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## Lawyer

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Rights of publicity vs personality rights: a comparative analysis of the US and UK legal frameworks

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# Rights of publicity vs personality rights: a comparative analysis of the US and UK legal frameworks

As the commercial value of identity continues to grow in an increasingly digital world, the legal frameworks governing personality and publicity rights are under heightened scrutiny. H. Straat Tenney and Giovanni Visintini of Troutman Pepper Locke explore the key differences between the United States and United Kingdom approaches, offering practical insights for navigating these complex, multijurisdictional issues.



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“The UK does not recognize a standalone right of publicity or personality right. There is no direct equivalent to the US statutory framework.”

**T**he differences in the protection of an individual's name, likeness, image, and other personal indicia between the United States and the United Kingdom are significant. The US has developed a patchwork of state-level statutory rights of publicity (or privacy), while the UK relies on an assortment of overlapping common law and statutory rights to achieve similar, though often more limited, results. This article surveys both frameworks, highlights key practical differences, and offers practice pointers for navigating multijurisdictional matters.

## The US approach

### A. No federal right of publicity — a patchwork of state laws

The US has no overarching federal right of publicity law. Instead, protection arises from an array of state laws that vary considerably in their scope, duration, and remedies. As a result, a jurisdiction-specific analysis is

critical: the elements a plaintiff must prove, the defenses available, and the recoverable damages can differ dramatically from one state to the next. Although Congress has periodically considered federal right of publicity and digital replica legislation, including proposals such as the NO FAKES Act and the No AI FRAUD Act, none has been enacted, leaving regulation of these issues largely to the states.



Despite this patchwork, several common threads run through most right of publicity regimes. Most states recognize claims based on the use of an individual’s name, likeness, voice, and signature, with some allowing claims based on nicknames and other distinctive identifiers. Many states extend protection to all individuals, not just celebrities or public figures. More than half recognize a postmortem right of publicity, making these laws especially important for estates and licensed brand programs built around deceased talent.

At the same time, legislatures and courts have imposed meaningful guardrails. Most states require that the plaintiff’s identity be used for a commercial or other advantage-seeking purpose. In addition, publicity rights must be balanced against First Amendment protections to ensure that reporting, commentary, artistic expression, and other speech on matters of public concern are not improperly chilled.

Today, more than half of US states recognize some version of the right of publicity, either by statute, common law, or both. The two commercially significant jurisdictions — California and New York — stand at opposite ends of the spectrum in several respects, underscoring how much the level of protection can change when crossing a state line.

California provides some of the broadest right of publicity protections in the country, covering an individual’s name, voice, signature, photograph, and likeness. In addition to a flexible common law misappropriation claim, Cal. Civ. Code § 3344 prohibits the knowing use of a person’s name, voice, signature, photograph, or likeness on products or in advertising without consent, and affords a statutory minimum recovery, actual damages, the defendant’s profits, and, in appropriate cases, punitive damages. California also provides a 70-year postmortem right for “deceased personalities,” treating the interest as a transferable property right.

In contrast, New York’s approach has traditionally focused on privacy rather than property rights, with N.Y. Civil Rights Law §§ 50–51 providing criminal and civil remedies for unauthorized use of a living person’s name, portrait, picture, voice, or likeness for advertising or trade purposes. Compared to California, New York’s statute for living individuals is less oriented toward recovery of a defendant’s profits. There is no statutory minimum award or fee-shifting mechanism for prevailing plaintiffs. New York has, however, begun to narrow the gap by recognizing a 40-year postmortem right of publicity for certain deceased personalities

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and by addressing digital replicas in response to AI-driven uses of identity.

Many states have followed suit by expanding their publicity frameworks to address AI and digital replicas. Tennessee’s ELVIS Act, for example, amends the Tennessee Personal Rights Protection Act to protect artists’ voices from AI misuse, including simulations that are “readily identifiable and attributable to the individual.” Tenn. Code Ann. § 47-25-1101 et seq. Other states — Illinois, Ohio, and Florida, to name a few — have enacted statutory protections that bolster or supplement common law remedies. Against this backdrop of increasingly robust state-level protection, federal efforts to create a comprehensive right of publicity regime — whether focused on traditional exploitation or AI-generated digital replicas — have thus far stalled, reinforcing the central role of state law in this area.

**B. False endorsement under the Lanham Act — a parallel federal remedy for celebrities**

Plaintiffs harmed by the use of their likeness can also turn to the Lanham Act for relief. Though it does not create a freestanding right of publicity, Section 43(a) (15 U.S.C. § 1125(a)) provides a powerful false endorsement cause of action that is frequently invoked by celebrities and other well-known individuals. A plaintiff asserting false endorsement must establish that the defendant’s use of the plaintiff’s name, likeness, voice, or other indicia of identity in commerce is likely to cause consumer confusion as to the plaintiff’s affiliation, sponsorship, or endorsement of the defendant’s goods or services.

There are a few key hurdles in a Lanham Act claim. As a practical matter, these claims are most viable for plaintiffs whose identities have recognizable commercial value. In addition, the burden of proof is higher and more commercially oriented than in many state right of publicity claims. For example, a plaintiff must prove a likelihood of consumer confusion, often through survey or marketplace evidence. A federal claim offers significant advantages: nationwide scope of reach and the potential for attorneys’ fees and enhanced damages in “exceptional” cases. For high-profile clients with widely recognized personas, a Lanham Act false endorsement claim is often pleaded alongside state right of publicity claims to maximize leverage and damages recovery.

