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# Right of Publicity Under § 3344 in the AI and Deepfake Era

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*California treats a deceased personality's voice and likeness as descendible property under Civil Code section 3344.1.*

California protects a person's name, voice, and likeness through a statute for living persons, a statute for deceased personalities, and a common-law tort. Recent enactments address computer-generated replicas directly. This memorandum states the law as of November 2026.

## I. Question Presented

What remedies does California law provide against unauthorized commercial use of a person's voice or likeness, including AI-generated digital replicas, and what changed in 2025 and 2026?

## II. Short Answer

Civil Code section 3344 imposes liability for a knowing, nonconsensual use of a living person's name, voice, signature, photograph, or likeness on products or in advertising, with a $750 minimum recovery, profits, punitive damages, and fees to the prevailing party. Since January 1, 2026, the statute also provides for injunctions with a two-business-day compliance period. Section 3344.1 protects deceased personalities for 70 years after death and, since January 1, 2025, imposes a $10,000 minimum for unauthorized digital replicas in expressive audiovisual works and sound recordings. Labor Code section 927 makes certain digital-replica contract provisions unenforceable. A bill to state expressly that "voice or likeness" in section 3344 includes a digital replica was vetoed. No federal digital-replica statute has been enacted.

## III. Governing Law

### A. Civil Code Section 3344

Liability attaches to "[a]ny person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling," without prior consent. (Civ. Code, § 3344, subd. (a)(1).) For a minor, a parent or guardian must consent. (*Ibid.*) Remedies include:

- the greater of $750 or actual damages;
- profits attributable to the use, on proof of gross revenue only, with the defendant bearing the burden of proving deductible expenses;
- punitive damages; and
- attorney fees and costs to "[t]he prevailing party." (*Ibid.*)

Senate Bill No. 683 (2025–2026 Reg. Sess.), chaptered as Statutes 2025, chapter 590, added subdivision (a)(2). (Sen. Bill No. 683.) A party may now seek an injunction or temporary restraining order under Code of Civil Procedure section 527. If the order requires removal or recall, the respondent must comply "within two business days from the day the order is served, unless otherwise required by the order." (§ 3344, subd. (a)(2).)

Uses in connection with "any news, public affairs, or sports broadcast or account, or any political campaign" do not require consent. (§ 3344, subd. (d).) Advertising media are not liable absent knowledge of the unauthorized use. (§ 3344, subd. (f).) Statutory remedies are cumulative. (§ 3344, subd. (g).)

### B. The Common-Law Tort

A common-law claim may be pleaded by alleging "(1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury." (*Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409, 417.) The statutory claim adds "a knowing use" for advertising or solicitation purposes, and a "direct" connection between the use and the commercial purpose. (*Id.* at pp. 417–418.) The common-law claim is broader: the appropriation may be to the defendant's advantage "commercially or otherwise."

### C. Civil Code Section 3344.1

Section 3344.1 creates property rights in a deceased personality's name, voice, signature, photograph, or likeness, "freely transferable or descendible." (Civ. Code, § 3344.1, subd. (b).) Absent transfer, the rights pass to the surviving spouse, children, grandchildren, or parents in statutory shares. (§ 3344.1, subd. (d).) No action lies for uses more than 70 years after death. (§ 3344.1, subd. (g).) A successor or licensee may not recover damages for uses occurring before it registers its claim with the Secretary of State. (§ 3344.1, subd. (f)(1).) Plays, books, audiovisual works, musical compositions, and similar works are not "products" under the general provision if they are entertainment or dramatic, literary, or musical works. (§ 3344.1, subd. (a)(1)(B)(i).)


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### D. AB 1836: Digital Replicas of Deceased Personalities

Assembly Bill No. 1836 (2023–2024 Reg. Sess.), Statutes 2024, chapter 258, added subdivision (a)(2). (Assem. Bill No. 1836.) A person who "produces, distributes, or makes available the digital replica of a deceased personality's voice or likeness in an expressive audiovisual work or sound recording" without consent is liable for the greater of $10,000 or actual damages. (§ 3344.1, subd. (a)(2)(A)(i).) The provision operates "[n]otwithstanding paragraph (1)," so the expressive-work carve-out does not shield it. Consent is not required for news; "comment, criticism, scholarship, satire, or parody"; documentary, historical, or biographical portrayals, unless intended to create a false impression of an authentic recording; fleeting or incidental uses; and advertisements for such works. (§ 3344.1, subd. (a)(2)(A)(ii).)

