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(3) A person or persons shall be considered to be represented as members of a definable group if they are represented in the photograph solely as a result of being present at the time the photograph was taken and have not been singled out as individuals in any manner.

(c) Where a photograph or likeness of an employee of the person using the photograph or likeness appearing in the advertisement or other publication prepared by or in behalf of the user is only incidental, and not essential, to the purpose of the publication in which it appears, there shall arise a rebuttable presumption affecting the burden of producing evidence that the failure to obtain the consent of the employee was not a knowing use of the employee's photograph or likeness.

(d) For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subdivision (a).

(e) The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subdivision (a) solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the person's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subdivision (a).

(f) Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the person's name, voice, signature, photograph, or likeness as prohibited by this section.

(g) The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

3344.1. (a) (1) Any person who uses a deceased personality's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior consent from the person or persons specified in subdivision (c), shall be liable for any damages sustained by the person or persons injured as a result thereof. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of seven hundred fifty dollars (\$750) or the actual damages suffered by the injured party or parties, as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. In establishing these profits, the injured party or parties shall be required to present proof only of the gross revenue attributable to the use and the person who violated the section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties.

The prevailing party or parties in any action under this section shall also be entitled to attorneys' fees and costs.

(2) For purposes of this subdivision, a play, book, magazine, newspaper, musical composition, audiovisual work, radio or television program, single and original work of art, work of political or newsworthy value, or an advertisement or commercial announcement for any of these works, shall not be considered a product, article of merchandise, good, or service if it is fictional or nonfictional entertainment, or a dramatic, literary, or musical work.

(3) If a work that is protected under paragraph (2) includes within it a use in connection with a product, article of merchandise, good, or service, this use shall not be exempt under this subdivision, notwithstanding the unprotected use's inclusion in a work otherwise exempt under this subdivision, if the claimant proves that this use is so directly connected with a product, article of merchandise, good, or service as to constitute an act of advertising, selling, or soliciting purchases of that product, article of merchandise, good, or service by the deceased personality without prior consent from the person or persons specified in subdivision (c).

(b) The rights recognized under this section are property rights, freely transferable, in whole or in part, by contract or by means of trust or testamentary documents, whether the transfer occurs before the death of the deceased personality, by the deceased personality or his or her transferees, or, after the death of the deceased personality, by the person or persons in whom the rights vest under this section or the transferees of that person or persons.

(c) The consent required by this section shall be exercisable by the person or persons to whom the right of consent, or portion thereof, has been transferred in accordance with subdivision (b), or if no transfer has occurred, then by the person or persons to whom the right of consent, or portion thereof, has passed in accordance with subdivision (d).

(d) Subject to subdivisions (b) and (c), after the death of any person, the rights under this section shall belong to the following person or persons and may be exercised, on behalf of and for the benefit of all of those persons, by those persons who, in the aggregate, are entitled to more than a one-half interest in the rights:

(1) The entire interest in those rights belong to the surviving spouse of the deceased personality unless there are any surviving children or grandchildren of the deceased personality, in which case one-half of the entire interest in those rights belong to the surviving spouse.

(2) The entire interest in those rights belong to the surviving children of the deceased personality and to the surviving children of any dead child of the deceased personality unless the deceased personality has a surviving spouse, in which case the ownership of a one-half interest in rights is divided among the surviving children and grandchildren.

(3) If there is no surviving spouse, and no surviving children or grandchildren, then the entire interest in those rights belong to the surviving parent or parents of the deceased personality.

(4) The rights of the deceased personality's children and grandchildren are in all cases divided among them and exercisable in the manner provided in Section 240 of the Probate Code according to the number of the deceased personality's children represented. The share of the children of a dead child of a deceased personality can be exercised only by the action of a majority of them.

(e) If any deceased personality does not transfer his or her rights under this section by contract, or by means of a trust or testamentary document, and there are no surviving persons as described in subdivision (d), then the rights set forth in subdivision (a) shall terminate.

(f) (1) A successor in interest to the rights of a deceased personality under this section or a licensee thereof may not recover damages for a use prohibited by this section that occurs before the successor in interest or licensee registers a claim of the rights under paragraph (2).

(2) Any person claiming to be a successor in interest to the rights of a deceased personality under this section or a licensee thereof may register that claim with the Secretary of State on a form prescribed by the Secretary of State and upon payment of a fee as set forth in subdivision (d) of Section 12195 of the Government Code.

The form shall be verified and shall include the name and date of death of the deceased personality, the name and address of the claimant, the basis of the claim, and the rights claimed.

(3) Upon receipt and after filing of any document under this section, the Secretary of State shall post the document along with the entire registry of persons claiming to be a successor in interest to the rights of a deceased personality or a registered licensee under this section upon the World Wide Web, also known as the Internet. The Secretary of State may microfilm or reproduce by other techniques any of the filings or documents and destroy the original filing or document. The microfilm or other reproduction of any document under the provisions of this section shall be admissible in any court of law. The microfilm or other reproduction of any document may be destroyed by the Secretary of State 70 years after the death of the personality named therein.

