
IDEA THEFT, MISATTRIBUTION, REPUTATIONAL HARM: OTHER PROTECTIONS FOR WRITERS

Most writers are sellers in a buyer's market. This reality puts any writer trying to shop her work and stay in favor with her publishers in a vulnerable position. It is well known in the publishing and entertainment industries that copyright does not protect the ideas embodied in a pitch or a query letter, and they may legally be taken and used by a recipient with impunity. Although doing so would be considered highly unethical in the trade book industry, it is not necessarily the same in the periodical, film, and game industries. As well, other kinds of unfair treatment are too often imposed on writers. For example, a manuscript might be edited beyond recognition and published under the writer's name, to the detriment of her reputation. A publisher might attribute one's work to a different, better-selling author, or assign a pseudonym to an author and then refuse to let her take it to another publisher for subsequent books. In the United States, legal protection against such abuses is limited. Not only does copyright law explicitly make ideas free for the taking, but it also prohibits claims under any other legal theory that deal with the same subject matter as copyright.

Nevertheless, aside from copyright, there are a few causes of legal action that can protect writers against some of these abuses. This chapter will describe laws dealing with the misappropriation of ideas and the legal

doctrine of “unfair competition,” which prohibits, among other things, the false designation of origin of a product, including a literary work. It will cover claims a writer might be able to bring for damage caused to her reputation, including defamation and invasion of the rights of privacy and publicity, and also describe the procedure by which a well-known writer can retrieve an Internet domain name identical (or very similar) to her name.

PROTECTION OF IDEAS

When Jeff Grosso finished film school, he had an idea for a script. He wrote *The Shell Game* based on his experiences working his way through school as a professional gambler. Seeking a buyer, Grosso saw the following listing in a 1997 Writer's Market Guide: “Gotham Entertainment Group . . . Buys 5/10 scripts a year . . . Query with completed script . . . Makes outright purchase . . . We have a deal with Miramax films . . .” He sent his script to Gotham (and to many others), got no response, and was surprised more than a year later to see that Miramax had released *Rounders*, the story of a professional gambler starring Matt Damon. Believing that Gotham and Miramax had “mined” his script for their film, Grosso sued for both copyright infringement and on another legal theory: breach of an “implied contract” to compensate him if his ideas were used.

The case was transferred from state to federal court, which has exclusive jurisdiction over copyright claims, and that court ruled that the script and the film were not substantially similar. The dismissal of his copyright claim left Grosso with only the argument that the producers had misappropriated his ideas. The court therefore had to examine his claim under the doctrine of copyright preemption.

COPYRIGHT PREEMPTION

When Congress passed the 1976 Copyright Act, it intended the scope of the law to be comprehensive and to eliminate all other laws regulating in the same arena. Not only did the 1976 Act establish the precept that nobody has the exclusive right to ideas, but it also explicitly preempted, that is, superseded, any claims in which a work at issue “come[s] within the subject matter of copyright” and in which state law recognizes “legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright.” (Copyright Act, Section 107(a)) In practice,

these tenets mean that the law does not recognize any claim, federal or state, alleging only that the defendant stole the plaintiff's idea. Ideas fall "within the subject matter of copyright" and are, to quote one court, "as free as the air," and a claim of idea theft is based on a right that is "equivalent to" a right "within the general scope of copyright." Thus, copyright preempts claims—notably, idea theft—for which it explicitly does not offer redress.

Preemption does not, however, give publishers and producers carte blanche to appropriate ideas offered to them without permission. It does mean that a claim involving idea theft must assert a right that is qualitatively different from the rights recognized by copyright. The claim must contain at least one element in addition to the bare assertion that a proprietary idea was used without permission. The additional element that courts credit most often is the allegation that the publisher agreed, either implicitly or explicitly, to compensate the writer for the use of her idea, and the claim is therefore for breach of contract. Courts also recognize a claim of "breach of confidence," which alleges that the defendant promised not to disclose an original idea conveyed in confidence in exchange for being privy to the idea.

These legal theories (which Grosso was permitted to allege but could not ultimately prove) require that a writer take steps so that she can prove a bilateral agreement actually exists either to pay for the use of, or not to disclose, her idea.

BREACH OF EXPRESS OR IMPLIED CONTRACT

An *express* agreement to pay for an idea, whether or not in writing, is relatively easy to prove. It must evidence that each side agrees that if the recipient of the idea uses it, the purveyor will be compensated. The more details provided in the contract about the payment offered and the uses that may be made, the more likely it is that a court will recognize an enforceable contract.

