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The Post-Mortem Right of Publicity: Defining it, Valuing it, Defending it and Planning for it

Sharon L. Klein* and Jenna M. Cohn**

I. WHAT IS IT?

The right of publicity (ROP), which is borne from the right of privacy, is an individual's right to control and profit from the commercial use of their name, image or likeness, and to prevent others from exploiting their persona for commercial gain. The ROP is governed by state law, either through statute or common law, and is subject to First Amendment protections.¹ In 1977, in *Zacchini v. Scripps-Howard Broadcasting Co.*,² the Supreme Court recognized the ROP as a separate property right, independent from the right of privacy.

The post-mortem ROP extends the ROP beyond an individual's lifetime, allowing an executor or heir to enforce the protections provided by law. State law varies in terms of what triggers the post-mortem ROP. Several state statutes require individuals to have exploited their

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** Family Wealth Advisor at Wilmington Trust, N.A., collaborates with clients and advisors to provide customized Wealth Management solutions. A different version of this article was published in *Estate Planning*, Thomson Reuters/Tax & Accounting, Vol. 49/ No. 1 (Jan. 2022). The publication was granted a nonexclusive license to print, with the authors maintaining the copyright. This article, which includes developments through June 30, 2022, is for general information only and is not intended as an offer or solicitation for the sale of any financial product, service or other professional advice. Wilmington Trust does not provide tax, legal or accounting advice. Professional advice always requires consideration of individual circumstances. Wilmington Trust is a registered service mark used in connection with various fiduciary and non-fiduciary services offered by certain subsidiaries of M&T Bank Corporation.

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¹ See 433 U.S. 562, 566, 567, 578 (1977). Usually excepted from protection is the use of a person's name or likeness for news reporting or in an attempt to portray a person in mediums including a play, book, article, film or radio if predominantly for public interest. See, e.g., *id.* at 563-65 (showing a cause of action based on a freelance report recording the plaintiff's performance and showing it on a television news program).

² See *id.* at 573.

publicity rights during lifetime³ while some do not require prior commercialization.⁴ Other states require that the name, image or likeness have commercial value either during lifetime or at death.⁵ Regarding effective dates, most statutes apply the post-mortem ROP from the statute's date of enactment, whereas a few statutes apply retroactively.⁶ The number of years the post-mortem ROP protects an individual's persona varies widely among the states from ten years⁷ to 100 years,⁸ with some states having protection for an uncertain duration based on common law.⁹

With the recent proliferation of digital recreations, including the 2022 "ABBA Voyage" concert in London, where youthful digital avatars – named Abbatars – performed before a packed audience including the 70+ year old real ABBA band members, we have the technology to reincarnate deceased performers.¹⁰ As the most recent state to enact a ROP statute, which includes post-mortem rights, New York also protects deceased performers against the use of an unauthorized "digital replica" (a computer-generated electronic performance) that is so realistic it would deceive a reasonable observer into believing that it was a performance by the performer.¹¹ The use will not be considered "likely to deceive" if there is a conspicuous disclaimer that the work has not been authorized. With advancements in artificial intelligence, perhaps more states will follow this form of protection.

II. WHICH LAW GOVERNS?

The nexus for using a state statute typically is that a decedent was domiciled or resident in that state at the time of death. However, some

³ *See infra* Appendix (California, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, and Washington).

⁴ *See infra* Appendix (Alabama, Arkansas, Florida, Hawaii, Illinois, Indiana, Nevada, and Tennessee).

⁵ *See infra* Appendix (California, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, and Texas).

⁶ *See infra* Appendix (California, Hawaii, Indiana, Oklahoma, Texas, and Washington apply the post-mortem ROP retroactively).

⁷ *See, e.g.*, TENN. CODE ANN. § 47-25-1104(a) (2022) (10 years, but can be extended); *see also* WASH. REV. CODE § 63.60.040(1) (2022) (10 years for non-celebrity individual).

⁸ *See, e.g.*, IND. CODE § 32-36-1-8(a) (2022); OKLA. STAT. tit. 12, § 1448(G) (2022).

