What's in a Name? Fred Goldman's Quest to Acquire O.J. Simpson's Right of Publicity and the Suit's Implications for Celebrities

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I. INTRODUCTION

The public outcry witnessed in the fall of 2006 over a planned book and television deal featuring Orenthal James ("O.J.") Simpson\textsuperscript{1} thrust the decade-old controversy back into the media spotlight.\textsuperscript{2} The book and interview, both titled, \textit{If I Did It}, detailed how Simpson hypothetically would have killed his ex-wife Nicole Brown Simpson and her friend Ron Goldman.\textsuperscript{3} After a week of protests from the victims’ families, advertisers, booksellers, and television station affiliates, News Corporation chairman and CEO Rupert Murdoch announced the cancellation of the book and television interview.\textsuperscript{4} However, the story served to revive Americans’ fascination with

\begin{enumerate}
\item See Gilbert Geis & Leigh B. Bienen, Crimes of the Century: From Leopold and Loeb to O.J. Simpson 171 (Northwestern University Press 1998). A celebrated college athlete, Simpson won the Heisman trophy as a football player at the University of Southern California. \textit{Id.} Following college, Simpson played football professionally in the National Football League. \textit{Id.} For nine years, he was a running back for the Buffalo Bills, followed by a two-year stint with the San Francisco '49ers. \textit{Id.} Upon his retirement, he was inducted into the National Football Hall of Fame. \textit{Id.} Simpson spent his post-football years appearing in commercials and working as a sports commentator. \textit{Id.}
\item See Martin Miller, Meg James & Gina Piccalo, Simpson Book, TV Plan Dropped, L.A. TIMES, Nov. 21, 2006, at A1.
\item Robin Abcarian & Martin Miller, Simpson to Tell How He Could Have Killed Pair, L.A. TIMES, Nov. 16, 2006, at B1, available at http://www.latimes.com/entertainment/news/la-me-simpson16nov16,0,4376301.story?coll=la-home-headlines. The book, titled \textit{If I Did It}, was scheduled to be released November 30, 2006, by ReganBooks, an imprint of the News Corp.-owned HarperCollins. \textit{Id.} In addition, a two-part interview with Simpson was to air on November 27 and 29, as a precursor to the book release. \textit{Id.} Conducted by the book’s publisher, Judith Regan, the interview was scheduled to be shown on the Fox network, also a division of News Corp. \textit{Id.} A November 15, 2006 press release by Fox promoted the television special this way: O.J. Simpson, in his own words, tells for the first time how he would have committed the murders if he were the one responsible for the crimes. In the two-part event, Simpson describes how he would have carried out the murders he has vehemently denied committing for over a decade.
\item See Miller et al., \textit{supra} note 2. The Brown and Goldman families expressed outrage at news of the book and television special. See Abcarian & Miller, \textit{supra} note 3. Denise Brown, the sister of Nicole, released a statement: “It’s unfortunate that Simpson has decided to awaken a nightmare that we have painfully endured and worked so hard to move beyond. We hope Ms. Regan takes full accountability for promoting the wrongdoing of criminals and leveraging this forum and the actions of Simpson to commercialize abuse.” \textit{Id.} Fred Goldman similarly voiced his disgust: “It is an all-time low for television. To imagine that a major network would put a murderer on TV to have him tell how he would murder the mother of his children and my son is beyond comprehension.” \textit{Id.} In the days following the announcement, Fred Goldman created an online petition to encourage a boycott of the project. Miller et al., \textit{supra} note 2. Fred Goldman also appeared on Larry King Live and criticized Simpson, Regan, and the Fox network. \textit{Id.} In addition to the opposition voiced by the victims’ families, bookstores were split as to whether to order the book for their stores. See U.S. Booksellers Mixed on Stocking O.J. Simpson Book, Nov. 18, 2006, http://fin.news.yahoo.com/
Simpson, as well as to reignite the outrage that has followed him since his criminal trial.\(^5\)

On October 3, 1995, an estimated 150 million people watched as Simpson was acquitted of the murders of Nicole Brown\(^6\) and Ron Goldman\(^7\) in one of the twentieth century’s most highly publicized cases.\(^8\) This “trial of the century,” as it was dubbed, was the longest trial ever held in


\(^6\) See GEIS & BIENEN, supra note 1, at 171. Simpson met Nicole Brown when she was an eighteen-year-old waitress at a Beverly Hills nightclub. Id. The two dated for a year, then lived together for six years before finally marrying in 1985. Id. A rocky marriage led to a series of separations and reconciliations for the couple that ultimately ended in divorce in 1992. Id.