An *implied* contract is necessarily more difficult to prove. It requires proof of an expectation by both parties that the use of the idea will be compensated. To prove an implied contract, the circumstances surrounding the interaction must show that the writer disclosed the idea in order to sell it, that she expected to be compensated for the idea if it was used, and that the defendant knew the writer's conditions, had the opportunity to decline to receive the idea, and nonetheless accepted disclosure. As with any con-

tract, a basic meeting of the minds is the *sine qua non*; thus, both parties must understand that the writer is disclosing the idea on the condition that she will be compensated if it is used. Whether those circumstances in fact exist depends on factors such as the particular industry's custom and practice, whether the pitch was solicited by the party receiving it, and the substance of the parties' communications around the conveyance of the idea.

If a publisher has affirmatively asked a writer to disclose her idea, courts are more likely to find an implied promise to pay if it is used. Some courts actually require that the recipient solicited the idea to find an implied contract. Others courts are more lenient and will recognize an implied contract if the writer gave advance notice that she expected compensation and gave the recipient the opportunity to decline receipt of the idea, such as by placing it in a sealed envelope with an explanatory cover letter. An implied contract might also arise if a publisher agrees to an author's verbal request not to use her idea without compensating or retaining her.

Even in the absence of a solicitation, request for payment in exchange for disclosure, or advance notice and an opportunity to decline, some claimants have argued that a promise to pay should be implied if industry custom dictates. Although no court has yet reportedly accepted this argument explicitly, some have implicitly adopted it, and California courts are increasingly giving the film and television industry practices a hard look in appropriate circumstances.⁴¹

In some states, including New York, courts require that the idea disclosed be "novel," that is, not formerly known. In 1988, the idea of portraying a close-knit, upper middle class African American family at the center of a situation comedy was held not to be novel, and so a writer who claimed that his idea was appropriated to create *The Cosby Show* was not able to show an implied contract to pay by the producer. But other states' courts eschew the novelty requirement if the idea disclosed was new to the recipient and the other factors show an agreement, or when a fiduciary relationship, such as that between author and agent, has led to the disclosure.

⁴¹ Jeff Grosso could not prove the Writers Guide listing was a promise to pay, or even a solicitation to submit ideas. He had not included a request for payment with his submission and had had no further contact with any of the defendants. Although his case established that an implied promise to pay for an idea is not preempted by copyright under California law, his claims were ultimately dismissed without a trial for lack of proof.

BREACH OF CONFIDENCE

A breach of confidence alleges that the plaintiff disclosed truly novel and confidential information, that the defendant knew this and agreed to keep it confidential, and that the defendant disclosed that information in breach of the parties' understanding. As with an implied contract, showing a breach of confidence depends on the circumstances leading up to the disclosure and evidence of the parties' understanding.

PROTECTING YOUR IDEAS

If you simply send out an unsolicited proposal, screenplay treatment, or a detailed query letter, you are not likely to have any protection beyond what copyright provides. The recipient might like your ideas conveyed, but choose to retain a different person to express those ideas in a fully realized work. Although this practice is rare among reputable agents and book publishers, Hollywood and Silicon Valley have different industry standards and practices. To be fair, producers, publishers, and agents receive multitudes of ideas, many of them similar both to one another and to projects already in development. Therefore, except when dealing with reputable literary agents,⁴² try to protect your interests with a contract when possible, or with a paper trail if a contract is not feasible.

The ideal contract is in writing and expressly provides for compensation if the recipient uses your idea. Such an agreement can be simple. For example, the following brief letter might do:

Dear Sir/Madam,

I understand it is your practice to entertain or receive program materials, ideas, or suggestions for [specify the market]. I have developed such a [indicate what will be submitted] for submission and would like to disclose this to you. I understand that if you use it, you will pay reasonable compensation and give appropriate credit to me based on current industry standards. If this understanding is correct, please advise me if I should send this submission to you.

Yours, etc.

⁴² See Chapter 15. Once you have engaged an agent, she has a fiduciary duty of loyalty to you and may not misappropriate your idea or otherwise break your confidence.

Although an express contract is the best way to protect your idea, it is unrealistic to expect most producers and publishers to agree to it for unsolicited works. In fact, after *Grosso v. Miramax*, many purchasers of literary property began to require writers submitting ideas, proposals, treatments, and manuscripts to sign releases before they will consider the submission. The typical release bars the writer from bringing any claim over the recipient's subsequent use of similar material and expressly acknowledges that the writer is aware that similar ideas may come from other sources. It usually stipulates the (small) maximum value of the material and the total recovery possible should the author sue and win despite the release. Naturally, you should exercise caution before signing such a release in order to submit your work. The risk might be worth taking, but due diligence is a must. Research the organization to determine its reputation in this area, and look for different entities to query that might accept your submission agreement.