⁹ *See infra* Appendix (Arizona, Georgia, Michigan, Minnesota, New Jersey, South Carolina, and Utah).

¹⁰ *See* Jill Lawless, *Stars and Royalty watch ABBA's Return in Digital Stage Show*, WASH. TIMES (May 27, 2022), <https://www.washingtontimes.com/news/2022/may/27/stars-and-royalty-watch-abbas-return-in-digital-st/> [<https://perma.cc/HK2R-T2NM>].

¹¹ N.Y. CIV. RIGHTS LAW § 50-f(2)(b) (McKinney 2022).

states (Hawaii,¹² Indiana,¹³ Nevada¹⁴ and Washington¹⁵) have broad statutes that provide protection as long as the exploitation occurs within the state, regardless of whether the decedent was a domiciliary or resident. For example, the company that controlled Marilyn Monroe's Estate attempted to use Indiana's broad statute, even though Marilyn died in California and her estate was probated in New York. The company sued a t-shirt manufacturer and a website operator selling t-shirts featuring Monroe's image, even though neither was based in Indiana. The alleged breach of the Indiana statute was predicated on the fact that the t-shirts were sold at a Target in Indiana and that the website was accessible within Indiana. The court¹⁶ did not have to opine on the constitutionality of Indiana's statute, rejecting the claims on the narrow basis that none of New York, California or Indiana had a post-mortem ROP at the date of Monroe's death.

Note, however, that the broad-reaching statutes have come under attack. Indeed, in a case involving the Estate of Jimi Hendrix, who was domiciled in New York, which did not then have a post-mortem ROP, a federal court in Washington State held that Washington's choice-of-law clause was unconstitutional under the Commerce Clause, encouraging forum shopping in violation of the Due Process and Full Faith and Credit Clauses while producing inconsistent results across the states.¹⁷ That part of the decision was reversed on narrow grounds on appeal to the Ninth Circuit,¹⁸ which held that the commerce took place only within Washington State and so did not impermissibly burden interstate commerce. Washington was held to have sufficient contacts with the actual, non-speculative controversy at issue, which involved the sale in Washington of unofficial goods bearing Hendrix's likeness. Accordingly, it was not necessary for the court to strike down the Washington statute, although the Ninth Circuit recognized that the statute raised difficult questions regarding whether another state must recognize the broad personality rights that Washington provides.¹⁹

¹² See HAW. REV. STAT. § 482P-1 (2022).

¹³ See IND. CODE § 32-36-1-1(a) (2022).

¹⁴ See NEV. REV. STAT. § 597.780 (2021).

¹⁵ See WASH. REV. CODE § 63.60.020(2) (2022).

¹⁶ See *Shaw Fam. Archives Ltd. v. CMG Worldwide, Inc.*, 486 F. Supp. 2d 309, 314 (S.D. N.Y. 2007).

¹⁷ See *Experience Hendrix, L.L.C. v. HendrixLicensing.com, Ltd.*, 766 F. Supp. 2d 1122, 1140 (W.D. Wash. 2011), *aff'd in part, rev'd in part, vacated in part*, 762 F.3d 829 (9th Cir. 2014).

¹⁸ See *Experience Hendrix L.L.C. v. Hendrixlicensing.com Ltd.*, 762 F.3d 829, 836-37 (9th Cir. 2014).

¹⁹ See *id.* at 836.

Query whether it might be possible in some jurisdictions to assign a celebrity's rights to a corporation headquartered in that state in order to garner that state's protection for an individual domiciled outside the state.

