



1 photograph, or likeness. This right exists in the name, voice,  
2 signature, photograph, or likeness of individuals or  
3 personalities living or deceased. This right shall be freely  
4 transferable, assignable, and licensable, in whole or in part,  
5 by any otherwise permissible form of inter vivos or testamentary  
6 transfer, including without limitation a will or other  
7 testamentary instrument, trust, contract, community property  
8 agreement, or cotenancy with survivorship provisions or payable-  
9 on-death provisions, whether the will or other testamentary  
10 instrument, trust, contract, community property agreement, or  
11 cotenancy document is entered into or executed by the deceased  
12 individual or personality or by any subsequent owner of the  
13 deceased individual's or personality's rights as recognized by  
14 this chapter; or, if none is applicable, then the owner of the  
15 rights shall be determined under the laws of intestate  
16 succession applicable to interests in intangible personal  
17 property. The property right does not expire upon the death of  
18 the individual or personality, regardless of whether the law of  
19 the domicile, residence, or citizenship of the individual or  
20 personality at the time of death or otherwise recognizes a  
21 similar or identical property right. The right exists whether  
22 or not it was commercially exploited by the individual or the



1 personality during the individual's or the personality's  
2 lifetime. This chapter is intended to apply to all individuals  
3 and personalities, living and deceased, regardless of place of  
4 domicile or place of domicile at time of death. In the case of  
5 a deceased individual or personality, the rights recognized  
6 under this chapter shall be deemed to exist at the time of death  
7 of any deceased individual or personality or subsequent  
8 successor of their rights for the purpose of determining the  
9 person or persons entitled to these property rights as provided  
10 for in section -3.

11 § -2 **Definitions.** As used in this chapter, unless the  
12 context clearly requires otherwise:

13 "Deceased individual" means any individual, regardless of  
14 the individual's place of domicile, residence, or citizenship at  
15 the time of death or otherwise, who has died.

16 "Deceased personality" means any individual, regardless of  
17 the personality's place of domicile, residence, or citizenship  
18 at the time of death or otherwise, whose name, voice, signature,  
19 photograph, or likeness had commercial value at the time of his  
20 or her death, whether or not during the lifetime of that  
21 individual he or she used his or her name, voice, signature,  
22 photograph, or likeness on or in products, merchandise or goods,



1 or for purposes of advertising or selling, or soliciting the  
2 purchase or sale of, products, merchandise, goods, or services:

3 "Fund-raising" means an organized activity to solicit  
4 donations of money or other goods or services from persons or  
5 entities by an organization, company, or public entity. A fund-  
6 raising activity does not include a live, public performance by  
7 an individual or group of individuals for which money is  
8 received in solicited or unsolicited gratuities.

9 "Individual" means a natural person, living or dead.

10 "Likeness" means an image, painting, sketching, model,  
11 diagram, or other clear representation, other than a photograph,  
12 of an individual's face, body, or parts thereof, or the  
13 distinctive appearance, gestures, or mannerisms of an  
14 individual.

15 "Name" means the actual or assumed name, or nickname, of a  
16 living or deceased individual that is intended to identify that  
17 individual.

18 "Person" means any natural person, firm, association,  
19 partnership, corporation, joint stock company, syndicate,  
20 receiver, common law trust, conservator, statutory trust, or any  
21 other concern by whatever name known or however organized,  
22 formed, or created, and includes nonprofit corporations,



1 associations, educational and religious institutions, political  
2 parties, and community, civic, or other organizations.

3 "Personality" means any individual whose name, voice,  
4 signature, photograph, or likeness has commercial value, whether  
5 or not that individual uses his or her name, voice, signature,  
6 photograph, or likeness on or in products, merchandise, or  
7 goods, or for purposes of advertising or selling, or  
8 solicitation of purchase of, products, merchandise, goods, or  
9 services.

10 "Photograph" means any photograph or photographic  
11 reproduction, still or moving, or any videotape, online or live  
12 television transmission, of any individual, so that the  
13 individual is readily identifiable.

14 "Signature" means the one handwritten or otherwise legally  
15 binding form of an individual's name, written or authorized by  
16 that individual, that distinguishes the individual from all  
17 others.

18 § -3 **Transfer, assignment, and license.** (a) Every  
19 individual or personality has a property right in the use of his  
20 or her name, voice, signature, photograph, or likeness. This  
21 right shall be freely transferable, assignable, and licensable,  
22 in whole or in part, by contract or inter vivos transfer. This



1 right shall not expire upon the death of the individual or  
2 personality, but shall be owned and enforceable by the following  
3 successors, heirs, or other transferees of living or deceased  
4 individuals or personalities:

- 5 (1) Except where rights were transferred or assigned  
6 before the deceased personality's death by means of  
7 any contract or trust instrument, the right shall be  
8 owned by the person entitled to the rights under the  
9 deceased individual's or personality's last will and  
10 testament or, if none, then by the beneficiaries or  
11 heirs under the laws of intestate succession  
12 applicable to interests in intangible personal  
13 property generally of the individual's or  
14 personality's domicile, regardless of whether the law  
15 of the domicile of the deceased individual or  
16 personality, at the time of death, or thereafter,  
17 recognizes a similar or identical property right; or  
18 (2) If the deceased individual or personality transferred  
19 or assigned any interest in the personality rights  
20 during his or her life by means of any contract or  
21 trust instrument, then the transferred or assigned  
22 interest shall be held as follows:



- 1 (A) If the transferred or assigned interest was held  
2 in trust, in accordance with the terms of the  
3 trust;
- 4 (B) If the interest is subject to a cotenancy with  
5 any survivorship provisions or payable-on-death  
6 provisions, in accordance with those provisions;
- 7 (C) If the interest is subject to any contract,  
8 including without limitation an exclusive  
9 license, assignment, or a community property  
10 agreement, in accordance with the terms of the  
11 applicable contract or contracts;
- 12 (D) If the interest has been transferred or assigned  
13 to a third person in a form that is not addressed  
14 in this section, by the individual or  
15 personality, or the successor, heir, or other  
16 transferee of the living or deceased individual  
17 or personality, then the interest may be  
18 transferred, assigned, or licensed by that third  
19 person, in whole or in part, by any otherwise  
20 permissible form of inter vivos or testamentary  
21 transfer or, if none is applicable, under the  
22 laws of intestate succession applicable to



1 interests in intangible personal property of the  
2 third person's domicile, regardless of whether  
3 the law of the domicile of the deceased third  
4 party, at the time of death, or thereafter,  
5 recognizes a similar or identical property right.

6 (b) A property right exists whether or not those rights  
7 were commercially exploited by or under the authority of the  
8 individual or the personality or the individual's or  
9 personality's successors or transferees during the individual's  
10 or the personality's lifetime.

11 (c) The rights recognized under this chapter shall be  
12 deemed to have existed before the effective date of this  
13 chapter, but causes of action, and related damages, inter alia,  
14 relating to misappropriation of the rights established by this  
15 chapter may only be enforced as of the effective date of this  
16 chapter.

17 § -4 **Right is exclusive for individuals and**  
18 **personalities.** (a) For individuals, except to the extent that  
19 the individual may have assigned or licensed the rights, the  
20 rights protected in this chapter are exclusive to the  
21 individual, subject to the assignment or licensing of the rights  
22 during the individual's lifetime, and are exclusive to the





1 persons entitled to the rights under section -3 for a period  
2 of seventy years after the death of the individual, including to  
3 the extent that the persons entitled to the rights under section  
4 -3 may have assigned or licensed these rights to others.

5 (b) For personalities, except to the extent that the  
6 personality may have assigned or licensed the rights, the rights  
7 protected in this chapter are exclusive to the personality,  
8 subject to the assignment or licensing of the rights during the  
9 personality's lifetime, and to the persons entitled to these  
10 rights under section -3 for a period of seventy years after  
11 the death of the personality, including to the extent that the  
12 persons entitled to these rights under section -3 may have  
13 assigned or licensed these rights to others.

14 (c) The rights granted in this chapter may be exercised by  
15 a personal representative, attorney-in-fact, parent of a minor  
16 child, or guardian, or as authorized by a court of competent  
17 jurisdiction. The terms "personal representative," "attorney-  
18 in-fact," and "guardian" shall have the same meanings in this  
19 chapter as they have in chapter 560.

20 § -5 **Infringement of right; use without consent; profit**  
21 **or not for profit.** Any person who uses or authorizes the use of  
22 a living or deceased individual's or personality's name, voice,



1 signature, photograph, or likeness, on or in goods, merchandise,  
2 or products entered into commerce in this State, or for purposes  
3 of advertising products, merchandise, goods, or services, or for  
4 purposes of fund-raising or solicitation of donations, or if any  
5 person disseminates or publishes advertisements in this State,  
6 without written or oral, express or implied consent of the owner  
7 of the right, has infringed this right. An infringement may  
8 occur under this section without regard to whether the use or  
9 activity is for profit or not for profit.

10       §   -6   **Infringement of right; circuit courts; injunctions;**  
11 **liability for damages and profits; impoundment; destruction;**  
12 **attorneys' fees.** (a) The circuit courts of this State may  
13 grant injunctions on reasonable terms to prevent or restrain the  
14 unauthorized use of the rights in a living or deceased  
15 individual's or personality's name, voice, signature,  
16 photograph, or likeness.

17       (b) Any person who infringes the rights under this chapter  
18 shall be liable for the greater of \$10,000 or the actual damages  
19 sustained as a result of the infringement, and any profits that  
20 are attributable to the infringement and not taken into account  
21 when calculating actual damages. To prove profits under this  
22 section, the injured party or parties must submit proof of gross



1 revenues attributable to the infringement, and the infringing  
2 party is required to prove his or her deductible expenses. For  
3 the purposes of computing statutory damages, the use of a name,  
4 voice, signature, photograph, or likeness in or related to one  
5 work constitutes a single act of infringement regardless of the  
6 number of copies made or the number of times the name, voice,  
7 signature, photograph, or likeness is displayed.