If you cannot get an express agreement to compensate you for your idea or you must sign a release, consider writing some of the work before submitting it. The more complete your rendering of the idea when submitted, the more copyright protection the work will enjoy and the less incentive a publisher might have to use somebody else to flesh out your idea. It is also more likely to be protected under the implied contract theory.

As mentioned, one way to show an implied contract to pay for your idea is to give the recipient advance notice and an opportunity to decline your proposal. Place the proposal in a sealed envelope, and place that in a larger envelope with a cover letter informing the recipient that by opening the smaller envelope, it thereby agrees to compensate and/or retain you if it uses your idea. If you are meeting with a representative of the publisher or producer, bring a third party with you, and verbally set forth your conditions for disclosure and use of your ideas.⁴³ If the recipient agrees, your companion is a witness to the agreement. In this case, you should also create a paper trail by setting forth terms of agreement in a follow-up letter.

To demonstrate the date on which you created a film or television-related idea, register it with the Writers Guild of America, East or West

⁴³ It is the custom and practice in the entertainment and game industries to stop a verbal pitch or to quickly indicate no interest if the producer has a similar project already in development.

(described in Appendix A to chapter 1). These unions register film and television scripts, synopses, outlines, ideas, treatments, and scenarios in order to document the completion date and identity. The Writers Guild rules governing the treatment and use of writers' ideas govern the many film and TV producers that have collective bargaining agreements with the Writers Guild. You do not need to join the Writers Guild to register your work.

UNFAIR COMPETITION

The objective of federal and state trademark and unfair competition laws is to prevent a party from confusing the public in order to benefit from another's reputation. Misappropriation is a category of unfair competition used to prevent the unauthorized use of unique characteristics of a product. The Lanham Act, the federal trademark protection law, defines unfair competition as "any false designation of origin, false or misleading description [or representation] of fact" that is "likely to cause confusion . . . or to deceive as to affiliation, connection or association." State unfair competition laws are similar, but somewhat broader: "The essence of an unfair competition claim is that the defendant assembled a product which bears so striking a resemblance to the plaintiff's product that the public will be confused as to the identity of the products," according to New York's highest court.⁴⁴ Unfair competition claims can prevent the unauthorized use of a writer's character in a new work if it would cause confusion as to the source of the second work, prevent the false attribution of a work to someone other than the writer who created it, and allow a writer to prevent attribution to her for another's work or for a distorted version of her own work.

MISAPPROPRIATION OF CHARACTERS, TITLES, AND AUTHORS' NAMES

In the 1950s, the title of Ernest Hemingway's play *The Fifth Column* had acquired such a strong association with the author among the general public that a court forbade a producer from using the title *Fifth Column Squad* for an unrelated film. Hemingway's winning case was based on trademark misappropriation. The doctrine of misappropriation protects against the

⁴⁴ *Shaw v. Time-Life Records* (New York Court of Appeals, 1975).

unauthorized use of almost any mark imaginable that the public associates with a specific source of a product.⁴⁵ Marks protected by federal and/or common law trademark include specific phrases (e.g., “E.T. phone home”), logos, packaging, sounds (e.g., “Doh!” as uttered by Homer Simpson), even smells. Registration of a trademark is not necessary for full protection. A mark earns protection through its use in commerce in connection with a product sufficient to create an association in the minds of consumers. Protected marks can include property related to literature that copyright does not cover, such as the name, appearance, dress, and unique traits of literary characters, titles of series, and well-known authors’ names.

