



Report on Public Policy Position

Name of Section:

Arts, Communications, Entertainment & Sports Section
ACES: Right of Publicity Committee

Contact Person:

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Other:

Right of Publicity Statute

Date position was adopted:

October 1, 2004

Process used to take the ideological position:

The statute was drafted by polling of section members and using their input to alter a model. The position vote was taken at the section's annual meeting

Number of members in the decision-making body:

9

Number who voted in favor and opposed to the position:

7 voted in favor, 2 voted in opposition

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

Please see the following pages

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

Please see the following pages

**ACES STATUTORY PROPOSAL
MICHIGAN RIGHT OF PUBLICITY**

1.1 Definitions

(a) "Commercial purpose"

As used in this chapter, "commercial purpose" means the use of an aspect of a personality's right of publicity as follows:

- (1) On or in connection with a product, merchandise, goods, services, or commercial activities.
- (2) For advertising or soliciting purchases of products, merchandise, goods, services, or for promoting commercial activities.
- (3) For the purpose of fundraising.

(b) "Name"

As used in this chapter, "name" means the actual or assumed name of a living or deceased natural person that is intended to identify the person.

(c) "News reporting or an entertainment medium"

As used in this chapter, "news reporting or an entertainment medium" means a medium that publishes, broadcasts, or disseminates advertising in the normal course of its business, including the following:

- (1) Newspapers.
- (2) Magazines.
- (3) Radio and television networks and stations.
- (4) Cable television systems.

(d) "Person"

As used in this chapter, "person" means a natural person, a partnership, a firm, a corporation, or an unincorporated association.

(e) "Personalty"

As used in this chapter, "personalty" means a living or deceased natural person whose:

- (1) name;
- (2) voice;
- (3) signature;
- (4) photograph;
- (5) image;
- (6) likeness;
- (7) distinctive appearance;
- (8) gesture;
- (9) mannerisms; or,
- (10) persona;

has commercial value, whether or not the person uses or authorizes the use of the person's rights of publicity for a commercial purpose during the person's lifetime.

(f) "Right of publicity"

As used in this chapter, "right of publicity" means a personality's property interest in the personality's:

- (1) name;
- (2) voice;
- (3) signature;
- (4) photograph;
- (5) image;
- (6) likeness;
- (7) distinctive appearance;
- (8) gestures;
- (9) mannerisms; or,
- (10) persona.

**ACES STATUTORY PROPOSAL
MICHIGAN RIGHT OF PUBLICITY**

§ 1.2 Applicability

(a) This chapter applies to an act or event that occurs within Michigan, regardless of a personality's domicile, residence, or citizenship.

(b) This chapter does not affect rights and privileges recognized under any other law that apply to a news reporting or an entertainment medium.

(c) This chapter does not apply to the following:

(1) The use of a personality's name, voice, signature, photograph, image, likeness, distinctive appearance, gestures, mannerisms, or persona in any of the following:

(A) Literary works, theatrical works, musical compositions, film, radio, or television programs.

(B) Material that has political or newsworthy value.

(C) Original works of fine art.

(D) Promotional material or an advertisement for a news reporting or an entertainment medium that:

(i) uses all or part of a past edition of the medium's own broadcast or publication; and

(ii) does not convey or reasonably suggest that a personality endorses the news reporting or entertainment medium.

(E) An advertisement or commercial announcement for a use described in this subdivision.

(2) The use of a personality's name to truthfully identify the personality as:

(A) the author of a written work; or

(B) a performer of a recorded performance; under circumstances in which the written work or recorded performance is otherwise rightfully reproduced, exhibited, or broadcast.

(3) The use of a personality's:

(A) name;

(B) voice;

(C) signature;

(D) photograph;

(E) image;

(F) likeness;

(G) distinctive appearance;

(H) gestures;

(I) mannerisms; or

(J) persona; in connection with the broadcast or reporting of an event or a topic of general or public interest.

§ 1.3 Written consent and protection period

(a) A person may not use an aspect of a personality's **right of publicity** for a commercial purpose during the personality's lifetime or for fifty (50) years after the date of the personality's death without having obtained previous written consent from a person specified in section 1.12 of this chapter.

§ 1.4 Jurisdiction

A person who:

(1) engages in conduct within Michigan that is prohibited under section 1.3 of this chapter;

(2) creates or causes to be created within Michigan goods, merchandise, or other materials prohibited under section 1.3 of this chapter;

(3) transports or causes to be transported into Michigan goods, merchandise, or other materials created or used in violation of section 1.3 of this chapter; or

(4) knowingly causes advertising or promotional material created or used in violation of section 1.3 of this chapter to be published, distributed, exhibited, or disseminated within Michigan; submits to the jurisdiction of Michigan courts.