(4) Claims registered under this subdivision shall be public records.

(g) No action shall be brought under this section by reason of any use of a deceased personality's name, voice, signature, photograph, or likeness occurring after the expiration of 70 years after the death of the deceased personality.

(h) As used in this section, "deceased personality" means any natural person whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death, whether or not during the lifetime of that natural person the person used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services. A "deceased personality" shall include, without limitation, any such natural person who has died within 70 years prior to January 1, 1985.

(i) As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any video tape or live television transmission, of any person, such that the deceased personality is readily identifiable. A deceased personality shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine who the person depicted in the photograph is.

(j) For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subdivision (a).

(k) The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subdivision (a) solely because the material containing the use is commercially sponsored or contains paid advertising. Rather, it shall be a question of fact whether or not the use of the deceased personality's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subdivision (a).

(l) Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that the owners or employees had knowledge of the unauthorized use of the deceased personality's name, voice, signature, photograph, or likeness as prohibited by this section.

(m) The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

(n) This section shall apply to the adjudication of liability and the imposition of any damages or other remedies in cases in which the liability, damages, and other remedies arise from acts occurring directly in this state. For purposes of this section, acts giving rise to liability shall be limited to the use, on or in products, merchandise, goods, or services, or the advertising or selling, or soliciting purchases of, products, merchandise, goods, or services prohibited by this section.

(o) This section shall be known and may be cited as the Astaire Celebrity Image Protection Act.

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ARTICLE 5 (Civil Rights)

Right of Privacy

Section 50. Right of privacy.

51. Action for injunction and for damages.

Sec. 50. Right of privacy. A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.

Sec. 51. Action for injunction and for damages. Any person whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait or picture, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait or picture in such manner as is forbidden or declared to be unlawful by section fifty of this article, the jury, in its discretion, may award exemplary damages. But nothing contained in this article shall be so construed as to prevent any person, firm or corporation from selling or otherwise transferring any material containing such name, portrait or picture in whatever

medium to any user of such name, portrait or picture, or to any third party for sale or transfer directly or indirectly to such a user, for use in a manner lawful under this article; nothing contained in this article shall be so construed as to prevent any person, firm or corporation, practicing the profession of photography, from exhibiting in or about his or its establishment specimens of the work of such establishment, unless the same is continued by such person, firm or corporation after written notice objecting thereto has been given by the person portrayed; and nothing contained in this article shall be so construed as to prevent any person, firm or corporation from using the name, portrait or picture of any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by him which he has sold or disposed of with such name, portrait or picture used in connection therewith; or from using the name, portrait or picture of any author, composer or artist in connection with his literary, musical or artistic productions which he has sold or disposed of with such name, portrait or picture used in connection therewith.

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PROPERTY (765 ILCS 1075/)

Right of Publicity Act.

(765 ILCS 1075/1)

Sec. 1. Short title. This Act may be cited as the Right of Publicity Act.

(765 ILCS 1075/5)

Sec. 5. Definitions. As used in this Act: "Commercial purpose" means the public use or holding out of an individual's identity (i) on or in connection with the offering for sale or sale of a product, merchandise, goods, or services; (ii) for purposes of advertising or promoting products, merchandise, goods, or services; or (iii) for the purpose of fundraising. "Identity" means any attribute of an individual that serves to identify that individual to an ordinary, reasonable viewer or listener, including but not limited to (i) name, (ii) signature, (iii) photograph, (iv) image, (v) likeness, or (vi) voice. "Individual" means a living or deceased natural person, regardless of whether the identity of that individual has been used for a commercial purpose during the

individual's lifetime. "Juristic person" means a partnership, trust, estate, corporation, unincorporated association, or other organization capable of suing and being sued in a court of law. "Name" means the actual name or other name by which an individual is known that is intended to identify that individual.

(765 ILCS 1075/10)

Sec. 10. Recognition of right of publicity. The right to control and to choose whether and how to use an individual's identity for commercial purposes is recognized as each individual's right of publicity.

(765 ILCS 1075/15)

Sec. 15. Transferability, descendability, and divisibility. The rights under this Act are property rights that are freely transferable in whole or in part to any person either by written transfer, including but not limited to wills and trusts, or by intestate succession only to an individual's spouse, parents, children, and grandchildren, except that the rights under this Act are not subject to levy or attachment and may not be the subject of a security interest. Nothing in this Section limits the ability of any party to levy, attach, or obtain a security interest in the proceeds of the rights under this Act or the proceeds of the exercise of those rights.

(765 ILCS 1075/20)

Sec. 20. Enforcement of rights and remedies.