\(^7\) See id. at 169. Ron Goldman was a waiter at Mezzaluna, an Italian restaurant where Nicole had dined on the evening of the murders. Id. At the time he was killed, Goldman was returning a pair of sunglasses Nicole’s mother had dropped in front of the restaurant. Id.

California, lasting nine months and costing an estimated $15 million to fight and defend. The trial participants were numerous: in addition to the 150 witnesses who were called, eleven lawyers represented Simpson and twenty-five prosecutors worked on the case.

The trial captivated the nation in a manner rivaling the Scopes “Monkey Trial” and the Lindbergh kidnapping trial. Americans were glued to


10. See GEIS & BIENEN, supra note 1, at 171. The expenditures for the prosecution were estimated at $9 million, including $2.6 million for housing, food, and other expenses related to jury sequestration. Id. In addition, the defense costs were approximately $6 million. Id.


12. University of Missouri-Kansas City School of Law professor Douglas Linder believes the “trial of the century” was not Simpson’s murder trial, but rather the Scopes Trial in Dayton, Tennessee. See Douglas Linder, Trial of the Century?, http://www.law.umkc.edu/faculty/projects/ftrials/scopes/century.html [hereinafter Trial of the Century] (last visited Oct. 12, 2007). The 1925 case of State v. John Scopes, better known as the “Scopes Monkey Trial,” involved the arrest of high school teacher John Scopes for teaching evolution in Tennessee schools. See Edward W. Knappman, John Thomas Scopes Trial: 1925 (The “Monkey Trial”), in 1 GREAT AMERICAN TRIALS 545, 546 (Edward W. Knappman ed., 2d ed., 2002). Scopes’ actions violated the Butler Act, a state law outlawing the teaching in public schools of “any theory that denies the story of the divine creation of man as taught in the Bible, and [teaching] instead that man has descended from a lower order of animals.” Id. The trial became a media circus as newspaper editors sent reporters to cover the events. Id. at 547. Dozens of additional telegraph lines had to be strung to accommodate the influx of media. Id. After the trial earned the nickname the “Monkey Trial,” souvenirs such as monkey dolls and umbrellas with monkey handles were sold. See id. at 546-47. The case positioned the famed William Jennings Bryan against legendary defense attorney Clarence Darrow, with Darrow representing Scopes. Id. at 546. “The Scopes trial produced what the New York Times called ‘the most amazing courtroom scene in Anglo-American history,’” when Darrow called prosecutor Bryan to the stand and examined him for nearly two hours on whether stories in the Bible were literally true. Trial of the Century, supra. To add to the drama, the theatrics occurred on the lawn before thousands of onlookers because the judge feared the weight of the spectators might cause the courtroom floor to cave in. Id. Linder compares the significance of the Simpson and Scopes trials:

The main significance of the Simpson trial is as a lesson for judges and prosecutors in how not to conduct a trial . . . . The Scopes Trial, on the other hand, was about ideas. It was about whether Science and Religion could be reconciled. It was a symbolic struggle for America’s culture between the forces of Traditionalism and the forces of Modernism. It was about whether we look for guidance from, as Bryan said “the faith of our fathers,” or from our own intellects.

Id.

their television sets as they watched the events unfold before them each day. The unprecedented amount of media coverage of the case further fueled the public’s fascination. Two thousand reporters covered the trial, representing twenty-three newspapers and magazines, nineteen television stations, and eight radio stations. The Los Angeles Times alone published over 1,000 articles about the trial.

As the trial progressed, Judge Lance Ito, prosecutors Marcia Clark and Christopher Darden, defense attorney Johnnie Cochran, and Hauptmann Trial] (last visited Oct. 12, 2007). Charles A. Lindbergh, Jr. was taken from the Lindbergh home on March 1, 1932. GElS & BIENEN, supra note 1, at 92. A nationwide search ensued followed by ransom negotiations with the kidnappers. See id. at 92-97. Finally, on May 12, 1932, the corpse was found a few miles from the Lindbergh’s home. Id. at 97. In 1933, three years after the abduction, the nation watched as Hauptmann was tried in New Jersey. Id. at 104. A sense of the media frenzy accompanying the trial was expressed by lawyer Francis X. Busch:

The kidnapping and killing of the Lindbergh baby stirred the emotions of the American public as no other crime has done in the last fifty years. From one end of the country to the other, fathers and mothers shared the anxiety of the beloved and distracted parents during the supposed negotiations for their child’s safe return. When, after more than two years, the culprit was discovered and put on trial, the day-to-day proceedings in the little old courthouse at Flemington, New Jersey, claimed top priority in every newspaper and news radio program in the nation.