III. WHAT IS ITS VALUE?

Many state statutes specifically define the post-mortem ROP as a property right that is freely descendible and transferable by will, trust, or other testamentary instrument.²⁰ While the ROP provides heirs with important rights to enable them to profit from an individual's persona and police unauthorized commercial exploitation, creating a specific post-mortem ROP has had estate tax consequences: The value of the gross estate includes "the value at the time of . . . death of all property, real or personal, tangible or intangible, wherever situated."²¹

The landmark case of first impression, *Estate of Andrews v. United States*,²² determined that the value of an author's name is includable in their gross estate at its fair market value on date of death. At her death, Virginia Andrews was an internationally known, best-selling author. The Estate did not list Andrews' name as an asset of the estate, and the Internal Revenue Service (IRS) issued a notice of deficiency, asserting that Andrews' name was an estate asset. The court approached the valuation of Andrews' name by examining its fair market value — the price at which it would change hands between a willing buyer and willing seller — based on facts reasonably knowable on her date of death.²³ The court considered a number of factors, including the risks of procuring a ghostwriter and the possibility of substantial financial success if the first ghostwritten book was a success, and determined that the value of Andrews' name was \$703,500.²⁴

In the 271-page opinion rendered in the *Estate of Michael J. Jackson*,²⁵ the United States Tax Court directly addressed the taxability of image and likeness. The Estate and the IRS disagreed regarding the fair market value of Jackson's image and likeness. Originally, the Estate valued Jackson's image and likeness at \$2,105 on Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, increasing the

²⁰ *Understanding Right of Publicity or Name, Image, Likeness (NIL)*, ACTEC (Apr. 5, 2022), <https://actecfoundation.org/podcasts/understanding-rights-of-publicity-name-image-likeness-nil/> [<https://perma.cc/A76T-SZHD>].

²¹ I.R.C. § 2031(a).

²² 850 F. Supp. 1279 (E.D. Va. 1994).

²³ Treas. Reg. § 20.2031-1(b).

²⁴ See *Estate of Andrews*, 850 F. Supp. at 1295.

²⁵ *Estate of Jackson v. Comm'r*, T.C. Memo. 2021-48, 121 T.C.M. (CCH) 1320 at *5 (2021).

value to \$3,078,000 in preparation for trial.²⁶ The IRS' initial valuation on audit was \$434,261,895.²⁷ The Commissioner also assessed undervaluation penalties of nearly \$200 million.²⁸

In valuing Jackson's image and likeness, the court pointed out that the default value of a right is its fair market value,²⁹ and, as per the general valuation rule, found that it must include the value of Jackson's image and likeness at its highest and best use.³⁰ The crux of the court's decision was the focus on valuing Jackson's property as of the date of death: Although the Estate was able to successfully exploit Jackson's image *after* death, as of his date of death Jackson earned close to nothing from his image and likeness because child molestation allegations had left his reputation in tatters.³¹

To value unique assets like the right of publicity, courts and appraisers have typically used three approaches: income (which calculates how much revenue an asset will produce and discounts back to present value),³² market (which compares the asset to prices at which similar assets have changed hands),³³ and cost (which estimates the cost of recreating).³⁴ The income approach was used by all experts in the Jackson Estate.³⁵

The Estate's expert provided 10-year revenue projections that balanced Jackson's gifts as an entertainer against the stigma he bore as an accused child molester and concluded that the effect of the abuse allegations outweighed reputational rehabilitation during Jackson's life.³⁶

The IRS expert took a "wildly different approach" and considered five "opportunities" that he believed a hypothetical buyer could reasonably foresee at Jackson's death: themed attractions and products, branded merchandise, a Cirque du Soleil show, a film, and a Broadway musical.³⁷ "As the Commissioner's only expert witness, his credibility was an especially important part of the case. And . . . since he perjured himself . . . it suffered greatly at trial."³⁸ The court rejected the analysis of the IRS expert as "fantasy," finding that he included assets other than

²⁶ *Id.* at *61.

²⁷ *See id.* at *51.

²⁸ *See id.*

²⁹ *Id.* at *98; *see also* Treas. Reg. § 20.2031-1(b).

³⁰ *See Estate of Jackson*, 121 T.C.M. (CCH) at *99.

³¹ *See id.* at *101, *111.

³² *Id.* at *65.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at *66.

³⁶ *Id.* at *111-14.

³⁷ *See id.* at *120-23.