§ 1.5 Liability for violations of this chapter

A person who violates section 1.3 of this chapter may be liable for any of the following:

(1) Damages in the amount of:

(A) one thousand dollars (\$ 1,000); or

(B) actual damages, including profits derived from the unauthorized use; whichever is greater.

(2) Treble or punitive damages, as the injured party may elect, if the violation under section 1.3 of this chapter is knowing, willful, or intentional.

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§ 1.6 Profits -- Establishing amount

In establishing the amount of the profits under section 1.5(1)(B) of this chapter:

- (1) the plaintiff is required to prove the gross revenue attributable to the unauthorized use; and
- (2) the defendant is required to prove properly deductible expenses.

§ 1.7 Damages -- Injunctive relief

In addition to any damages awarded under section 1.5 of this chapter, the court:

- (1) shall award to the prevailing party reasonable attorney's fees, costs, and expenses relating to an action under this chapter; and
- (2) may order temporary or permanent injunctive relief, except as provided by section 1.8 of this chapter.

§ 1.8 Enforcement of injunction against news reporting or entertainment medium

Injunctive relief is not enforceable against a news reporting or an entertainment medium that has:

- (1) contracted with a person for the publication or broadcast of an advertisement; and
- (2) incorporated the advertisement in tangible form into material that has been prepared for broadcast or publication.

§ 1.9 Impoundment

(a) This section does not apply to a news reporting or an entertainment medium.

(b) During any period that an action under this chapter is pending, a court may order the impoundment of:

- (1) goods, merchandise, or other materials claimed to have been made or used in violation of section 1.3 of this chapter; and
- (2) plates, molds, matrices, masters, tapes, negatives, or other items from which goods, merchandise, or other materials described in subdivision (1) may be manufactured or reproduced.

(c) The court may order impoundment under subsection (b) upon terms that the court considers reasonable.

§ 1.10 Destruction of certain items

(a) This section does not apply to a news reporting or an entertainment medium.

(b) As part of a final judgment or decree, a court may order the destruction or other reasonable disposition of items described in section 1.9(b) of this chapter.

§ 1.11 Property rights

The rights recognized under this chapter are property rights, freely transferable and descendible, in whole or in part, by the following:

- (1) Contract.
- (2) License.
- (3) Gift.
- (4) Trust.
- (5) Testamentary document.
- (6) Operation of the laws of intestate succession applicable to the state administering the estate and property of an intestate deceased personality, regardless of whether the state recognizes the property rights set forth under this chapter.

§ 1.12 Person who may exercise rights

(a) The written consent required by section 1.3 of this chapter and the rights and remedies set forth in this chapter may be exercised and enforced by:

- (1) a personality; or
 - (2) a person to whom the recognized rights of a personality have been transferred under section 1.11 of this chapter.
- (b) If a transfer of a personality's recognized rights has not occurred under section 1.11 of this chapter, a person to whom the personality's recognized rights are transferred under section 1.13 of this chapter may exercise and enforce the rights under this chapter and seek the remedies provided in this chapter.

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§ 1.13 Death of intestate personality -- Interest in personality's recognized rights

(a) Subject to sections 1.11 and 1.12 of this chapter, after the death of an intestate personality, the rights and remedies of this chapter may be exercised and enforced by a person who possesses a total of not less than one-half (1/2) interest of the personality's recognized rights.

(b) A person described in subsection (a) shall account to any other person in whom the personality's recognized rights have vested to the extent that the other person's interest may appear.

§ 1.14 When deceased personality's rights terminate

If:

(1) a deceased personality's recognized rights under this chapter were not transferred by;

(A) contract;

(B) license;

(C) gift;

(D) trust; or

(E) testamentary document; and

(2) there are no surviving persons as described in section 1.12 of this chapter to whom the deceased personality's recognized rights pass by intestate succession; the deceased personality's rights set forth in this chapter terminate.

§ 1.15 Supplemental nature of rights and remedies

The rights and remedies provided for in this chapter are supplemental to any other rights and remedies provided by law.

§ 1.16 Defenses

The following affirmative defenses shall be available, though defenses are not limited to the following:

(1) Incidental use;

(2) No actual use;

(3) Fictional use;

(4) Transformative use;

(5) Implied consent; and,

(6) Parody.