Id. at 90-91.

14. The interest in the trial was due at least in part to Simpson’s status as a famed football player and celebrity. Dr. Todd Boyd of the University of Southern California remarks, “It’s a case that had everything. There’s multiple murders. There’s a famous former football player, who had become a [sic] actor. You know, there are drugs, there’s sex, there’s violence.” The O.J. Case 10 Years Later, CBSNEWS.COM, June 11, 2004, http://www.cbsnews.com/stories/2004/06/11/national/main622502.shtml [hereinafter 10 Years]. The trial also sparked discussions about domestic violence, race relations, and the role of celebrity and the media in court cases. Id.


16. Id.

17. A Los Angeles County Superior Court Judge, Ito presided over the Simpson criminal trial. Howard Chua-Eoan & Elizabeth Gleick, Making the Case, TIME.COM, Oct. 16, 1995, http://www.time.com/time/magazine/article/0,9171,983569,00.html. He became the subject of many jokes as the trial quickly turned into a media circus. See id. For example, Tonight Show host Jay Leno developed the “Dancing Itos” as a form of parody of the judge. Id.


19. Darden was a thirteen-year veteran of the Los Angeles County District Attorney’s Office. Andrea Ford & Henry Weinstein, D.A. Forced to Beef Up His A-Team Simpson Case: Faced with an Imposing Defense, Garbett has Committed 11 People. Latest was prosecutor in Cowlings Probe, L.A. TIMES, Nov. 10, 1994, at B1. Prior to the Simpson trial, he worked in the Special Investigations Division which investigates public employees, such as police officers, charged with criminal acts. Id. Following the trial, he left the District Attorney’s Office and became a professor.
detective Mark Fuhrman\textsuperscript{21} became household names to many Americans. A survey taken at the time of the trial revealed seventy-four percent of people knew Kato Kaelin, while only a mere twenty-five percent could identify the Vice President.\textsuperscript{22} In addition, Larry King famously told his viewers, “If we had God booked and O.J. was available, we’d move God.”\textsuperscript{23}

The Simpson saga did not end with the acquittal in the criminal case. During the murder trial, the Goldman and Brown families filed wrongful death and survival suits in civil court asking for damages to compensate them for the loss of their loved ones.\textsuperscript{24} On February 4, 1997, a civil jury

