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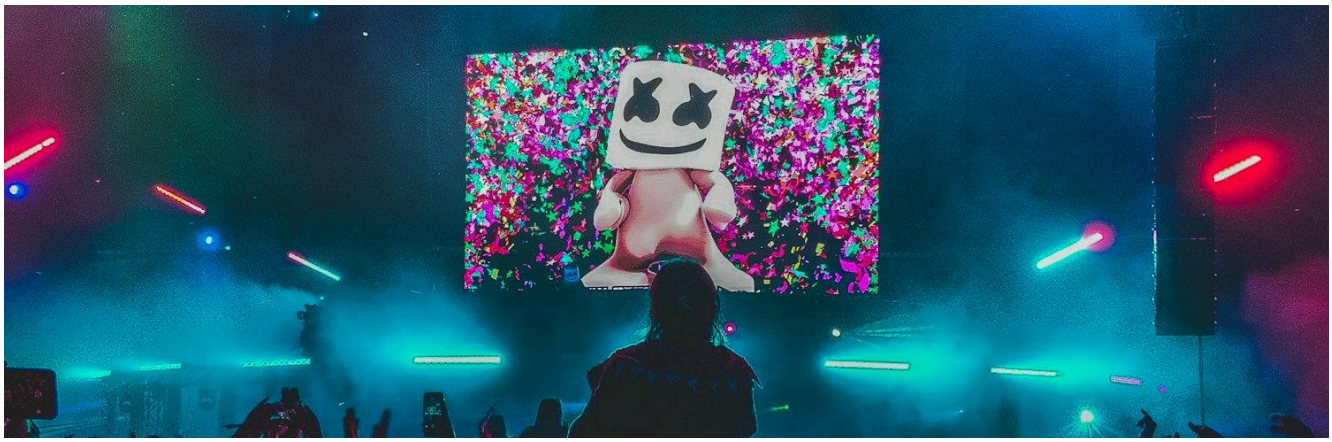
PRACTICE GUIDE · ENTERTAINMENT & TALENT

Right of Publicity

Grand Park Law Group · 2026



A.

The Statutory Right (Civ. Code § 3344)

California Civil Code section 3344 creates a statutory cause of action for the unauthorized commercial use of another's "name, voice, signature, photograph, or likeness." Cal. Civ. Code § 3344(a). To prevail, a plaintiff must show (1) knowing use of the identifier, (2) on or in products, merchandise, or goods, or for purposes of advertising or selling, (3) without prior consent, and (4) a "direct connection" between the use and the commercial purpose. *Id.*

The statute provides minimum statutory damages of $750, plus actual damages, profits attributable to the use, punitive damages where appropriate, and — importantly — *mandatory* attorney's fees and costs to the prevailing party (whether plaintiff or defendant). *Id.* § 3344(a). The fee-shifting provision is symmetric, which makes § 3344 a high-stakes vehicle for both sides.

B.

The Common-Law Right (*Eastwood v. Superior Court*)

The common-law right of publicity in California predates the statute and remains independently viable. The seminal articulation is *Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409, in which Clint Eastwood sued the *National Enquirer* for the unauthorized appropriation of his name and likeness in a fabricated love-triangle story. The court held that the elements of the common-law claim are: (1) the defendant's use of the plaintiff's identity; (2) appropriation of the plaintiff's name or likeness to the defendant's advantage, commercial or otherwise; (3) lack of consent; and (4) resulting injury. *Id.* at 417.

The common-law claim sweeps more broadly than § 3344 in two respects: it does not require the "knowing" mental state, and it reaches "any" advantage — including non-commercial appropriation.

The most expansive application of the common-law right came in *White v. Samsung Electronics America, Inc.* (9th Cir. 1992) 971 F.2d 1395, where the Ninth Circuit held that a robot in a blonde wig turning letters on a *Wheel of Fortune*-style set could constitute appropriation of Vanna White's "identity," even though no name, voice, signature, photograph, or likeness was used. *Id.* at 1398–99. *White* remains good law in the Ninth Circuit and is a cautionary precedent for advertisers using "evocative" imagery.

C. Post-Mortem Rights (Civ. Code § 3344.1)

California recognizes a post-mortem right of publicity for "deceased personalities," defined as natural persons whose identity had commercial value at the time of death (or because of death). Cal. Civ. Code § 3344.1(h). The right lasts seventy years after death. *Id.* § 3344.1(g). It is freely transferable and descendible by will, trust, or intestate succession. *Id.* § 3344.1(b)–(d). Registration with the Secretary of State is permitted (and creates a public record) but is not a condition of the right's existence. *Id.* § 3344.1(f).

The statute carries the same statutory-damages floor and fee-shifting mechanism as § 3344. *Id.* § 3344.1(a)(1). It contains broad exemptions for plays, books, magazines, newspapers, musical compositions, audiovisual works, radio and television programs, single and original works of fine art, political and newsworthy material, and advertisements for any of the foregoing. *Id.* § 3344.1(a)(2).

D. The Newsworthy/Public-Interest Exception

Both the statutory and common-law rights yield to First Amendment-grounded exceptions for news, public affairs, sports broadcasts, and political coverage. Cal. Civ. Code § 3344(d). For expressive works that are neither pure news nor pure advertising — biopics, docudramas, fictionalized accounts — California courts apply the "transformative use" test articulated in *Comedy III Productions, Inc. v. Saderup* (2001) 25 Cal.4th 387.

The *Comedy III* test asks whether the challenged work contains "significant transformative elements" or whether its value derives "primarily from the celebrity's fame." *Id.* at 407. A literal portrait of the Three Stooges on T-shirts failed; a stylized, parodic, or interpretive depiction would pass. *Id.* at 409. The test has been extended to video games and comic books.

E. AI, Deepfakes, and the Evolving Frontier

The right of publicity is the doctrinal pressure point for the generative-AI revolution. California has legislated specifically: AB 2602 (2024) requires informed consent and union/legal representation for "digital replicas" of performers; AB 1836 (2024) extends post-mortem protection against unauthorized digital replicas; and SAG-AFTRA's 2023 master agreement contains detailed AI-replica clauses now flowing into individual deal memos. Expect a tiered consent regime — training data, output use, posthumous use — and draft accordingly.

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