³⁸ *Id.* at *59.

image and likeness in his valuation, included revenue streams that were unforeseeable at the time of Jackson's death and overstated the assets' value.³⁹

The court concluded that Jackson's name and image should be valued at \$4,153,912, and that no penalties were payable because the Estate's original low valuation "wasn't that farfetched" given how little revenue Jackson had been earning from his name and likeness.⁴⁰

IV. A "PAIR OF PROBLEMS"

In its decision, the court discussed what it framed as a "pair of problems."

A. Distinguishing between the value of an asset and the value of its management

The court pointed out that after the assets were no longer under Jackson's control, they had been managed "with stunningly greater competence"⁴¹ than they had been in Jackson's own hands. The court noted that the first in the pair of problems is how to value any asset that requires active management, because it is so difficult to distinguish between the value of that asset and the value of its management.⁴²

B. How to measure "synergies"

According to the court, a second and distinct problem is how to measure the effect that separate assets can have on each other's value.⁴³ The court acknowledged that it would be entirely reasonable to think that a collection of related intellectual-property rights might be more valuable if they could be packaged and sold together.⁴⁴ The IRS expert called these synergies.⁴⁵

Jackson's will did not divide his valuable intellectual property; keeping it together made deal-making much easier, like a controlling block of stock. However, the court noted that the parties spent years in pretrial preparation, at the end of which they reached stipulations about certain assets. Although the court assumed that the Estate's assets could be used together to generate value, the court would not allow the Com-

³⁹ See *id.* at *133, *137, *141.

⁴⁰ *Id.* at *249-51, *253.

⁴¹ *Id.* at *69.

⁴² See *id.* at *69-70.

⁴³ *Id.* at *70.

⁴⁴ *Id.* at *70-71.

⁴⁵ See *id.* at *71.

missioner to renege on his stipulation and cram the value of stipulated assets into assets whose value he did not stipulate.⁴⁶

V. HOW TO PLAN FOR IT?

It will be prudent for practitioners to consider the post-mortem ROP in planning. Restricting the ROP after death could potentially reduce its estate tax value (at the cost of reducing its value to heirs), although it is unclear what impact those restrictions will have on the valuation of post-mortem publicity rights. Robin Williams took extensive measures to stop the exploitation of his image after death by transferring his rights to a trust that allegedly prevented his name, voice, signature, photograph, or likeness from being exploited for 25 years following his death.⁴⁷ Presumably to shield his heirs from having to pay tax on the value of his image and likeness, Williams reportedly donated his post-mortem ROP after the 25-year restriction to a foundation he created.⁴⁸ If challenged, whether this approach actually reduces the value of a ROP to zero for estate tax purposes is questionable. The gross estate ordinarily is determined without regard to restrictions imposed by a decedent's will, yet the charitable deduction is computed to take those restrictions into account. Accordingly, there might be a mismatch between the full value of a ROP included in a gross estate and an offsetting charitable deduction for less than the full value.⁴⁹ An unrestricted transfer of a ROP to a charity would garner a charitable deduction of its full value, but would enable (or perhaps given fiduciary obligations of those managing the charity, mandate) its exploitation.⁵⁰

Transferring the ROP to a trust if a celebrity is early in their career and the value is low may be one solution; others may involve investigating different ownership structures to minimize estate tax value, including dividing interests among multiple structures as is often implemented in the business owner planning context to garner lack of marketability and minority interest valuation discounts. Although the court in the *Es-*

⁴⁶ See *id.* at *74.

⁴⁷ Hannah Ellis-Petersen, *Robin Williams Went Above and Beyond to Stop His Image Being Used*, *GUARDIAN* (Mar. 31, 2015), <https://www.theguardian.com/film/2015/mar/31/robin-williams-restricted-use-image-despite-existing-us-laws> [<https://perma.cc/6TQP-MBBA>].

⁴⁸ See Benjamin Lee, *Robin Williams Restricted use of his Image for 25 Years After his Death*, *GUARDIAN* (Mar. 31, 2015), <https://www.theguardian.com/film/2015/mar/31/robin-williams-restricted-use-of-his-image-for-25-years-after-his-death> [<https://perma.cc/UQ6N-S9NT>].