\begin{footnotes}
\item[20] Legendary defense attorney Cochran headed Simpson's defense team. \textit{Cochran Dead}, supra note 11. After Simpson was asked to try on a glove found at the crime scene, Cochran coined the famous phrase, “If it doesn’t fit, you must acquit.” \textit{See id.} Despite securing Simpson's acquittal on the murder charge, Cochran was criticized for using race to obtain the verdict from a predominantly African-American jury. \textit{See GEIS & BIENEN, supra note 1, at 182.}
\item[21] A Los Angeles Police Department (LAPD) detective, Fuhrman discovered the bloody gloves that the prosecution used to link Simpson to the murders. \textit{See Bernard Ryan, Jr., O.J. Simpson Trials: 1995 & 1996-97, in 2 GREAT AMERICAN TRIALS 1371, 1372 (Edward W. Knappman ed., 2d ed., 2002).} During his testimony at trial, he denied having used the word "nigger" in the previous ten years. \textit{Id. at 1374.} However, the defense later secured an audiotape that directly contradicted Fuhrman's testimony. \textit{Id. at 1378.} The tape contained an interview with screenwriter Laura McKinney regarding a script she was writing. \textit{Id. at 1377-78.} On the tape, Fuhrman used the word "nigger" forty-one times and displayed prejudice toward African-Americans. \textit{See id. at 1378.} The defense argued that such comments made Fuhrman a racist who planted evidence in an attempt to frame Simpson. \textit{See Analysis [sic] of the O.J. Simpson Murder Trial—The Crime library, CRIMELIBRARY.COM, http://www.crimelibrary.com/notorious_murders/famous/simpson/siege_11.html (last visited Oct. 12, 2007).}
\item[22] Jones, supra note 9. Kaelin lived in the guesthouse at Simpson's estate. Ryan, supra note 21, at 1372. His testimony regarding statements made by Simpson before the murders along with information on Simpson's whereabouts the night of the crime made him a crucial prosecution witness. \textit{See id. at 1374.}
\item[23] Renee Graham, \textit{Revisiting the O.J. circus, the media is guilty again}, BOSTON GLOBE, June 8, 2004, http://www.boston.com/sf/media/articles/2004/06/08/revisiting_the_oj_circus_the_media_is_guilty_again/. This statement serves as further evidence of the fascination with Simpson and his murder trial that existed at the time.
\item[24] Ryan, supra note 21, at 1380-81. Three separate civil suits were brought against Simpson: one by Fred Goldman; one by Goldman's mother, Sharon Rufo; and a third by the Browns on behalf of Nicole's estate. \textit{Id. at 1380.} A wrongful death claim was filed by each of Goldman's parents for the loss of support caused by the death of their son. \textit{Id.} In contrast, the Brown family filed only a survival action for the assault and battery that culminated in Nicole's death. \textit{Id.} It is uncommon for criminal defendants to be subject to a civil suit following an acquittal on criminal charges. \textit{See Christopher John Farley, Simpson's Civil Wars, TIME.COM, Oct. 23, 1995, http://www.time.com/time/magazine/article/0,9171,983614,00.html.} However, in Simpson's case, the victims' families believed there were considerable assets worth pursuing. \textit{See id.} The civil trial differed from the murder trial in several important ways. First, the civil case carried a lower standard of proof, requiring a "preponderance of the evidence" standard rather than proof "beyond a reasonable doubt." \textit{Id.} Second, a unanimous jury was not required. \textit{Id.} Rather, only nine out of twelve jurors were needed for a guilty verdict. \textit{Id.} Third, Simpson was forced to testify in the civil action, while in the criminal case his constitutional rights enabled him to avoid taking the stand. \textit{See id.} Fourth, the civil case was heard in a Santa Monica, California court in front of a mostly white
\end{footnotes}
found Simpson liable for the wrongful death of Ron Goldman, as well as battery against Nicole Brown. The jury verdict ordered Simpson to pay damages totaling $33.5 million, including $8.5 million in compensatory damages and $25 million in punitive damages.

Nearly ten years later, the civil judgment remains virtually unpaid by Simpson. In September 2006, Fred Goldman, the father of victim Ron Goldman, filed a petition in a Los Angeles court asking for the assignment and transfer of Simpson’s right of publicity to partially satisfy the family’s portion of the judgment. Of the $33.5 million awarded by the civil jury, the Goldman’s share was approximately $20 million, not including interest.

Although publicity rights have been sold or transferred in the past, the request for the court to forcibly take them as payment of a civil judgment
was a novel legal tactic by Goldman's attorney. While the motion subsequently was dismissed by a Santa Monica judge, the issue could come up again, particularly in California, the center of the entertainment industry. The question of whether post-judgment enforcement remedies may include the transfer of publicity rights could, theoretically, be raised by any plaintiff holding a judgment against a defendant perceived as having lucrative publicity rights. This Comment explores the legal complexities surrounding this newest chapter in the Simpson storyline as well as the implications of this lawsuit for other celebrities.

Part II of this Comment discusses the history and background of the right of publicity and how it differs from the right of privacy. It provides an overview of the right of publicity’s expansion through the years to cover more individuals and more attributes of identity. As California law is controlling in this case, Part III details the right of publicity within the context of California state law. While California uses a combination of common-law and statutory provisions to protect against the infringement of publicity rights, the focus will be on the two statutes establishing causes of action for both living and deceased persons. Part IV outlines the arguments advanced by Fred Goldman and Simpson and evaluates them in light of relevant case law and statutory provisions. This discussion is followed by an analysis of the court’s rationale in deciding to dismiss the case. Part V offers thoughts on the court’s opinion and argues the result it

31. The suit was dismissed by Santa Monica Superior Court Judge Linda Lefkowitz on October 31, 2006. Simpson Retains Rights, supra note 29. The dismissal generated praise from Simpson attorney Yale Galanter: “There has never been a case in the U.S. where a judge has involuntarily taken somebody’s identity rights. If she did, the Goldmans would be able to speak on behalf of O.J. Simpson. They’d be able to use his image without his approval.” Id.
32. See Patt Morrison, Patt Morrison: Owning O.J., LATIMES.COM, Sept. 7, 2006, available at http://www.latimes.com/news/opinion/commentary/la-oe-morrison7sep07,0,6067659.column?coll=la-home-commentary. A Los Angeles Times commentary provides a somewhat humorous example of a potential suit that could arise if Fred Goldman’s petition were granted. Writer Patt Morrison explains:

Paris Hilton’s small, tormented pet . . . happens to take a bite out of you while you’re stuck alongside her behind the rope at the MTV Video Music Awards after-party. You sue . . . . You go to court for redress and suddenly you own Paris Hilton. Her name, her image, her perfume profits, her CD royalties, such as they are—all yours, until the million bucks she owes you for the coatimundi bite is paid off.

