

Right of Publicity Law

(May 2021)

New York
DEPARTMENT OF STATE
Division of Licensing Services
www.dos.ny.gov

Andrew M. Cuomo
Governor

Rossana Rosado
Secretary of State

Civil Rights Law

§50-f. Right of publicity.

1. For purposes of this section:
 - a. "deceased performer" means a deceased natural person domiciled in this state at the time of death who, for gain or livelihood, was regularly engaged in acting, singing, dancing, or playing a musical instrument.
 - b. "deceased personality" means any deceased natural person domiciled in this state at the time of death whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death, or because 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.
 - c. "digital replica" means a newly created, original, computer-generated, electronic performance by an individual in a separate and newly created, original expressive sound recording or audiovisual work in which the individual did not actually perform, that is so realistic that a reasonable observer would believe it is a performance by the individual being portrayed and no other individual. A digital replica does not include the electronic reproduction, computer generated or other digital remastering of an expressive sound recording or audiovisual work consisting of an individual's original or recorded performance, nor the making or duplication of another recording that consists entirely of the independent fixation of other sounds, even if such sounds imitate or simulate the voice of the individual.
 - d. "sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.
2.
 - 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 subdivision four of this section, shall be liable for any damages sustained by the person or persons injured as a result thereof.
 - b. Any person who uses a deceased performer's digital replica in a scripted audiovisual work as a fictional character or for the live performance of a musical work shall be liable for any damages sustained by the person or persons injured as a result thereof if the use occurs without prior consent from the person or persons in subdivision four of this section, if the use is likely to deceive the public into thinking it was authorized by the person or persons specified in subdivision four of this section. A use shall not be considered likely to deceive the public into thinking it was authorized by the person or persons specified in subdivision four of this section if the person making such use provides a conspicuous disclaimer in the credits of the scripted audiovisual work, and in any related advertisement in which the digital replica appears, stating that the use of the digital replica has not been authorized by the person or persons specified in subdivision four of this section.
 - c. In any action brought under this section:
 - i. the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of two thousand dollars or the compensatory 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 such use and are not taken into account in computing the compensatory damages.
 - ii. in establishing profits under this subdivision, the injured party or parties shall be required to present proof only of the gross revenue attributable to the unauthorized use, and the person who violated this section is required to prove his or her deductible expenses.
 - iii. punitive damages may also be awarded to the injured party or parties.
 - d. For purposes of this subdivision:
 - i. it shall not be a violation of paragraph a of this subdivision if the work is a play, book, magazine, newspaper, or other literary work; musical work or composition; work of art or other visual work; work of political, public interest, educational or newsworthy value, including comment, criticism, parody or satire; audio or audiovisual work, radio or television program, if it is fictional or nonfictional entertainment; or an advertisement or commercial announcement for any of the foregoing works.
 - ii. it shall not be a violation of paragraph b of this subdivision if the work is of parody, satire, commentary, or criticism; works of political or newsworthy value, or similar works, such as documentaries, docudramas, or historical or biographical works, regardless of the degree of fictionalization; a representation of a deceased performer as himself or herself, regardless of the degree of fictionalization, except in a live performance of a musical work; de minimis or incidental; or an advertisement or commercial announcement for any of the foregoing works.
 - iii. it shall not be a violation of this section if the use of a name, voice, signature, photograph, or likeness occurs in connection with any news, public affairs, or sports program or account, regardless of format, medium or means of transmission, or any political campaign.
 - iv. it shall not be a violation of this section if the use is of a name, voice, signature, photograph, or likeness in a commercial medium solely because the material containing the use is commercially sponsored or contains paid advertising or product placement, or includes within it a use in connection with a product, article of merchandise, good, or service. 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 or product placement as to constitute a use for which consent is required under this subdivision.
 - e. In relation to a violation of paragraph a of this subdivision, if a work that is protected under paragraph d of this subdivision includes within it a use in connection with a product, article of merchandise, good, or service, this use shall not be exempt under paragraph d of this subdivision, notwithstanding the unprotected use's inclusion in a work otherwise exempt under paragraph d of 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 for the use under paragraph a of this subdivision from the person or persons specified in subdivision four of this section.
3. The rights recognized under this section are property rights, freely transferable or descendible, in whole or in part, by contract, license, gift, or by means of any trust or any other testamentary instrument. In the absence of an express transfer in a testamentary instrument of the deceased personality's rights in his or her name, voice, signature, photograph, or likeness, a provision in the testamentary instrument that provides for the disposition of the residue of the deceased personality's assets shall be effective to transfer the rights recognized under this section in accordance with the terms of that provision. The rights established by this section shall also be freely transferable or descendible by contract, license, gift, trust, or any other testamentary instrument by any subsequent owner of the deceased personality's rights as recognized by this section. Nothing in this section shall be construed to render invalid or unenforceable any contract entered into by a deceased personality during his or her lifetime by which the deceased personality assigned the rights, in whole or in part, to use his or her name, voice, signature, photograph, or likeness.
 4. 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 three of this section, 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 five of this section.
 5. Subject to subdivisions three and four of this section, the rights under this section of an individual dying intestate shall be distributed under the laws of intestate succession, and the rights and remedies of this article may be exercised and enforced by a person or persons who possess at least a fifty-one percent interest of the individual's rights under this section. Such persons 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.
 6. If any deceased personality does not transfer his or her rights under this section by contract, or by means of a trust or testamentary instrument, and there are no surviving persons as described in subdivision five of this section, then the rights set forth in subdivision two of this section shall terminate.
 7. a. 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, which the secretary of state shall set by rule. 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. A successor in interest to the rights of a deceased personality under this section or a licensee thereof shall not have a cause of action for a use prohibited by this section that occurs before the successor in interest or licensee registers a claim of the rights.
 - b. 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 secretary of state's internet website.
 - c. Claims registered under this subdivision shall be public records.
 8. An action shall not 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 forty years after the death of the deceased personality.
 9. 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 advertisements, 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 actual knowledge by prior notification of the unauthorized use of the deceased performer's digital replica or deceased personality's name, voice, signature, photograph, or likeness as prohibited by this section.
 10. The provisions of this section are in addition to, but shall not supersede, any other rights or remedies available in law or equity.
 11. 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.
 12. Nothing in this section shall be construed to limit, or to enlarge, the protections that 47 U.S.C. § 230 confers on an interactive computer service for content provided by another information content provider, as such terms are defined in 47 U.S.C. § 230.

RULES AND REGULATIONS

TITLE 19 NYCRR

PART 131

RIGHT OF PUBLICITY REGISTRATION

§131.1 [Reserved].

§131.2 Fee.

The fee for filing a registration of a person claiming to be a successor in interest to the rights of a deceased personality or a licensee thereof with the Department of State under Civil Rights Law section 50-f §150.

131.3 Verification by affirmation.

- (a) The registration form for any person claiming to be a successor in interest to the rights of a deceased personality or a licensee thereof may be verified by affirmation under penalty of perjury.
- (b) In the case of an agent, lawfully appointed, completing a registration form on behalf of a person claiming to be a successor in interest to the rights of a deceased personality or a licensee thereof, the agent shall be required to verify by affirmation, under the penalty of perjury, that such agent has been duly appointed to file such registration, knows the contents of such registration, and believes the same to be true.