(a) The rights and remedies set forth in this Act may be exercised and enforced by:

(1) an individual or his or her authorized representative;

(2) a person to whom the recognized rights have been transferred by written transfer under Section 15 of this Act; or

(3) after the death of an individual who has not transferred the recognized rights by written transfer under this Act, any person or persons who possesses an interest in those rights.

(b) Each person described in paragraph (3) of subsection (a) shall make a proportional accounting to, and shall act at all times in good faith with respect to, any other person in whom the rights being enforced have vested.

(765 ILCS 1075/25)

Sec. 25. Termination of rights of deceased individual. The rights set forth in this Act terminate if:

- (a) a deceased individual has not transferred his or her rights in writing under Section 15 of this Act; and
- (b) the individual has no living spouse, parents, children, or grandchildren.

(765 ILCS 1075/30)

Sec. 30. Limitations regarding use of an individual's identity.

- (a) A person may not use an individual's identity for commercial purposes during the individual's lifetime without having obtained previous written consent from the appropriate person or persons specified in Section 20 of this Act or their authorized representative.
- (b) If an individual's death occurs after the effective date of this Act, a person may not use that individual's identity for commercial purposes for 50.

(765 ILCS 1075/35)

Sec. 35. Applicability.

- (a) This Act applies to acts or events that take place after the effective date of this Act.
- (b) This Act does not apply to the following:
 - (1) use of an individual's identity in an attempt to portray, describe, or impersonate that individual in a live performance, a single and original work of fine art, play, book, article, musical work, film, radio, television, or other audio, visual, or audio-visual work, provided that the performance, work, play, book, article, or film does not constitute in and of itself a commercial advertisement for a product, merchandise, goods, or services;
 - (2) use of an individual's identity for non-commercial purposes, including any news, public affairs, or sports broadcast or account, or any political campaign;
 - (3) use of an individual's name in truthfully identifying the person as the author of a particular work or program or the performer in a particular performance;
 - (4) promotional materials, advertisements, or commercial announcements for a use described under paragraph (1), (2), or (3) of this subsection; or

(5) use of photographs, videotapes, and images by a person, firm, or corporation practicing the profession of photography ("professional photographer") to exhibit in or about the professional photographer's place of business or portfolio, specimens of the professional photographer's work, unless the exhibition is continued by the professional photographer after written notice objecting to the exhibition has been given by the individual portrayed.

(765 ILCS 1075/40)

Sec. 40. Violations; monetary relief.

(a) A person who violates Section 30 of this Act may be liable for either of the following, whichever is greater:

- (1) actual damages, profits derived from the unauthorized use, or both; or
- (2) \$1,000

(b) Punitive damages may be awarded against a person found to have willfully violated Section 30 of this Act.

(765 ILCS 1075/45)

Sec. 45. Establishment of profits. In establishing profits under paragraph (1) of subsection (a) of Section 40 of this Act:

- (a) the plaintiff is required to prove the damages or gross revenue attributable to the unauthorized use; and
- (b) the defendant is required to prove properly deductible expenses.

(765 ILCS 1075/50)

Sec. 50. Injunctive relief. Upon a showing of cause as required by Article XI of the Code of Civil Procedure for the issuance of injunctive relief, the court may issue such temporary restraining orders, preliminary injunctions, and permanent injunctions as may be appropriate under this Act.

(765 ILCS 1075/55)

Sec. 55. Attorney's fees; costs. The court may award to the prevailing party reasonable attorney's fees, costs, and expenses relating to an action under this Act.

(765 ILCS 1075/60)

Sec. 60. Rights and remedies. The rights and remedies provided for in this Act are meant to supplant those available under the common law as of the effective date of this Act, but do not affect an individual's common law rights as they existed before the effective date of this Act. Except for the common law right of publicity, the rights and remedies provided under this Act are supplemental to any other rights and remedies provided by law including, but not limited to, the common law right of privacy.

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IC 32-36 ARTICLE 36. PUBLICITY IC 32-36-1

Chapter 1. Rights of Publicity

IC 32-36-1-1 Application of chapter

Sec. 1. (a) This chapter applies to an act or event that occurs within Indiana, 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, or mannerisms 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; or

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

IC 32-36-1-2 "Commercial purpose" defined

Sec. 2. 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.

IC 32-36-1-3 "Name" defined

Sec. 3. 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.

IC 32-36-1-4 "News reporting or an entertainment medium" defined

Sec. 4. 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.

IC 32-36-1-5 "Person" defined

Sec. 5. As used in this chapter, "person" means a natural person, a partnership, a firm, a corporation, or an unincorporated association.

IC 32-36-1-6 "Personality" defined

Sec. 6. As used in this chapter, "personality" 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; or (9) mannerisms; 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.

IC 32-36-1-7 "Right of publicity" defined

Sec. 7. 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; or (9) mannerisms.