8 (c) At any time while an action under this chapter is  
9 pending, the court may order the impounding, on reasonable  
10 terms, of all materials or any part thereof claimed to have been  
11 made or used in violation of the injured party's rights, and the  
12 court may enjoin the use of all plates, molds, matrices,  
13 masters, tapes, film negatives, master recordings, copies of  
14 recordings, optical disk stampers, or other articles by means of  
15 which these materials may be reproduced.

16 (d) As part of a final judgment or decree, the court may  
17 order the destruction or other reasonable disposition of all  
18 materials found to have been made or used in violation of the  
19 injured party's rights, and of all plates, molds, matrices,  
20 masters, tapes, film negatives, master recordings, copies of  
21 recordings, optical disk stampers, or other articles by means of  
22 which these materials may be reproduced.



1 (e) The prevailing party may recover reasonable attorneys'  
2 fees, expenses, and court costs incurred in recovering any  
3 remedy or defending any claim brought under this section.

4 (f) The remedies provided for in this section are  
5 cumulative and are in addition to any others provided for by  
6 law.

7 § -7 Exemptions from use restrictions; when chapter does

8 not apply. (a) For purposes of section -5, the use of a  
9 name, voice, signature, photograph, or likeness in connection  
10 with matters of cultural, historical, political, religious,  
11 educational, newsworthy, or public interest, including without  
12 limitation comment, criticism, satire, and parody relating  
13 thereto, shall not constitute a use for which consent is  
14 required under this chapter. A matter exempt from consent under  
15 this subsection does not lose its exempt status because it  
16 appears in the form of a paid advertisement if it is clear that  
17 the principal purpose of the advertisement is to comment on the  
18 matter.

19 (b) This chapter does not apply to the use or  
20 authorization for use of an individual's or personality's name,  
21 voice, signature, photograph, or likeness, in any of the  
22 following:

- 1           (1) Single and original works of fine art, including but  
2           not limited to photographic, graphic, and sculptural  
3           works of art that are not published in more than five  
4           copies;
- 5           (2) A literary work, theatrical work, musical composition,  
6           film, radio, online or television program, magazine  
7           article, news story, public affairs report, or sports  
8           broadcast or account, or with any political campaign  
9           when the use does not inaccurately claim or state an  
10          endorsement by the individual or personality;
- 11          (3) An advertisement or commercial announcement for a use  
12          permitted by subsections (a) and (g) and paragraph (1)  
13          or (2);
- 14          (4) An advertisement, commercial announcement, or  
15          packaging for the authorized sale, distribution,  
16          performance, broadcast, or display of a literary,  
17          musical, cinematographic, or other artistic work using  
18          the name, voice, signature, photograph, or likeness of  
19          the writer, author, composer, director, actor, or  
20          artist who created the work, where the individual or  
21          personality consented in a writing signed by the  
22          individual or personality or their successor-in-



1 interest, to the use of his or her name, voice,  
2 signature, photograph, or likeness on or in connection  
3 with the initial sale, distribution, performance, or  
4 display thereof; and

5 (5) The advertisement or sale of a rare or fine product,  
6 including but not limited to books, which incorporates  
7 the signature of the author.

8 (c) It is no defense to an infringement action under this  
9 chapter that the use of an individual's or personality's name,  
10 voice, signature, photograph, or likeness includes more than one  
11 individual or personality so identifiable. However, the  
12 individuals or personalities complaining of the use shall not  
13 bring their cause of action as a class action.

14 (d) Section -5 shall not apply to the owners or  
15 employees of any medium used for advertising, including but not  
16 limited to newspapers, magazines, radio and television stations,  
17 online service providers, billboards, and transit ads, who,  
18 without prior notice that the use would be in violation of this  
19 chapter, have published or disseminated any advertisement or  
20 solicitation in violation of this chapter, unless the  
21 advertisement or solicitation was intended to promote the medium  
22 itself.



1           (e) This chapter does not apply to a use or authorization  
2 for use of an individual's or personality's name that is merely  
3 descriptive and used fairly and in good faith only to identify  
4 or describe something other than the individual or personality,  
5 such as, without limitation, to describe or identify a place, a  
6 legacy, a style, a theory, an ownership interest, or a party to  
7 a transaction or to accurately describe the goods or services of  
8 a party.

9           (f) This chapter does not apply to the use of an  
10 individual's or personality's name, voice, signature,  
11 photograph, or likeness when the use of the individual's or  
12 personality's name, voice, signature, photograph, or likeness is  
13 an insignificant, de minimis, or incidental use.

14           (g) This chapter does not apply to the distribution,  
15 promotion, transfer, or license of a photograph or other  
16 material containing an individual's or personality's name,  
17 voice, signature, photograph, or likeness to a third party for  
18 use in a manner which is lawful under this chapter, or to a  
19 third party for further distribution, promotion, transfer, or  
20 license for use in a manner which is lawful under this chapter."



1 SECTION 3. This Act shall take effect upon its approval.

2

INTRODUCED BY:                     *Colin Kelly Boy*                      
By Request

JAN 26 2009





**Report Title:**

Publicity Rights; Commercial Uses

**Description:**

Establishes property rights in the commercial use of a person's name voice, signature, photograph, or likeness.