Id.
33. See infra notes 42-50 and accompanying text.
34. See infra notes 51-84 and accompanying text.
35. See infra notes 85-121 and accompanying text.
36. See CAL. CIV. CODE § 3344 (Deering 2006), held preempted in part by federal Copyright Act by Laws v. Sony Music Entm’t, 448 F.3d 1134, 1145-46 (9th Cir. 2006), cert. denied, 127 S. Ct. 1371 (2007); see also CAL. CIV. CODE § 3344.1 (Deering 2006).
37. See infra notes 122-82 and accompanying text.
38. See infra notes 183-23 and accompanying text.
reached was the correct one under the current law. Part VI speculates as to the possible implications of suits seeking a celebrity’s right of publicity, including concerns of involuntary servitude. Finally, Part VII concludes the Comment by asserting that the assignment and transfer of publicity rights, while not currently recognized in the debtor-creditor context, should be available as a remedy for unpaid creditors.

II. HISTORY AND BACKGROUND: RIGHT OF PUBLICITY

Before discussing the suit to transfer Simpson’s right of publicity, and the arguments advanced by Goldman and Simpson, it is crucial to understand the area of law upon which the parties’ contentions will be based.

In recent years, fame has been seen increasingly as a commodity in the United States rather than as a solely personal trait. Encouraged by celebrities and other public figures, states have crafted a new type of intellectual property called the right of publicity that is recognized by common law, statute, or both. This right permits those in the public eye, and in some cases, their heirs, to control how their name and face is used and to seek payment when their identity is exploited for commercial purposes.

39. See infra notes 224-31 and accompanying text.
40. See infra notes 232-77 and accompanying text.
41. See infra notes 278-89 and accompanying text.
43. See id. Currently, twenty-eight states recognize publicity rights for living persons, either by common law or statute. See 1 J. THOMAS MCCARTHY, THE RIGHTS OF PUBLICITY AND PRIVACY § 6:3 (2d ed. 2006). Specifically, eighteen states recognize the right of publicity under the common law, including Arizona, Alabama, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Kentucky, Michigan, Minnesota, Missouri, New Jersey, Ohio, Pennsylvania, Texas, Utah, and Wisconsin. Id. Of these states, eight also have statutes that supplement the common law: California, Florida, Illinois, Kentucky, Ohio, Pennsylvania, Texas, and Wisconsin. Id. Additionally, ten states, while not recognizing the right of publicity under the common law, have statutes dealing with the right of publicity: Indiana, Massachusetts, Nebraska, Nevada, New York, Oklahoma, Rhode Island, Tennessee, Virginia, and Washington. Id. As this survey of the states demonstrates, the right of publicity is widely recognized in some form in the majority of states. However, the laws are a veritable patchwork, with each state choosing to protect publicity rights differently.
44. See Estate of Presley v. Russen, 513 F. Supp. 1339 (D.N.J. 1981) (describing how Elvis Presley’s estate brought a right-of-publicity action against the producer of THE BIG EL SHOW, a stage production showcasing an Elvis Presley impersonator and patterned after an Elvis Presley stage show). The court in Estate of Presley defined the common-law right of publicity as “the right . . . to control the commercial value and exploitation of [a person’s] name and picture or likeness and to prevent others from unfairly appropriating this value for their commercial benefit.” Id. at 1353;
Although evolved from the right of privacy, the right of publicity is distinguishable in the interests it protects. Commonly claimed by private persons, the right of privacy protects against injuries to the individual’s feelings, often precipitated by unwanted publicity. The right of privacy is based upon a personal right and “the correct measure of damages is the extent of injury to the individual’s feelings and not the value that the defendant received from the unauthorized use of his name or picture.” In contrast, the right of publicity is primarily reserved for celebrities who seek out exposure and, thus, are not likely to be embarrassed by having their name or image circulated. The right of publicity is a pecuniary interest

see also Haelan Labs., Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866, 868 (2d Cir. 1953) (where a court for the first time explicitly recognized the right of publicity as a right “in addition to and independent of that right of privacy”). In expressing the need for publicity rights, the court stated:

[It] is common knowledge that many prominent persons (especially actors and ball-players), far from having their feelings bruised through public exposure of their likenesses, would feel sorely deprived if they no longer received money for authorizing advertisements, popularizing their countenances, displayed in newspapers, magazines, busses, trains and subways. This right of publicity would usually yield them no money unless it could be made the subject of an exclusive grant which barred any other advertiser from using their pictures.

Id.

45. See Howard J. Berkman, The Right of Publicity—Protection for Public Figures and Celebrities, 42 BROOK. L. REV. 527, 527 (1976). In Hogan v. A.S. Barnes & Co., one court offered a helpful description of the differences between the rights of privacy and publicity:

On the one hand, where plaintiff is a person previously unknown to the general public, that is, one who has lived a life of relative obscurity insofar as publicity is concerned, the gist of his complaint is that, by reason of the publication of his picture in connection with the advertisement of a product, he has been unwillingly exposed to the glare of public scrutiny. In such a case, plaintiff’s right of privacy has truly been invaded.

On the other hand, where plaintiff is a person who may be termed a “public figure,” such as an actor or an athlete, the gist of his complaint is entirely different. He does not complain that by reason of the publication of his picture in connection with the advertisement of a product, his name and face have become a matter of public comment, but rather that the commercial value which has attached to his name because of the fact that he is a public figure has been exploited without his having shared in the profits therefrom.

Id. at 532-33 n.34 (quoting Hogan v. A. S. Barnes & Co., 114 U.S.P.Q. 314 (Pa. Ct. C.P. Phila. County 1957) (where professional golfer Ben Hogan brought suit against A. S. Barnes Company for publishing a book with plaintiff’s picture on the cover as well as his name and picture inside the book)).

46. See id. at 527, 533. The right of privacy is the “right to be let alone” and the injury is mental because it involves feelings of humiliation and embarrassment. Id. Samuel Warren and Louis Brandeis were the first to recognize the right to privacy. See Samuel Warren & Louis Brandeis, The Right to Privacy, 4 HARV. L. REV. 193 (1890).

47. Berkman, supra note 45, at 533.

48. See id. at 529, 533. In contrast to the right of privacy, which protects against injuries to feelings, the right of publicity recognizes public figures’ desire for publicity. Id. As Berkman writes, “[I]t is ludicrous to suggest that the vast majority of entertainers . . . experience embarrassment or humiliation when their names or images are publicized. Rather, in most cases publicity is desired inasmuch as a celebrity’s income may be directly proportionate to the celebrity’s

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founded on the denial of compensation for endorsements and the property rights public figures have in their name and likeness. 49 Damages for an invasion of the right of publicity seek to prevent unjust enrichment and include the “value that the defendant received from the unauthorized use of [the plaintiff’s] name or picture.” 50

Once considered applicable only to celebrities and entertainers, publicity rights have been extended in many jurisdictions to encompass any famous person, including those whose fame is a secondary effect of their degree of fame.” Id. at 533. Although the private person usually seeks to shun publicity, a public figure seeks attention. Id. at 527, 529. Celebrities who have brought right-of-publicity claims include: Johnny Carson, Bette Midler, and Vanna White. See, e.g., Carson v. Here’s Johnny Portable Toilets, Inc., 698 F.2d 831 (6th Cir. 1983) (holding the use of the phrase “Here’s Johnny” by a toilet rental company infringed on the late-night personality’s right of publicity); Midler v. Ford Motor Co., 849 F.2d 460 (9th Cir. 1988) (finding a violation of plaintiff’s right of publicity in the use of a Bette-Midler sound-alike in television commercials); White v. Samsung Elecs. Am., Inc., 971 F.2d 1395 (9th Cir. 1992) (determining there was a right-of-publicity claim that could go to a jury where advertisements portrayed a robot resembling Vanna White).