IC 32-36-1-8 Consent to commercial purpose use of personality's right of publicity; duration of right

Sec. 8. (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 one hundred (100) years after the date of the personality's death without having obtained previous written consent from a person specified in section 17 of this chapter.

(b) A written consent solicited or negotiated by an athlete agent (as defined in IC 25-5.2-1-2) from a student athlete (as defined in IC 25-5.2-1-2) is void if the athlete agent obtained the consent as the result of an agency contract that:

(1) was void under IC 25-5.2-2-2 or under the law of the state where the agency contract was entered into;

(2) was voided by the student athlete under IC 25-5.2-2-8 or a similar law in the state where the agency contract was entered into; or

(3) was entered into without the notice required under IC 35-46-4-4 or a similar law in the state where the agency contract was entered into.

(c) A written consent for an endorsement contract (as defined in IC 35-46-4-1.5) is void if notice is not given as required by IC 35-46-4-4 or a similar law in the state where the endorsement contract is entered into.

IC 32-36-1-9 Jurisdictional acts

Sec. 9. A person who:

- (1) engages in conduct within Indiana that is prohibited under section 8 of this chapter;
- (2) creates or causes to be created within Indiana goods, merchandise, or other materials prohibited under section 8 of this chapter;
- (3) transports or causes to be transported into Indiana goods, merchandise, or other materials created or used in violation of section 8 of this chapter; or
- (4) knowingly causes advertising or promotional material created or used in violation of section 8 of this chapter to be published, distributed, exhibited, or disseminated within Indiana; submits to the jurisdiction of Indiana courts.

IC 32-36-1-10 Damages

Sec. 10. A person who violates section 8 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 8 of this chapter is knowing, willful, or intentional.

IC 32-36-1-11 Profits derived from unauthorized use; proof

Sec. 11. In establishing the amount of the profits under section 10(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.

IC 32-36-1-12 Additional remedies

Sec. 12. In addition to any damages awarded under section 10 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 13 of this chapter.

IC 32-36-1-13 Injunctive relief; enforceability against news reporting or entertainment medium

Sec. 13. 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.

IC 32-36-1-14 Impoundment of materials pending resolution of action

Sec. 14. (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 8 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.

IC 32-36-1-15 Destruction or other disposition of offending materials

- Sec. 15. (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 14 (b) of this chapter.

IC 32-36-1-16 Property rights

Sec. 16. 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.

IC 32-36-1-17 Exercise and enforcement of rights and remedies

Sec. 17. (a) The written consent required by section 8 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 16 of this chapter.

(b) If a transfer of a personality's recognized rights has not occurred under section 16 of this chapter, a person to whom the personality's recognized rights are transferred under section 18 of this chapter may exercise and enforce the rights under this chapter and seek the remedies provided in this chapter.

IC 32-36-1-18 Exercise and enforcement of rights and remedies following death of intestate personality; fractional interests

Sec. 18. (a) Subject to sections 16 and 17 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.

IC 32-36-1-19 Termination of untransferred rights following personality's death

Sec. 19. 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 17 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.

IC 32-36-1-20 Rights and remedies supplemental to others provided by law

Sec. 20. The rights and remedies provided for in this chapter are supplemental to any other rights and remedies provided by law.

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PROPERTY CODE

**CHAPTER 26. USE OF A DECEASED INDIVIDUAL'S NAME, VOICE, SIGNATURE,
PHOTOGRAPH, OR LIKENESS**

§ 26.001. DEFINITIONS. In this chapter:

- (1) "Photograph" means a photograph or photographic reproduction, still or moving, videotape, or live television transmission of an individual in a manner that allows a person viewing the photograph with the naked eye to reasonably determine the identity of the individual.
- (2) "Property right" means the property right created by this chapter.
- (3) "Name" means the actual or assumed name used by an individual which, when used in conjunction with other information, is intended to identify a particular person.

(4) "Media enterprise" means a newspaper, magazine, radio station or network, television station or network, or cable television system.

§ 26.002. PROPERTY RIGHT ESTABLISHED.

An individual has a property right in the use of the individual's name, voice, signature, photograph, or likeness after the death of the individual.

§ 26.003. APPLICABILITY. This chapter applies to an individual:

(1) alive on or after September 1, 1987, or who died before September 1, 1987, but on or after January 1, 1937; and

(2) whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death or comes to have commercial value after that time.

§ 26.004. TRANSFERABILITY.

(a) The property right is freely transferable, in whole or in part, by contract or by means of trust or testamentary documents.

(b) The property right may be transferred before or after the death of the individual.

§ 26.005. OWNERSHIP AFTER DEATH OF INDIVIDUAL.