Unfair competition laws exist to protect the public, not the creator of the mark. In a case from the 1930s that is still considered a good explanation of the doctrine, the proposed title of a motion picture was the same as the name of the main character in a well-known book series. A court enjoined the film’s producer from using the proposed title:

The plaintiff’s copyrights do not cover the titles to the stories. . . . But a name that has become descriptive, and is closely identified in the public mind with the work of a particular author, may not, during the life of the copyright, be used so as to *mislead*. . . . Nor may such a name be used even after the expiration of the copyright, unless adequate explanation is given to *guard against mistake*. . . . In the present case, the name has become associated in the public mind solely and exclusively with the plaintiff’s authorship; it is a name which is highly descriptive of his work; and ordinary principles of unfair competition are peculiarly applicable. (emphasis added).⁴⁶

The key to proving misappropriation of a mark is to show that it has acquired secondary meaning and is associated by the public with a single source, and that the unauthorized use raises a likelihood of public confusion about the identity of the source. “Secondary meaning” means that the mark has become a resonant symbol of the source of a product. Marks that are not widely known, unique, or well established enough to have acquired secondary meaning are not protected. The strength of the mark depends on a combination of its uniqueness and the extent of its use in the marketplace. The more unique the mark, the less it needs to be used in

⁴⁵ For simplicity, the property covered by unfair competition is referred to here as “marks.”

⁴⁶ *Patten v. Superior Talking Pictures* (S.D.N.Y. 1934).

commerce to acquire secondary meaning, and vice versa. The stronger the mark, the easier it is to prove the second element, a likelihood of confusion among the public. For example, the estate of Edgar Rice Burroughs successfully enjoined advertisements for a pornographic film called *Tarz & Jane & Boy & Cheeta*. Rightly or wrongly, the court saw the characters from Burroughs's works as having such strong secondary meaning that the public was likely to think the estate might have authorized the film. Here, as in many such cases, a prominent disclaimer on the second work might have alleviated the likelihood of confusion and thereby eliminated the claim.

Even marks that are well known might not be protectable if the public associates them with more than one source. For example, the longtime publisher of the *Peter Rabbit* books by Beatrix Potter could not legally prevent another writer from using some of Potter's original illustrations in his book. (The copyright had expired in Potter's works.) The court found that although the illustrations were identified with Beatrix Potter as the author, they were not sufficiently identified with the publisher of the books to justify an injunction.

FALSE ATTRIBUTION

False attribution, also known as "passing off" or "palming off," means the wrongful attribution to an author for a work that she did not write, essentially misappropriating her name. The doctrine has existed in common law for many decades; in 1816, representatives of Lord Byron successfully sued to prevent the publication of poems falsely attributed to him. As in other unfair competition cases, the wrongful use must be likely to cause public confusion as to the source of the product. For example, in the 1970s, the author Ken Follett wrote a series of bestsellers. A publisher for whom he had edited a book years earlier decided to capitalize on his newfound fame and reprint the early work with Follett's name given top billing, even though other writers had written most of the book. Follett sued to stop this misuse of his name. The court ruled that the publisher could not give greater billing to Follett than to the writers who had contributed more, because to do so would mislead the public and harm the author through the false attribution of others' work to him.

As in Follett's case, false attribution can involve material that was partially written by the person to whom authorship is attributed. This often

happens with textbooks that are repeatedly revised over the years. In an extreme case, wrongful attribution might even be libelous. One such case involved Joseph Clevenger, a lawyer who wrote and edited *Clevenger's Annual Practice of New York* for more than thirty years. In 1956, he ended the association with his publisher and revoked the right to use his name as editor of subsequent editions. The publisher nonetheless put out a later edition trading on the established "Clevenger's" mark; the edition also stated that it was "Annually Revised" without revealing that the publisher's staff had made the revisions. Clevenger sued for libel, arguing that the public would attribute numerous mistakes in the text to his errors, harming his professional reputation. The court concluded that a jury might reasonably find that the wording and arrangement of the title page defamed him. Had Clevenger brought an unfair competition claim, he might not have prevailed if the cover had correctly stated that others had revised the book.

Passing off claims cannot be used to enlarge the proper scope of copyright protection, such as through the use of pen names. Samuel Clemens published some literary sketches but did not register the copyrights, and they therefore entered the public domain. Years later, they were published without his permission under the name Mark Twain. Although Clemens objected to the use of his pseudonym, arguing that it had become a trademark that could not be used without his permission, a federal court disagreed, holding that a pen name cannot give a writer more rights than he would have under his real name, and that there was no likelihood of confusion as to the source of the works.

NONATTRIBUTION OR "REVERSE PASSING OFF"

"Reverse passing off"—identifying a product with the wrong source—can apply in cases when a writer's work is not appropriately credited. As with other forms of unfair competition, the remedies for reverse passing off can include money damages and an injunction to prevent distribution of a mistakenly identified product. However, unfair competition law does not, by itself, entitle a writer to authorship credit if her publishing contract states otherwise. Various arrangements exist in the industry in which a writer agrees to work under a pseudonym or not to receive credit; these agreements are enforceable. One mass-market romance publisher is known to "assign" pseudonyms to its authors and then to reassign them at will to other authors. According to its contract, the first author may use her

pseudonym with a different publisher only with permission. Although it seems intended to cause consumer confusion, this practice has not yet been tested in court.