⁴⁹ See Mitchell M. Gans, *Publicity Rights and the Estate Tax*, 42 *COLUM. J. L. & ARTS* 399, 404 (2019) (discussing the disparity between the full value of a ROP included in a gross estate and an offsetting charitable deduction for less than the full value).

⁵⁰ See *id.* at 405.

tate of Michael J. Jackson rejected the IRS' synergies argument because of the pretrial history,⁵¹ it acknowledged that a collection of intellectual property rights might be more valuable if they could be packaged and sold together.⁵² This suggests that planning should focus on dividing ownership, so a decedent does not control 100% of the interest at death. For example, selling or gifting publicity rights to irrevocable grantor trusts can potentially remove value from a celebrity's estate, and also reduce the estate by the grantor's ongoing income tax liability, allowing the trusts effectively to grow tax-free. Query, however, whether the rights might be pulled back into the estate under Internal Revenue Code section 2036 (a)(2) if a celebrity's continued control over the publicity rights is considered a right to determine who may possess or enjoy the income from the property.⁵³ To reduce the risk of section 2036 inclusion, it will be prudent to appoint an independent trustee and to sell rather than gift the publicity rights, since a bona fide sale (for legitimate and significant nontax reasons) for adequate and full consideration will not be subject to section 2036.⁵⁴

Leaving the ROP to a U.S. citizen surviving spouse outright or in a trust structured to garner the marital deduction would defer taxes until the spouse's death,⁵⁵ at which time the publicity rights may have experienced a significant diminution in value, reducing the ultimate estate tax cost. Considering insurance to offset the increased value of the estate may merit consideration. In terms of managing post-mortem publicity rights, just as individuals are increasingly naming specialty advisors in their dispositive documents to manage business assets, digital property or artwork, it may be prudent to name a publicity rights advisor with specific expertise to maximize value to heirs and reduce potential conflict among beneficiaries. In the pre and post-nuptial marital planning context, the ROP should be considered an asset and reflected in marital agreements.

Practitioners in states with no statute or common law post-mortem ROP protection may have to look to other jurisdictions for guidance, or to relief under federal law. For example, a false endorsement claim can potentially be brought under the Lanham Act as a form of unfair competition likely to cause consumer confusion,⁵⁶ although those claims

⁵¹ See *Estate of Jackson*, 121 T.C.M. (CCH) at *74.

⁵² *Id.* at *70-71.

⁵³ See Bradford S. Cohen & Scott J. Loesch, *Tax and Estate Planning for Post-mortem Celebrity*, L.A. Law., May 2017, at 13, 17.

⁵⁴ See *id.*

⁵⁵ I.R.C. § 2056.

⁵⁶ 15 U.S.C. § 1125(a)(1).

have not been consistently successful.⁵⁷ For example, in the *Estate of Elvis Presley v. Russen*,⁵⁸ the New Jersey court found one image of Elvis was a protectable trademark, rejecting the argument that all images of Elvis were so protected.

Even in the absence of a state statute that explicitly accords a post-mortem ROP, most courts have agreed that the ROP survives death and is enforceable by a decedent's estate.⁵⁹ According to the court in *State ex rel. Elvis Presley International Memorial Foundation. v. Crowell*,⁶⁰ recognizing that the ROP is descendible promotes the following important policies: (1) acknowledging that an individual's right of testamentary distribution is an essential right; (2) the basic principle that "one may not reap where another has sown nor gather where another has strewn;" (3) a celebrity's expectation that he is creating a valuable capital asset that will benefit his heirs and assigns after his death; (4) the value of the contract rights of persons who have acquired the right to use a celebrity's name and likeness; (5) the public's interest in being free from deception with regard to the sponsorship, approval or certification of goods and services; and (6) the policy against unfair competition through the use of deceptively similar corporate names.⁶¹

⁵⁷ See generally *Do I Have a Lanham Act Claim Against My Competitor for False Advertising?*, BONALAW, <https://www.bonalaw.com/insights/legal-resources/do-i-have-a-lanham-act-claim-against-my-competitor-for-false-advertising> [<https://perma.cc/3JCU-CYKF>] (describing how plaintiffs asserting a Lanham Act claim face a high burden).