(a) If the ownership of the property right of an individual has not been transferred at or before the death of the individual, the property right vests as follows:

(1) if there is a surviving spouse but there are no surviving children or grandchildren, the entire interest vests in the surviving spouse;

(2) if there is a surviving spouse and surviving children or grandchildren, one-half the interest vests in the surviving spouse and one-half the interest vests in the surviving children or grandchildren;

(3) if there is no surviving spouse, the entire interest vests in the surviving children of the deceased individual and the surviving children of any deceased children of the deceased individual; or

(4) if there is no surviving spouse, children, or grandchildren, the entire interest vests in the surviving parents of the deceased individual.

(b) The interests of the deceased individual's children and grandchildren are divided among them and exercisable on a per stirpes basis in the manner provided by Section 43, Texas Probate Code, according to the number of the deceased individual's children represented. If there is more than one child of a deceased child of the deceased individual, the share of a child of a deceased child may only be exercised by a majority of the children of the deceased child.

(c) If the property right is split among more than one person, those persons who own more than a one-half interest in the aggregate may exercise the right on behalf of all persons who own the right.

§ 26.006. REGISTRATION OF CLAIM.

(a) A person who claims to own a property right may register that claim with the secretary of state.

(b) The secretary of state shall provide a form for registration of a claim under this section. The form must be verified and must include:

- (1) the name and date of death of the deceased individual;
- (2) the name and address of the claimant;
- (3) a statement of the basis of the claim; and
- (4) a statement of the right claimed.

(c) The secretary of state may microfilm or reproduce by another technique a document filed under this section and destroy the original document.

(d) A document or a reproduction of a document filed under this section is admissible in evidence.

(e) The secretary of state may destroy all documents filed under this section after the 50th anniversary of the date of death of the individual whose property right they concern.

(f) The fee for filing a claim is \$25.

(g) A document filed under this section is a public record.

§ 26.007. EFFECT OF REGISTRATION.

(a) Registration of a claim is prima facie evidence of a valid claim to a property right.

(b) A registered claim is superior to a conflicting, unregistered claim unless a court invalidates the registered claim.

§ 26.008. EXERCISE OF OWNERSHIP FOR FIRST YEAR FOLLOWING DEATH OF INDIVIDUAL.

(a) Except as provided by Subsection (b), for the first year following the death of the individual a property right may be exercised, if authorized by law or an appointing court, by the following persons who may be appointed by a court for the benefit of the estate of the deceased individual:

- (1) an independent executor;
- (2) an executor;
- (3) an independent administrator;
- (4) a temporary or permanent administrator; or
- (5) a temporary or permanent guardian.

(b) For the first year following the death of the individual, an owner of a property right may exercise that right only if the owner registers a valid claim as provided by Section 26.006.

§ 26.009. EXERCISE OF OWNERSHIP AFTER FIRST YEAR FOLLOWING DEATH OF INDIVIDUAL.

After the first year following the death of the individual, an owner of a property right may exercise that right whether or not the owner has registered a claim as provided by Section 26.006.

§ 26.010. TERMINATION.

A property right expires on the first anniversary of the date of death of the individual if:

- (1) the individual has not transferred the right; and
- (2) a surviving person under Section 26.005 does not exist.

§ 26.011. UNAUTHORIZED USES.

Except as provided by Section 26.012, a person may not use, without the written consent of a person who may exercise the property right, a deceased individual's name, voice, signature, photograph, or likeness in any manner, including:

- (1) in connection with products, merchandise, or goods; or
- (2) for the purpose of advertising, selling, or soliciting the purchase of products, merchandise, goods, or services.

§ 26.012. PERMITTED USES.

(a) A person may use a deceased individual's name, voice, signature, photograph, or likeness in:

- (1) a play, book, film, radio program, or television program;
- (2) a magazine or newspaper article;
- (3) material that is primarily of political or newsworthy value;
- (4) single and original works of fine art; or

(5) an advertisement or commercial announcement concerning a use under this subsection.

(b) A media enterprise may use a deceased individual's name, voice, signature, photograph, or likeness in connection with the coverage of news, public affairs, a sporting event, or a political campaign without consent. Any use other than the above by a media enterprise of a deceased individual's name, voice, signature, photograph, or likeness shall require consent if the material constituting the use is integrally and directly connected with commercial sponsorship or paid advertising. No consent shall be required for the use of the deceased individual's name,

voice, signature, photograph, or likeness by a media enterprise if the broadcast or article is not commercially sponsored or does not contain paid advertising.

(c) A person who is an owner or employee of a media enterprise, including a newspaper, magazine, radio station or network, television station or network, cable television system, billboard, or transit ad, that is used for advertising a deceased individual's name, voice, signature, photograph, or likeness in a manner not authorized by this section is not liable for damages as provided by this section unless the person:

(1) knew that the use was not authorized by this section; or

(2) used the deceased individual's name, voice, signature, photograph, or likeness in a manner primarily intended to advertise or promote the media enterprise itself.

(d) A person may use a deceased individual's name, voice, signature, photograph, or likeness in any manner after the 50th anniversary of the date of the individual's death.

§ 26.013. LIABILITY FOR UNAUTHORIZED USE.