Nor is it clear that a publishing contract that is silent about giving the writer credit requires attribution. Although the custom in trade book publishing is to attribute books to their authors, it has been held that a disclaimer or acknowledgment of a person's contributions to a work instead of authorship credit might be sufficient if it eliminates the likelihood of consumer confusion. The best practice is to make sure your contracts provide that your book or article will be published under your name. Doing so protects your interests in two ways; first, of course, is to ensure you receive appropriate credit. But attribution is also necessary to win recourse in an unfair competition case involving the unacceptable distortion of your work.

DISTORTION

The hallmark of unfair competition, misrepresenting the source of a particular product, includes attributing such a distorted version of an original that the attribution itself misleads the public. An infamous example of literary distortion was ABC's editing of episodes of *Monty Python's Flying Circus* for broadcast. In their original agreements with the BBC, the members of Monty Python had approval rights over changes to their scripts. When ABC bought the right to broadcast the episodes from the BBC, it cut twenty-four minutes from each ninety-minute program to make time for commercials. The result was a "gross distortion" of the sketches, according to the Second Circuit Court of Appeals. When the creators sued under the federal unfair competition act, the court wrote:

The Lanham Act . . . has been invoked to prevent misrepresentations that may injure plaintiff's business or personal reputation. . . . It is sufficient to violate the Act that a representation of a product, although technically true, creates a false impression of the product's origin. . . . [When] a television network broadcasts a program properly designated as having been written and performed by a group, but which has been edited, without the writer's consent, into a form that departs substantially from the original work . . . [it] present[s] him to the public as the creator of a work not his own and thus makes him subject to criticism for work he has not done. . . . In such a case, it is the writer . . . rather than the network, who suffers the consequences of the mutilation. . . . Thus, an allegation that a defendant has presented to

the public a “garbled,” distorted version of plaintiff’s work seeks to redress the very rights sought to be protected by the Lanham Act.⁴⁷

In this case, the Court held that even a prebroadcast disclaimer that the network had edited the works would not have protected the writers sufficiently because not all the viewers would have tuned in to the disclaimer. To be sure, the extent of ABC’s distortion of the series was more profound than a garden variety disappointing editing job on a book or article. ABC had eliminated story lines and climactic moments in the drastically shortened episodes. A writer would face a high bar to legally challenge editorial changes in her work. As is usually the case, writers are better off preserving the right to approve of editorial revisions in their publishing contracts.

MORAL RIGHTS

Unlike France and other European countries, the United States does not recognize moral rights of writers.⁴⁸ The unfair competition claims described above are the closest thing to moral rights provided to writers in this country. Moral rights are derived from French civil law and are neither economic nor based on the ownership of intellectual property. Instead, they embody the belief that, regardless of who own the property rights in a creation, the creator should have control over its exploitation in order to protect her reputation and honor. The Berne Convention defines moral rights as:

the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, said work, which would be prejudicial to his honor or reputation.

In France, *droit moral* is perpetual and inalienable, meaning it cannot be lost or sold by the author. Moral rights give only the author the right to

⁴⁷ *Gilliam, et al. v. American Broadcast Company*, (2d Cir. 1976).

⁴⁸ In order to join the Berne Convention providing for reciprocal international recognition of copyright (described in Chapter 2), the United States had to recognize a minimal level of moral rights for visual artists, but not for writers. The US adopted this optional provision of the Berne Convention with respect to certain works of visual art under the Visual Artists Rights Act enacted in 1990.

decide when a work is completed and should be made public. The author even has the right to reconsider and retract the work from public distribution after publication, although she must pay in advance for the losses such a withdrawal will cause the party that has the distribution rights. The right of paternity, a variety of moral rights, also guarantees that the writer's name and authorship will be acknowledged in any exploitation of her work. An agreement requiring the author to use a pseudonym would not hold up in France because it would violate the right of paternity. By the same token, the right allows an author to prevent the use of her name in association with a work created by someone else. Another variety, the right of integrity, prohibits any alteration or distortion of a work without the writer's consent.