49. See Berkman, supra note 45, at 533. There are several justifications for giving celebrities a property right in their personas. See Michael Madow, Private Ownership of Public Image: Popular Culture and Publicity Rights, 81 CAL. L. REV. 127, 178-79 (1993) (detailing the various rationales behind publicity rights). First, the right of publicity allows individuals to reap the fruits of their labors. 1 MCCARTHY, supra note 43, § 2:2. According to this rationale, celebrities are entitled to control and profit from their images’ publication because of the time and effort they have devoted to cultivating fame and notoriety. Jennifer L. Carpenter, Internet Publication: The Case for an Expanded Right of Publicity for Non-Celebrities, 6 VA. J.L. & TECH. 3, 12 (Spring 2001). Second, the right of publicity provides needed incentives to foster creativity. See 1 MCCARTHY, supra note 43, § 2:6. By giving individuals the exclusive right to profit from the economic value they build in their identity, the right of publicity will motivate people to invest further in improving their skills and talents. See id. Such investment results in socially desirable behavior that ultimately leads to a better society. See id. Third, the right of publicity promotes the flow of information regarding goods and services and safeguards consumers from deception. See id. §§ 2:7-2:8. Through the right of publicity, advertisers are held accountable for misleading the public through the use of a celebrity image where the celebrity does not actually endorse the product or service. Carpenter, supra, at 13. Moreover, allowing individuals to determine how and when their identities will be used commercially maximizes the identities’ economic value. See 1 MCCARTHY, supra note 43, § 2:7. If anyone who wants to use an identity can do so freely, the value of the identity is diluted and its economic value is lost. See id. Granting property rights results in efficient allocation of scare resources and ensures the resource goes to the highest and best use. See id. Finally, the right of publicity prevents unjust enrichment by publishers. Carpenter, supra, at 14. This argument rests on the belief that it is wrong for “free riders” to profit from another person’s work. Id. Allowing publishers alone to profit from a celebrity’s fame results in disincentives for famous individuals to enter the public domain and relinquish their freedom and privacy. See id.

50. Berkman, supra note 45, at 533. A further indication of the worth of celebrities’ publicity rights is the compensatory awards they receive when a misappropriation of them is found. See Jacoby & Zimmerman, supra note 42, at 1332. The use of the Beatles’ respective personas in the show Beatlemania resulted in an award of almost $8 million to the Beatles. Id. at 1332 (citing Apple Corps. Ltd v. Leber, 229 U.S.P.Q. 1015, 1016 (Cal. Super. Ct. 1986)). After Bette Midler’s voice was imitated in a Ford commercial, Midler received $400,000 in compensation. Id.
involvement in politics or public affairs. Certain states, such as Florida, have abandoned attempts to limit publicity rights to a selected group. Instead, these states have held that every person has a potential property interest in the exploitation of the person’s identity for commercial purposes. In addition to the variation between states regarding the

51. Jacoby & Zimmerman, supra note 42, at 1336. Exploiting a celebrity’s identity has become big business. Tiger Woods, in addition to his winnings on the golf course, earned a reported $50-60 million in 2000 through the licensing of his name and face to companies such as Nike that use them to sell products. See also David Grainger, Tiger Woods, CNNMONEY.COM, Apr. 30, 2001, http://money.cnn.com/magazines/fortune/fortune_archive/2001/04/30/301939/index.htm (stating that Woods earned $54 million from endorsements in 2000). The contract with Nike was a five-year deal worth $100 million that ran through 2006, with the availability of option years afterwards. Chris Isidore, Tiger’s Still a Winner for Sponsors, CNNMONEY.COM, June 18, 2004, http://money.cnn.com/2004/06/18/commentary/column_sportsbiz/sportsbiz/index.htm. Woods has even established a corporation called ETW to manage his publicity rights. Jacoby & Zimmerman, supra note 42, at 1331 & n.61 (noting that the trademark “TIGER WOODS” was registered by ETW Corp. “for art prints, calendars, mounted photographs, notebooks, pencils, pens, posters, trading cards, and unmounted photographs” (quoting ETW Corp. v. Jireh Publ’g, Inc., 99 F. Supp. 2d 829, 830 (N.D. Ohio 2000), aff’d, 332 F.3d 915 (6th Cir. 2003))). Another example is Michael Jordan who, prior to his retirement from the NBA, earned $40 million in a one-year span by allowing his name to be used in the promotion of sneakers, underwear, and telephone service. Id. at 1331. In 1984, PepsiCo paid $5.5 million to Michael Jackson to perform a popular song in a television advertisement and allow the company to sponsor his “Victory Tour.” Madow, supra note 49, at 129 n.11 (citing Judann Dagnoli, Pepsi, Jackson Start “Relationship,” ADVERTISING AGE, May 12, 1986, at 6). Jackson later re-signed with PepsiCo, this time for three years and $15 million. Id. (citing Richard Harrington, Pepsi & the Pop Star: Michael Jackson’s $15 Million Cola Deal, WASH. POST, May 6, 1986, at C2). In 1986, Dole Food Company paid country singer Kenny Rogers $17 million to promote its products. Id. (citing Last Minute News, ADVERTISING AGE, Dec. 15, 1986, at 1, 8). Publicity rights also extend to politicians whose involvement in public affairs makes them recognizable to the public. The first modern example of a politician endorsing a product arose when William E. Miller, the vice-presidential candidate who ran with Barry Goldwater, appeared in a television commercial for American Express. 1 McCARTHY, supra note 43, § 4:2 n.4. Past vice-presidential candidate Geraldine Ferraro appeared in a Diet Pepsi television advertisement in 1985. Id. at § 4:2. Former Speaker of the House, the late Tip O’Neill represented American Express, Miller Lite beer, and Quality Inns. See Business Notes: Advertising, Oct. 2, 1989, http://www.time.com/time/magazine/article/0,9171,958660,00.html (discussing the $100,000 per day O’Neill makes as a spokesperson). A more recent example is former Senator Robert Dole who became the spokesperson for Viagra. Jacoby & Zimmerman, supra note 42, at 1336. Finally, in 2004, a dispute arose between Arnold Schwarzenegger and an Ohio company manufacturing and selling “bobblehead” dolls of the movie actor and California Governor. 1 McCARTHY, supra note 43, § 4:23. The dolls depicted Schwarzenegger in a business suit and holding a gun with ammunition swung across his chest. Id. After Schwarzenegger’s licensing company sued the doll maker for infringing his right of publicity, the parties settled and the company agreed to stop the sale of the dolls. Id.