(a) A person who uses a deceased individual's name, voice, signature, photograph, or likeness in a manner not authorized by this chapter is liable to the person who owns the property right for:

(1) the amount of any damages sustained, as a result of the unauthorized use, by the person who owns the property right or \$2,500, whichever is greater;

(2) the amount of any profits from the unauthorized use that are attributable to that use;

(3) the amount of any exemplary damages that may be awarded; and

(4) reasonable attorney's fees and expenses and court costs incurred in recovering the damages and profits established by this section.

(b) The amount of profits under Subsection (a)(2) may be established by a showing of the gross revenue attributable to the unauthorized use minus any expenses that the person who committed the unauthorized use may prove.

§ 26.014. OTHER RIGHTS NOT AFFECTED.

This chapter does not affect a right an individual may have in the use of the individual's name, voice, signature, photograph, or likeness before the death of the individual.

§ 26.015. DEFENSES TO LIABILITY.

A person shall not be liable for damages under this chapter if he has acted in reliance on the results of a probate proceeding governing the estate of the deceased personality in question.

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Oklahoma.Stat.tit. 12,1448,1449

§12-1448. Deceased personality's right of publicity - Unauthorized use - Claims - Exemptions.

A. Any person who uses a deceased personality's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior consent from the person or persons specified in subsection C of this section, shall be liable for any damages sustained by the person or persons injured as a result thereof, and any profits from the unauthorized use that are attributable to the use shall be taken into account in computing the actual damages. In establishing these profits, the injured party or parties shall be required to present proof only of the gross revenue attributable to the use and the person who violated this section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party or parties in any action under this section shall also be entitled to attorney's fees and costs.

B. The rights recognized under this section are property rights, freely transferable, in whole or in part, by contract or by means of trust or testamentary documents, whether the transfer occurs before the death of the deceased personality, by the deceased personality or his or her transferees, or, after the death of the deceased personality, by the person or persons in whom such rights vest under this section or the transferees of that person or persons.

C. The consent required by this section shall be exercisable by the person or persons to whom such right of consent (or portion thereof) has been transferred in accordance with subsection B of this section, or if no such transfer has occurred, then by the person or persons to whom such right of consent (or portion thereof) has passed in accordance with subsection D of this section.

D. Subject to subsections B and C of this section, after the death of any person, the rights under this section shall belong to the decedents' spouse, issue, or parents in accordance with Section 213 of Title 84 of the Oklahoma Statutes. Said rights shall be exercised on behalf of and for the benefit of all those persons, by those persons who, in the aggregate, are entitled to more than a one-half (1/2) interest in such rights.

E. If any deceased personality does not transfer his or her rights under this section by contract, or by means of a trust or testamentary document, and there are no surviving persons as described in subsection D of this section, then the rights set forth in subsection A of this section shall terminate.

F. 1. A successor-in-interest to the rights of a deceased personality under this section or a licensee thereof may not recover damages for a use prohibited by this section that occurs before the successor-in-interest or licensee registers a claim of the rights under paragraph 2 of this subsection.

2. Any person claiming to be a successor-in-interest to the rights of a deceased personality under this section or a licensee thereof may register that claim with the Secretary of State on a form prescribed by the Secretary of State and upon payment of a fee of Ten Dollars (\$10.00). The form shall be verified and shall include the name and date of death of the deceased personality, the name and address of the claimant, the basis of the claim, and the rights claimed.

3. Upon receipt and after filing of any document under this section, the Secretary of State may microfilm or reproduce by other techniques any of the filings or documents and destroy the original filing or document. The microfilm or other reproduction of any document under the provision of this section shall be admissible in any court of law. The microfilm or other reproduction of any document may be destroyed by the Secretary of State fifty (50) years after the death of the personality named therein.

4. Claims registered under this subdivision shall be public records.

G. No action shall be brought under this section by reason of any use of a deceased personality's name, voice, signature, photograph, or likeness occurring after the expiration of one hundred (100) years from the death of the deceased personality.

H. As used in this section, "deceased personality" means any natural person whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death, whether or not during the lifetime of that natural person the person used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services. A "deceased personality" shall include, without limitation, any such natural person who has died within fifty (50) years prior to January 1, 1986.

I. As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the deceased personality is readily identifiable. A deceased personality shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine who the person depicted in the photograph is.

J. For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subsection A of this section.

K. The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subsection A of this section solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the deceased personality's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subsection A of this section.

L. Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the deceased personality's name, voice, signature, photograph, or likeness as prohibited by this section.

M. The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

N. This section shall not apply to the use of a deceased personality's name, voice, signature, photograph, or likeness, in any of the following instances:

1. A play, book, magazine, newspaper, musical composition, exhibit, display, film, radio or television program, other than an advertisement or commercial announcement not exempt under paragraph 4 of this subsection;
2. Material that is of political or newsworthy value;
3. Single and original works of fine art; and
4. An advertisement or commercial announcement for a use permitted by paragraph 1, 2 or 3 of this subsection.

