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Right of Publicity

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Post-Mortem Rights of Publicity: Prince Legislation in Minnesota

The ability to control the use of one's name, likeness, voice, and other personal attributes is known as the right of publicity. Unlike trademarks, patents, and copyrights, which are types of intellectual property governed by federal law, the right of publicity is governed by state law. Some states, such as California, New York, and Tennessee, have robust right of publicity laws and bodies of case law interpreting those laws. Other states have no laws in place at all, and right of publicity issues are handled by the courts on a common law basis.

States that have right of publicity laws also differ on whether the right of publicity extends beyond a person's death—so called post-mortem rights of publicity. Of the states that are media and entertainment creation centers, California and Tennessee recognize post-mortem rights, while New York does not.

The recent passing of the musical artist Prince has placed a spotlight on the State of Minnesota, which does not have a right of publicity law on the books. In fact, apart from an Eighth Circuit decision involving the former wrestler/governor Jesse Ventura, there is scant case law relating to the right

of publicity in Minnesota. [*Jesse Ventura aka James G. Janos v. Titan Sports, Inc.*, U.S. Ct. of Appeals, 8th Circuit, 65 F.3d 725.]

Enter State Representative Joe Hoppe and State Senator Bobby Joe Champion, who introduced identical bills in May 2016, to be heard by the Minnesota House Civil Law Committee and Senate Judiciary Committee, respectively. The legislation, which was named the "Personal Rights in Names Can Endure" (or PRINCE) Act, appeared to be heavily based on Tennessee's right of publicity statute.

Almost immediately, numerous commentators criticized the breadth of the proposed bill and expressed concerns about the haste with which lawmakers were trying to pass the measure. About a week after introduction, Representative Hoppe, whose district includes Prince's Paisley Park home and studio, pulled the bill in order to take more time to consider some of the concerns raised.

As introduced, the legislation would have codified the right of publicity in Minnesota law by recognizing that an "individual has a property right in the use of that individual's name, voice, signature, photograph, and likeness in any medium in any manner." The law made it a violation for anyone to use an "individual's name, voice, signature, photograph, or likeness, in any manner," without the individual's consent: (1) on products or merchandise; (2) for advertising

or selling goods or services; or (3) for fundraising or soliciting donations. The proposed legislation allowed aggrieved individuals to seek an injunction, impoundment, and eventual destruction of infringing materials, and recovery of actual damages and attorney fees and costs.

Most importantly, and especially for the family members of Prince, the legislation would have allowed for a post-mortem right of publicity for a period of at least 50 years after the death of the individual. Such rights could continue after the 50-year period for so long as the rights continue to be exploited for commercial purposes by an executor, administrator, heir, devisee, or assignee. The draft legislation also had expressly stated that the rights created under the PRINCE Act were retroactive.

Also of interest was the inclusion of an explicit recognition that use of an individual's name, voice, signature, photograph, or likeness in connection with a news, public affairs, or sports broadcast or account would be considered a fair use.

According to local news reports, Representative Hoppe hopes to introduce a new version of the bill next year.

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