⁵⁸ 513 F. Supp. 1339, 1345-46, 1363-65 (D. N.J. 1981).

⁵⁹ See, e.g., *State ex rel. Presley v. Crowell*, 733 S.W.2d 89, 99 (Tenn. Ct. App. 1987); *Acme Circus Operating Co. v. Kuperstock*, 711 F.2d 1538, 1543-44 (11th Cir. 1983); *Martin Luther King, Jr. Ctr. for Soc. Change Inc. v. Am. Heritage Prods., Inc.*, 694 F.2d 674, 682 (11th Cir.1983); *Martin Luther King, Jr. Ctr. for Soc. Change, Inc. v. Am. Heritage Prods., Inc.*, 296 S.E.2d 697, 705 (Ga. 1982).

⁶⁰ 733 S.W.2d at 97.

⁶¹ *Id* at 97-99.

APPENDIX

State	Authority	Statutory Effective Date	Application	Years of Protection After Death	Scope of Protection
Alabama	ALA. CODE § 6-5-771(1), (3) (2022).	August 1, 2015	Commercial exploitation not necessary during lifetime	55 years	Name, signature, photograph, image, likeness, voice
Arizona	Common law; <i>See In re Estate of Reynolds</i> , 327 P.3d 213, 217 (Ariz. Ct. App. 2014); ARIZ. REV. STAT. ANN. § 12-761 (2022).	May 24, 2007	Commercial exploitation not necessary during lifetime for common law protection; Statute applies only to soldiers	Uncertain duration	Name and/or likeness
Arkansas	<i>See</i> ARK. CODE ANN. §§ 4-75-1103, -1107 (2022).	August 22, 2016	Commercial exploitation not necessary during lifetime	50 years	Name, voice, signature, photograph, or likeness
California	CAL. CIV. CODE § 3344.1(a)(1), (h) (West 2022).	January 1, 1985 (Retroactive to January 1, 1915)	Requires commercial value at death or because of death	70 years	Name, voice, signature, photograph, or likeness
Connecticut	Common law (unclear); <i>See Jim Henson Prods., Inc. v. John T. Brady & Assocs., Inc.</i> , 867 F. Supp. 175, 189-90 (S.D. N.Y. 1994).				

State	Authority	Statutory Effective Date	Application	Years of Protection After Death	Scope of Protection
Florida	FLA. STAT. § 540.08(1), (5) (2022).	As amended July 1, 2022	Commercial exploitation not necessary during lifetime	40 years	Name, portrait, photograph or other likeness
Georgia	<i>See</i> Martin Luther King, Jr., Ctr. for Soc. Change, Inc. v. Am. Heritage Prod., Inc., 296 S.E.2d 697, 700, 706 (Ga. 1982).		Commercial exploitation not necessary during lifetime	Uncertain duration	Name and likeness
Hawaii	HAW. REV. STAT. §§ 482P-1, -4 (2022).	July 15, 2009 (Retroactive to those who predeceased enactment)	Commercial exploitation not necessary during lifetime	70 years	Name, voice, signature, or likeness
Illinois	765 ILL. COMP. STAT. 1075/5, 1075/30(b) (2022).	January 1, 1999	Commercial exploitation not necessary during lifetime	50 years	Name, signature, photograph, image, likeness, or voice
Indiana	IND. CODE §§ 32-36-1-6, -8 (2022).	July 1, 1994 (Retroactive to on, before or after July 1, 1994)	Commercial exploitation not necessary during lifetime	100 years	Name, voice, signature, photograph, image, likeness, distinctive appearance, gestures, or mannerisms
Kentucky	KY. REV. STAT. ANN. § 391.170 (West 2022).	July 13, 1984	Applies to public figures	50 years	Name or likeness of a person who is a public figure
Louisiana	LA. STAT. ANN. § 14:102.21 (2022).	August 15, 2006	Applies only to soldiers	Uncertain duration	Name, portrait, or picture