§12-1449. Unauthorized use of another person's rights of publicity - Damages - Consent - Presumptions - Fact questions - Exemptions.

A. Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without such person's prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof, and any profits from the unauthorized use that are attributable to the use shall be taken into account in computing the actual damages. In establishing such profits, the injured party or parties are required to present proof only of the gross revenue attributable to such use, and the person who violated this section is required to prove his or her deductible expenses.

Punitive damages may also be awarded to the injured party or parties. The prevailing party in any action under this section shall also be entitled to attorney's fees and costs.

B. As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is readily identifiable.

1. A person shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine that the person depicted in the photograph is the same person who is complaining of its unauthorized use.

2. If the photograph includes more than one person so identifiable, then the person or persons complaining of the use shall be represented as individuals rather than solely as members of a definable group represented in the photograph. A definable group includes, but is not limited to, the following examples: A crowd at any sporting event, a crowd in any street or public building, the audience at any theatrical or stage production, a glee club, or a baseball team.

3. A person or persons shall be considered to be represented as members of a definable group if they are represented in the photograph solely as a result of being present at the time the photograph was taken and have not been singled out as individuals in any manner.

C. Where a photograph or likeness of an employee of the person using the photograph or likeness appearing in the advertisement or other publication prepared by or in behalf of the user is only incidental, and not essential, to the purpose of the publication in which it appears, there shall arise a rebuttable presumption affecting the burden of producing evidence that the failure to obtain the consent of the employee was not a knowing use of the employee's photograph or likeness.

D. For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subsection A of this section.

E. The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subsection A of this section solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the person's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subsection A of this section.

F. Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the person's name, voice, signature, photograph, or likeness as prohibited by this section.

G. The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

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Chapter 63.60 RCW

Personality rights

63.60.010 Use of name, voice, signature, photograph, or likeness is a property right.

Every individual or personality, as the case may be, has a property right in the use of his or her name, voice, signature, photograph, or likeness, and such right shall be freely transferable, assignable, and licensable, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer, including without limitation a will, trust, contract, community property agreement, or cotenancy with survivorship provisions or payable-on-death provisions, or, if none is applicable, under the laws of intestate succession applicable to interests in intangible personal property. The property right does not expire upon the death of the individual or personality, as the case may be. The right exists whether or not it was commercially exploited by the individual or the personality during the individual's or the personality's lifetime.

63.60.020 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Deceased personality" means any individual whose name, voice, signature, photograph, or likeness had commercial value at the time of his or her death, whether or not during the lifetime of that individual he or she used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or soliciting the purchase or sale of, products, merchandise, goods, or services. A "deceased personality" includes, without limitation, any such individual who has died within fifty years before January 1, 1998.

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

(3) "Individual" means a natural person, living or dead.

(4) "Likeness" means an image, painting, sketching, model, diagram, or other clear representation, other than a photograph, of an individual's face, body, or parts thereof, or the distinctive appearance, gestures, or mannerisms of an individual.

(5) "Name" means the actual or assumed name, or nickname, of a living or deceased individual that is intended to identify that individual.

(6) "Person" means any natural person, firm, association, partnership, corporation, joint stock company, syndicate, receiver, common law trust, conservator, statutory trust, or any other concern by whatever name known or however organized, formed, or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, and community, civic, or other organizations.

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

(8) "Photograph" means any photograph or photographic reproduction, still or moving, or any videotape, online or live television transmission, of any individual, so that the individual is readily identifiable.

(9) "Signature" means the one handwritten or otherwise legally binding form of an individual's name, written or authorized by that individual, that distinguishes the individual from all others.

63.60.030 Right is transferable, assignable, and licensable - Does not expire upon death - Exists without exploitation during lifetime.

(1) Every individual or personality, as the case may be, has a property right in the use of his or her name, voice, signature, photograph, or likeness, and such right shall be freely transferable, assignable, and licensable, in whole or in part, by contract or inter vivos transfer, and shall not expire upon the death of the individual or personality, as the case may be, so protected but shall pass:

(a) Under the deceased individual's or personality's, as the case may be, last will and testament or, if none, then under the laws of intestate succession applicable to interests in intangible personal property of the individual's or personality's, as the case may be, domicile; or

(b) If the individual or personality, as the case may be, transferred or assigned any interest in the personality rights during his or her life, then the transferred or assigned interest shall pass as follows:

(i) If the transferred or assigned interest was held in trust, in accordance with the terms of the trust;

(ii) If the interest is subject to a cotenancy with any survivorship provisions or payable-on-death provisions, in accordance with those provisions;

(iii) If the interest is subject to any contract, including without limitation a community property agreement, in accordance with the terms of the applicable contract or contracts;

(iv) If the interest has been transferred or assigned to a third person in a form that is not addressed earlier in this section, then the interest may be transferred, assigned, or licensed by such third person, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer or, if none is applicable, under the laws of intestate succession applicable to interests in intangible personal property of the third person's domicile.