A "digital replica" is "a computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual," in a work in which the individual did not perform, or in which the fundamental character of the performance "has been materially altered." (§ 3344.1, subd. (a)(2)(B)(ii)(I).) Authorized remixing, mastering, and sampling are excluded. (§ 3344.1, subd. (a)(2)(B)(ii)(II).)

### E. AB 2602: Digital-Replica Contract Terms

Assembly Bill No. 2602 (2023–2024 Reg. Sess.), Statutes 2024, chapter 259, added Labor Code section 927. (Assem. Bill No. 2602.) A provision in a personal or professional services agreement is unenforceable as to a new performance fixed on or after January 1, 2025, by a digital replica if all three conditions are met: (1) it allows a digital replica in place of work the individual would have performed in person; (2) it lacks "a reasonably specific description of the intended uses," subject to an exception for uses consistent with the contract and the fundamental character of the recorded performance; and (3) the individual was not represented by counsel who negotiated the digital-replica license with clearly stated terms, or by a union whose agreement expressly addresses digital replicas. (Lab. Code, § 927, subd. (a).) Other contract terms are unaffected. (§ 927, subd. (b).)

## IV. Analysis

### A. AI Replicas of Living Persons

Section 3344 does not define "voice" or "likeness" by reference to digital replicas. Senate Bill No. 11 (2025–2026 Reg. Sess.) would have provided that "a voice or likeness includes a digital replica." The Governor vetoed it on October 13, 2025, and the veto was sustained on March 2, 2026. (Sen. Bill No. 11.) A claimant must therefore argue that a synthetic voice or image is the person's "voice" or "likeness" under the existing text. The statute still requires a knowing use on products or for advertising or selling. A replica used in a non-advertising context may fit better under the common-law tort, which reaches appropriation "commercially or otherwise." (*Eastwood*, *supra*, 149 Cal.App.3d at p. 417.)


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### B. The First Amendment Defense

In *Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387, the Supreme Court addressed drawings of The Three Stooges reproduced on T-shirts and posters, under the predecessor to section 3344.1. The court asked "whether a product containing a celebrity's likeness is so transformed that it has become primarily the defendant's own expression rather than the celebrity's likeness." (*Id.* at p. 406.) "[A] literal depiction of a celebrity, even if accomplished with great skill, may still be subject to a right of publicity challenge." (*Id.* at p. 407.) The court could "discern no significant transformative or creative contribution" and affirmed the judgment of the Court of Appeal. (*Id.* at pp. 409–410.) A highly realistic replica is, by statutory definition, designed to be "readily identifiable." That feature tends toward the literal end of the *Comedy III* inquiry. The outcome will turn on the work as a whole.

### C. Federal Legislation

The NO FAKES Act of 2025, S. 1367, 119th Cong., was introduced on April 9, 2025, and referred to the Senate Judiciary Committee. (S. 1367.) A successor bill, the NO FAKES Act of 2026, S. 4591, 119th Cong., was introduced on May 20, 2026, and reported by the Judiciary Committee with an amendment on June 24, 2026. (S. 4591, reported version.) A press report states that a request to pass the NO FAKES Act by unanimous consent drew an objection on September 30, 2026. (Daily Journal (Oct. 7, 2026).) As of November 2026, no federal digital-replica statute has been enacted.

## V. Practical Considerations

- **Plead both theories.** Section 3344 offers the $750 floor, profits, and fee-shifting. The common-law claim does not require a knowing use for advertising.
- **Fee exposure runs both ways.** Section 3344 awards fees to the prevailing party, not only to the plaintiff.
- **Use the new injunction provision.** For takedown relief, a section 527 order now carries a two-business-day compliance period.
- **Register estate claims.** Successors should register with the Secretary of State before suing, because damages for earlier uses are barred.
- **Audit performer contracts.** For performances fixed after January 1, 2025, digital-replica clauses need a reasonably specific description of uses or qualifying representation.
- **Screen exceptions early.** News, parody, documentary, and incidental uses are exempt from the section 3344.1 digital-replica provision.

## VI. Authorities Cited

- Civil Code section 3344
- Civil Code section 3344.1
- Labor Code section 927
- Sen. Bill No. 683 (2025–2026 Reg. Sess.), Stats. 2025, ch. 590


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- Assem. Bill No. 1836 (2023–2024 Reg. Sess.), Stats. 2024, ch. 258
- Assem. Bill No. 2602 (2023–2024 Reg. Sess.), Stats. 2024, ch. 259
- Sen. Bill No. 11 (2025–2026 Reg. Sess.) (vetoed)
- *Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409
- *Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387
- NO FAKES Act of 2025, S. 1367, 119th Cong. (2025)
- NO FAKES Act of 2026, S. 4591, 119th Cong. (2026) (reported June 24, 2026)

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