RETRIEVING INTERNET DOMAIN NAMES

Well-known people, including writers, might be able to retrieve Internet domain names containing their names from unrelated parties who do not have a legitimate right to them. Although federal trademark law provides a remedy, it is burdensome to bring a federal lawsuit to retrieve a domain name. The Internet Corporation for Assigned Names and Numbers (ICANN), the body that assigns and regulates the use of domain names, established an arbitration procedure and standards by which owners can quickly retrieve domain names to which they own the trademark. The arbitration panel has the authority to order the transfer of a contested domain name. To retrieve the name, the owner must show three things: that the name is confusingly similar to her mark (registered or common law), the party who registered the domain name has no rights or legitimate interests in the name, and the registrant registered and used the name in bad faith.

The Authors Guild helped set a precedent in this area years ago when it brought an ICANN proceeding against an individual who had registered numerous domains matching famous authors' names. The registrant did not use the names to point to a website. He simply demanded large fees to transfer the names to the authors. The arbitration panel found that authors have common-law trademark rights in their names and that warehousing and offering the names to the highest bidder do not give the early registrant a legitimate right to the names. In fact, the warehousing in itself

demonstrated bad faith in light of the other facts, and the authors won the right to the domain names.

HARM TO AN AUTHOR'S REPUTATION

On occasion, some public treatment of a writer or her work might be a defamation,⁴⁹ but a critical review of a writer's work, no matter how vicious, cannot in itself be defamatory. Under the "fair comment" rule, a writer who places work before the public invites criticism of the work. But if untrue, disparaging statements of fact about the work or the author are made in a review, the critic might have crossed the line into defamation. It is also possible to claim that publication of a badly distorted work defames the author, as in the *Clevenger* case described above. Because work in the public domain can be freely copied by anyone, an author is unlikely to succeed in claiming a defamatory implication that she consented to distort her work in a derivative rendering. For example, the use of the Russian composer Shostakovich's public domain works in an anti-Russia film was held not defamatory.

RIGHTS OF PRIVACY

Rights of privacy encompass several somewhat different personal interests, including the right to be free from unwanted and unnecessary publicity, the right to shield one's most private and intimate moments from publicity, and protection from being shown in a false light before the public. A writer might make out a case of invasion of privacy in particular situations. For example, a professor's privacy was held invaded when he was shown in a false light by the use of his name on the unauthorized publication of his course lecture notes. The court found that using his name implied the plaintiff consented to the publication when, in fact, he reasonably believed publication would harm his professional standing. In the same vein, false attribution might be ruled a false light invasion of privacy, although courts are not all in agreement. Some courts have held that the right of privacy only protects a writer's real name, not her pen name, although this seems to make little sense. As described in more detail in chapter 8, the right of

⁴⁹ Defamation and invasion of privacy as the bases for a lawsuit are described in Chapter 8.

privacy diminishes as the subject gains stature as a public figure, particularly with respect to areas of her life that are matters of legitimate public interest.

RIGHT OF PUBLICITY

The right of publicity recognizes that individuals have the exclusive right to benefit from commercial exploitation of their names, likenesses, and personae. By definition, the right of publicity is of less value to a person who is not famous. The right of publicity also does not overcome the First Amendment right to use a famous person's name and likeness commercially if the use is incidental to legitimate reporting. For example, Ayn Rand's review of *Chaos Below Heaven* by Eugene Vale was accurately quoted on the book's jacket without her permission. She sued over what she termed a "blatant commercial exploitation of her personality," but the court concluded the quotation was a legitimate use of a comment by a public figure on a matter of current interest.

Most personal rights, including the right to privacy and the right to redress for defamation, die with the person. In 1984, however, California enacted a "celebrity rights" law that gave publicity rights to deceased celebrities' estates. Other states, notably Tennessee (the home state of Elvis Presley's estate), have followed suit. The basic approach of these laws is to protect the publicity rights of deceased people for up to fifty years after their death. The right applies to people whose names, voices, signatures, or likenesses had commercial value at the time of death, whether or not that commercial value was exploited during their life. Unlike defamation and invasion of privacy claims, the right of publicity can be assigned to and sold by the heirs. New York, the media capital of the country, has so far resisted passing a "dead celebrities" restriction on commercial speech.

On the other hand, valuable as the right of publicity might be to well-known writers, it does not protect a writer from receiving accurate credit for a work to which he contributed. Stephen King objected to the use of his name in the credits and advertising for a film based on a short story he had written and optioned years earlier. The court agreed with him that calling the film "Stephen King's *The Lawnmower Man*" violated the Lanham Act because he had not written the screenplay or had any other involvement with the film. But the court permitted the producers to bill the film as "based on a story by Stephen King," because it was accurate to do so.

