and written by Justice Kennedy in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).
15. *J.N. v. Facebook, Inc.*, No. 11-cv-2128 (E.D.N.Y.)
16. J. N., a minor, by and through his parent Scott Nastro Vs FACEBOOK, INC., No. 11-cv-2128 (E.D.N.Y.) and Defendant Facebook, Inc. is a corporation organized and existing under the laws of the State of Delaware, and has its headquarters

and principal place of business is the City of Palo Alto, County of Santa Clara, State of California. Facebook, Inc. privately owns and operates as Facebook

17. Number of monthly active Facebook users worldwide as of 3rd quarter 2017 (in millions) *retrieved from* https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/ **accessed on 5 January 2018.**
18. *ABC News*, Underage Facebook Members: 7.5 Million Users Under Age 13 retrieved from http://abcnews.go.com/Technology/underage-facebook-members-75-million-users-age-13/story?id=13565619 accessed on 5 January 2018.
19. No. BC45479 (Cal. Super. Ct. Los Angeles City)
20. *Blumenthal v. Picture Classics, Inc.,* 235 App. Div. 570, 257 N.Y.S. 800, aff'd. 261 N.Y. 504, 185 N.E. 713; *Loftus v. Greenwich Lithographing Co.,* 192 App. Div. 251, 182 N.Y.S. 428; *Durgom v. Columbia Broadcasting Systems, Inc.,* 29 Misc.2d 394, 395, 214 N.Y.S.2d 752
21. *Shields v. Gross,* 58 N.Y.2d 338, 345, 461 N.Y.S.2d 254, 448 N.E.2d 108; *Arrington v. New York Times Co.,* 55 N.Y.2d 433, 439, 449 N.Y.S.2d 941, 434 N.E.2d 1319.
22. *Flores v. Mosler Safe Co.,* 7 N.Y.2d 276, 280-281 [196 N.Y.S.2d 975, 164 N.E.2d 853]; see *Lahiri v. Daily Mirror,* 162 Misc. 776, 779 [295 N.Y.S. 382]),
23. *Stephano v. News Group Publications, Inc.,* App.Div., — N.Y.S.2d —— (First Dept., Jan. 5, 1984).
24. 698 F.2d 430 (11th Cir. 1983)
25. 76 F. Supp. 2d 775 (E.D. Mich. 1999)
26. 745 F. Supp. 1540 (C.D. Cal. 1990)
27. 498 F. Supp. 401 (S.D.N.Y. 1980)
28. 337 N.Y.S.2d 949 (NY App. 1972)
29. 299 N.Y.S.2d 501, 506 (NYApp. 1968).
30. 294 N.Y.S.2d 122 (NY App. 1968)
31. Id. at 509 (citing also in Right of Publicity, Law and Contemporary Problems, 216).
32. 591 N.E.2d 793 (Ohio App. 1990).
33. Vinci, 591 N.E.2dat 794.
34. 447 F.Supp. 723,
35. Barton Beebe, Thomas Cotter, Mark Lemley, Peter Menell & Robert Merges, "Trademarks, Unfair Competition, and Business Torts" (Aspen Publishers, 2011).
36. 15 U.S.C. Sec. 1125.
37. *Polaroid Corp. v. Polarad Elect*. Corp., 287 F.2d 492
38. Waits v. Frito-Law, Inc. 978 F.2d 1093 (9th Cir. 1992) or ETW Corp. v. Jireh Publishing, Inc., 332 F.3d 915 (6th Cir. 2003).
39. *"Lugosi v. Universal Pictures*, 603 P.2d 425 (Cal. 1979). "Who Can Inherit Fame?". Time (magazine). July 7, 1980. Retrieved 2007-07-21. "Ten years later, the son and the widow of Bela Lugosi, star of the Dracula films, tried to take this doctrine a step further. They argued that this right was essentially property and therefore should pass on to heirs. In a California suit, they asked the courts to stop Universal

Pictures from merchandising 70 Dracula products, ranging from jigsaw puzzles to belt buckles, and sought compensation based on the profits. Citing the First Amendment, Universal replied that the design of merchandise is a form of free speech that should not be restrained by anyone's heirs. Besides, said Universal's lawyer, Robert Wilson, Lugosi "attained fame and fortune because the company made and distributed the movies he starred in." After eleven years of wrangling, a trial judge decided in favor of the Lugosis, giving them $70,000 and barring Universal from merchandising Lugosi's likeness. ... In December the California Supreme Court reversed the Lugosi decision."

40. *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977), was an important U.S. Supreme Court case concerning rights of publicity. The Court held that the First and Fourteenth Amendments do not immunize the news media from civil liability when they broadcast a performer's entire act without his consent, and the Constitution does not prevent a State from requiring broadcasters to compensate performers. It was the first time (and so far the only time) the Supreme Court heard a case on rights of publicity
41. Retrieved from http://news.bbc.co.uk/2/hi/entertainment/2270558.stm dated on 15 April, 2013,"Cruise and Kidman claim the unauthorised use of their image for the advert had made them 'involuntary models without pay'. [...] They are seeking damages for violation of the Lanham Act, a US law designed to protect against trademark infringement and unfair competition such as false advertising."
42. Retrieved from http://www.loeb.com/files/Publication/1f8c8002-b146-4f2d-af06-0efad0aa9634/Presentation/PublicationAttachment/cebb4e7a-2bcd-4da6-89e5-0fa09b057089/Dillinger%20v.%20EA%20DC%20opinion.pdf January 19, 2012. "... the Court finds that the Indiana Supreme Court would agree with *Shaw*: Indiana's right-of-publicity statute doesn't apply to personalities who died before its enactment."
43. Bates, James (February 4, 2003). "'Sopranos' Take Shot at Ad in Court". *Los Angeles Times*. Retrieved June 19, 2012.
44. Retrieved from http://www.courts.state.ny.us/reporter/3dseries/2006/2006_50171.htm dated on 16 April 2013, "Nussenzweig v DiCorcia case.
45. "The New Grave Robbers". *New York Times*. March 27, 2011. Retrieved 2011-03-28. "In a case involving Marilyn Monroe, the California Legislature even created a retroactive right of publicity, establishing new private property interests in the identities of the long dead. (It didn't work, because a court later found that Monroe was a resident of New York when she died. Her identity remains in the public domain.)"
46. "*James "Jim" Brown v. Electronic Arts, Inc.*

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