State	Authority	Statutory Effective Date	Application	Years of Protection After Death	Scope of Protection
Maryland	MD. CODE ANN., BUS. REG. § 19-503 (West 2022).	October 1, 2008	Applies only to soldiers	50 years	Name, portrait, picture, or image
Michigan	Common law; <i>See</i> Herman Miller, Inc. v. Palazzetti Imps. & Exps. Inc., 270 F.3d 298, 298 (6th Cir. 2001).			Uncertain duration	
Minnesota	Common law; <i>See</i> Paisley Park Enters., Inc. v. Boxill, 299 F. Supp. 3d 1074, 1083-84 (D. Minn. 2017).			Uncertain duration	
Nebraska	NEB. REV. STAT. § 20-208 (2022).	1979		Uncertain duration	Name or likeness
Nevada	NEV. REV. STAT. § 597.790(1) (2021).	1989	Commercial exploitation not necessary during lifetime	50 years	Name, voice, signature, photograph, or likeness
New Jersey	Common law; <i>See</i> Estate of Presley v. Russen, 513 F. Supp. 1339 (D. N.J. 1981).			Uncertain duration	Name, likeness, or performance characteristics

State	Authority	Statutory Effective Date	Application	Years of Protection After Death	Scope of Protection
New York	N.Y. CIV. RIGHTS LAW § 50-f(1)(b), (8) (McKinney 2022).	May 29, 2021	Requires commercial value at or because of death	40 years	Name, voice, signature, photograph, or likeness
Ohio	OHIO REV. CODE ANN. §§ 2741.01-.02(A)(2) (West 2022).	November 22, 1999	Requires commercial value at death	60 years	Name, voice, signature, photograph, image, likeness, or distinctive appearance
Oklahoma	OKLA. STAT. tit. 12, § 1448(A), (G)-(H) (2022).	January 1, 1986 (Retroactive to January 1, 1936)	Requires commercial value at death	100 years	Name, voice, signature, photograph, or likeness
Pennsylvania	42 PA. CONS. STAT. § 8316(a), (c) (2022).	February 7, 2003	Requires commercial value at death	30 years	Name, signature, photograph, image, likeness, voice or a substantially similar imitation
South Carolina	<i>See Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.</i> , 684 S.E.2d 756, 762 (2009).			Uncertain duration	Name, likeness, or identity
South Dakota	S.D. CODIFIED LAWS §§ 21-64-1 to -2 (2022).	July 1, 2015	Requires commercial value at death	70 years	Name, voice, signature, photograph, image, likeness, distinctive appearance, gesture, or mannerism

State	Authority	Statutory Effective Date	Application	Years of Protection After Death	Scope of Protection
Tennessee	TENN. CODE ANN. §§ 47-25-1103 to -1104 (2022).	1984	Commercial exploitation not necessary during lifetime	10 years; can extend longer if publicity rights used at least every two years after initial 10-year period	Name, photograph, or likeness
Texas	TEX. PROB. CODE ANN. §§ 26.002-003, .012 (West 2021).	September 1, 1987 (Retroactive to January 1, 1937)	Requires commercial value at death or thereafter	50 years	Name, voice, signature, photograph, or likeness
Utah	Common law; <i>See Nature's Way Prod., Inc. v. Nature-Pharm., Inc.</i> , 736 F. Supp. 245, 252 (D. Utah 1990).		Requires transfer or other commercial exploitation during lifetime	Uncertain duration	
Virginia	VA. CODE ANN. § 8.01-40 (2022).	July 1, 2015		20 years	Name, portrait, or picture
Washington	WASH. REV. CODE §§ 63.60.020(1), (2), .040 (2022).	June 11, 1998 (Retroactive to January 1, 1988 [individual] and January 1, 1948 personality [celebrity])	Does not require commercial value at death, except to qualify as a personality	Individual: 10 years Personality (celebrity): 75 years	Name, voice, signature, photograph, or likeness