

**Wednesday Afternoon, April 15th**

*B. Right of Publicity/Privacy: Comparative Developments*

4:20 PM – 5:20 PM

Post Mortem Publicity Rights in the United States: Complexity and Chaos

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During a celebrity's lifetime most states protect, to varying degrees, against the unauthorized commercial use of a celebrity's name, image, likeness, voice, and signature. In recognition that the financial value of personality rights continue long after their death some states such as California and Indiana, have recognized a post-mortem right of publicity up to 100 years in length. Other states such as New York provide no protection and personality rights expire on the death of the celebrity. For those recognizing the post-mortem right, this property right normally descends to their heirs or beneficiaries similar to copyright. The rewards from post-mortem rights are substantial especially for those celebrities considered as cultural icons. For instance, the beneficiaries of the Elvis Presley estate earn more than \$49 million a year from licensing publicity rights.

One might ask why there is this discrepancy in post-mortem protection among the state right of publicity laws. The reasons are varied but most often a "political explanation can be given. New York, which does not recognize the post-mortem right, has a strong publishing industry whose interest differs from those of entertainers. California, which has a 70 year post mortem right, is the capital of the entertainment industry whose constituent group benefits greatly in having publicity rights that transcend death. But why does Indiana, hardly a colossus in the entertainment industry have a 100 post-mortem right? Again, politics provides the answer. Indianapolis is the home of the Curtis Management Group, one of the world's largest companies specializing in the mechanizing of publicity rights.

Because of these variations in protection, the choice of state jurisdiction is often the decisive factor in protecting a deceased celebrity personality rights. For my presentation, I will examine a series of recent decisions involving Marilyn Monroe which illustrate the important jurisdictional and choice of law rules that apply in post-mortem publicity right cases. As to Marilyn Monroe, the California court ultimately determined that despite her death in California, the famous actress was legally domiciled in New York. As a result, Monroe's deceased personality right in California was unprotectible even though California protects personality rights for 70 years after the death of a celebrity. Most important, the court further held that her publicity rights claim was not actionable at all because New York law does not protect post-mortem publicity rights.

Determining post mortem rights raises basic issues about the complexity of publicity rights enforcement when a multiplicity of jurisdictions is involved. States that have publicity rights are currently considering amendments to their statutes to address the "interests" of dead celebrities, but for the moment the movement in the states toward a relative harmonization of the post-mortem right is in flux.