(2) A property right exists whether or not such rights were commercially exploited by the individual or the personality during the individual's or the personality's, as the case may be, lifetime.

63.60.040 Right is exclusive for individuals and personalities.

(1) For individuals, except to the extent that the individual may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the individual, subject to the assignment or licensing of such rights, during such individual's lifetime and are exclusive to the persons entitled to such rights under RCW 63.60.030 for a period of ten years after the death of the individual except to the extent that the persons entitled to such rights under RCW 63.60.030 may have assigned or licensed such rights to others.

(2) For personalities, except to the extent that the personality may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the personality, subject to the assignment or licensing of such rights, during such personality's lifetime and to the persons entitled to such rights under RCW 63.60.030 for a period of seventy-five years after the death of the personality except to the extent that the persons entitled to such rights under RCW 63.60.030 may have assigned or licensed such rights to others.

(3) The rights granted in this chapter may be exercised by a personal representative, attorney in fact, parent of a minor child, or guardian, or as authorized by a court of competent jurisdiction. The terms "personal representative," "attorney in fact," and "guardian" shall have the same meanings in this chapter as they have in Title 11 RCW.

63.60.050 Infringement of right — Use without consent — Profit or not for profit.

Any person who uses or authorizes the use of a living or deceased individual's or personality's name, voice, signature, photograph, or likeness, on or in goods, merchandise, or products entered into commerce in this state, or for purposes of advertising products, merchandise, goods, or services, or for purposes of fund raising or solicitation of donations, or if any person disseminates or publishes such advertisements in this state, without written or oral, express or implied consent of the owner of the right, has infringed such right. An infringement may occur under this section without regard to whether the use or activity is for profit or not for profit.

63.60.060 Infringement of right — Superior courts — Injunctions — Liability for damages and profits — Impoundment — Destruction — Attorneys' fees.

(1) The superior courts of this state may grant injunctions on reasonable terms to prevent or restrain the unauthorized use of the rights in a living or deceased individual's or personality's name, voice, signature, photograph, or likeness.

(2) Any person who infringes the rights under this chapter shall be liable for the greater of one thousand five hundred dollars or the actual damages sustained as a result of the infringement, and any profits that are attributable to the infringement and not taken into account when calculating actual damages. To prove profits under this section, the injured party or parties must submit proof of gross revenues attributable to the infringement, and the infringing party is required to prove his or her deductible expenses. For the purposes of computing statutory damages, use of a name, voice, signature, photograph, and/or likeness in or related to one work constitutes a single act of infringement regardless of the number of copies made or the number of times the name, voice, signature, photograph, or likeness is displayed.

(3) At any time while an action under this chapter is pending, the court may order the impounding, on reasonable terms, of all materials or any part thereof claimed to have been made or used in violation of the injured party's rights, and the court may enjoin the use of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(4) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all materials found to have been made or used in violation of the injured party's rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

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

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

63.60.070 Exemptions from use restrictions — When chapter does not apply.

(1) For purposes of RCW 63.60.050, the use of a name, voice, signature, photograph, or likeness in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including, without limitation, comment, criticism, satire, and parody relating thereto, shall not constitute a use for which consent is required under this chapter. A matter exempt from consent under this subsection does not lose such exempt status because it appears in the form of a paid advertisement if it is clear that the principal purpose of the advertisement is to comment on such matter.

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

(a) Single and original works of fine art, including but not limited to photographic, graphic, and sculptural works of art that are not published in more than five copies;

(b) A literary work, theatrical work, musical composition, film, radio, online or television program, magazine article, news story, public affairs report, or sports broadcast or account, or with any political campaign when the use does not inaccurately claim or state an endorsement by the individual or personality;

(c) An advertisement or commercial announcement for a use permitted by subsections (1) and (7) of this section and (a) or (b) of this subsection;

(d) An advertisement, commercial announcement, or packaging for the authorized sale, distribution, performance, broadcast, or display of a literary, musical, cinematographic, or other artistic work using the name, voice, signature, photograph, or likeness of the writer, author, composer, director, actor, or artist who created the work, where such individual or personality consented to the use of his or her name, voice, signature, photograph, or likeness on or in connection with the initial sale, distribution, performance, or display thereof; and

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

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

(4) RCW 63.60.050 does not apply to the owners or employees of any medium used for advertising, including but not limited to, newspapers, magazines, radio and television stations, on-line service providers, billboards, and transit ads, who have published or disseminated any advertisement or solicitation in violation of this chapter, unless the advertisement or solicitation was intended to promote the medium itself.

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

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

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

63.60.080 Community property rights.

Nothing contained in this chapter is intended to invalidate any community property rights.

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