**The UK approach**

**A. No equivalent right of publicity**

The UK does not recognize a standalone right of publicity or personality right. There

is no direct equivalent to the US statutory framework, and UK courts have consistently declined to create one through judicial decision. Instead, individuals seeking to protect their name, image, likeness, or other personal indicia must identify and rely upon a range of existing legal doctrines — each with its own requirements, limitations, and practical drawbacks.

### B. Trademarks

Registration of a name, signature, image, or other personal identifier as a trademark under the Trade Marks Act 1994 can provide protection against unauthorized commercial use. Well-known personalities regularly file trademark applications covering key indicia of identity, particularly where a brand or licensing program is being developed.

However, these applications can face obstacles. First, an application may be refused on the ground that the mark lacks distinctive character. For example, a widely recognized face or name may be considered descriptive of the goods or services in question (e.g., DIANA, PRINCESS OF WALES). Second, an image of an individual may be refused for goods such as printed matter or posters where the mark effectively designates the subject matter of those goods rather than their commercial origin. For example, Alex Ferguson and Linkin Park applications have been refused on these grounds.

When filing these marks, it is essential to carefully consider the list of goods and services to avoid refusals. Filing for merchandising categories, such as clothing and accessories, tends to be more straightforward than filing for printed matter or photographic reproductions.

### C. Passing off

Passing off remains the primary common law vehicle for protecting against unauthorized commercial exploitation of personality in the UK. A successful claim requires establishing three elements:

1. goodwill or reputation in connection with goods or services;
2. a misrepresentation likely to lead the public to believe that the claimant has an association with, or has endorsed, the defendant's goods or services; and
3. damage or a real likelihood of damage flowing from the misrepresentation.

The false endorsement variant of passing off has been particularly significant in personality cases. In *Irvine v. Talksport Ltd* [2002], Formula One driver Eddie Irvine successfully sued a radio station that had digitally altered a photograph of him to show him holding one of its branded

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radios, creating the false impression that he endorsed the station. The Court recognized that a false representation that a celebrity has endorsed a product can constitute passing off, even without a direct trading relationship between the parties.

In *Robyn Rihanna Fenty v. Arcadia Group Brands Ltd* (T/A Topshop) [2015], the Court of Appeal upheld a passing off claim arising from Topshop's unauthorized sale of a T-shirt bearing Rihanna's image. The Court found that a significant section of the public would be misled into believing that Rihanna had authorized the product.

However, success in passing off cases is highly fact-sensitive. The claimant must demonstrate not merely that their image was used without consent, but that the specific use was likely to generate a misrepresentation in the minds of the relevant public. Evidence of the claimant's established merchandising and endorsement activities is critical. In this context, gathering evidence of existing licensing programs and endorsement deals would be particularly helpful.

### D. Breach of confidence

Breach of confidence can address certain unauthorized uses of personal images or private information, particularly those captured in private settings.

The foundational case in the personality context is *Douglas v. Hello! Ltd* [2007], in which the House of Lords upheld a claim arising from *Hello!* magazine's publication of unauthorized photographs of the wedding of Michael Douglas and Catherine Zeta-Jones. The couple had granted exclusive publication rights to *OK!* magazine, and the Court found that the photographs — taken in a private, controlled setting — carried the necessary quality of confidence.

This cause of action is most naturally suited to situations involving private information or images obtained or disclosed without authorization. It is less useful where the individual's image has been used in an entirely public context or where the relevant information is already in the public domain.

### E. Advertising standards

The UK's advertising regulatory regime — administered by the Advertising Standards Authority — provides a non-litigation avenue for addressing unauthorized use of an individual's image or words in advertising. The BCAP Code (for broadcast advertising) and the CAP Code (for non-broadcast advertising) contain specific provisions prohibiting the unauthorized use of a person's image, name, or endorsement in advertisements.

Both celebrities and private individuals can file complaints, and a successful complaint can result in the withdrawal or amendment of the offending advertisement, often a swift and cost-effective outcome. However, a critical limitation is that such adjudications cannot result in monetary damages. This route is best viewed as a complementary tool to litigation rather than a substitute for it, particularly where the primary goal is rapid removal of the offending content.

### Reform on the horizon — UK personality rights

With the emergence of AI technology and deepfakes, there is growing recognition within UK policy and legal circles that the existing patchwork of doctrines provides inadequate and unpredictable protection for personality rights. In the recently published report on “AI, Copyright and the Creative Industries” by the House of Lords Communications and Digital Committee, paragraphs 83 and 84 specifically mention personality rights and advise that:

“The Government should introduce protections against unauthorised digital replicas and ‘in the style of’ uses.”

This is a clear indication that the UK may finally adopt statutory protection for personality rights. However, when and in what form this would happen remains uncertain. We will continue to monitor developments in this area.

### Conclusion

The contrast between the US and UK approaches to personality and publicity rights reflects fundamentally different legal traditions and policy choices. In the US, a patchwork of state publicity regimes has evolved into a relatively defined and predictable framework — though state-by-state differences remain important. For example, states diverge on whether and how postmortem rights are recognized, how long they last, and the extent to which they cover digital or AI-generated uses.

In contrast, the UK has a patchwork legal framework with an array of common law and statutory rights, each with its own evidentiary requirements and strategic considerations. That may yet change. Recent developments suggest growing momentum behind the introduction of a statutory personality right in the UK, raising the real prospect of a more coherent regime in the not-too-distant future.

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