52. See Jacoby & Zimmerman, supra note 42, at 1336. A Florida statute states that a right-of-publicity action can be brought based upon the commercial use of “the name, portrait, photograph, or other likeness of any natural person” without permission. See id. at 1336 (quoting FLA. STAT. ANN. § 540.08 (West 2002)).

53. Id. at 1336. While some commentators have suggested only celebrities have publicity rights, the modern view held by a majority of courts and scholars is that everyone possesses a right of publicity. 1 McCARTHY, supra note 43, § 4:14. As a result, the celebrity/non-celebrity designation does not determine the existence of the right, but only the amount of recoverable damages. Id. Melville B. Nimmer commented on this idea:
individuals covered, the characteristics covered also differ. In every state recognizing publicity rights, the use of both names and likenesses is impractical to attempt to draw a line as to which persons have achieved the status of celebrity and which have not; it should rather be held that every person has the property right of publicity, but that the damages which a person may claim for infringement of the right will turn upon the value of the publicity appropriated which in turn will depend in great measure upon the degree of fame attained by the plaintiff. Thus, the right of publicity accorded to each individual "may have much or little, or only a nominal value," but the right should be available to everyone.

J. Thomas McCarthy, Melville B. Nimmer and the Right of Publicity: A Tribute, 34 UCLA L. REV. 1703, 1710 (1987) (quoting Nimmer, The Right of Publicity, 19 LAW & CONTEMP. PROBS. 203, 217 (1954)). Because the economic value of an everyday citizen's publicity rights would not be high, the right normally is litigated only when the individual has achieved a certain level of fame. See 1 McCarthy, supra note 43, § 4:3. It is the identities with the greatest commercial value that are most likely to be used in advertising and, thus, that are the most vulnerable to exploitation. Id.

54. The courts have often found liability based upon a personal name that clearly identifies an individual. See, e.g., Abdul-Jabbar v. Gen. Motors Corp., 85 F.3d 407 (9th Cir. 1996). In this case, defendants alleged it could use the name "Lew Alcindor" in an Oldsmobile commercial because plaintiff, a well-known NBA player, had changed his name to "Kareem Abdul-Jabbar" ten years prior to the suit. See id. at 409-10. The Ninth Circuit held that abandonment of a name was not a defense to a claim of infringement of publicity rights. See id. at 415. The court explained:

To the extent GMC's use of the plaintiff's birth name attracted television viewers' attention, GMC gained a commercial advantage . . . . Whether or not Lew Alcindor "equals" Kareem Abdul-Jabbar in the sense that "'Here's Johnny' equal[led] Johnny Carson," or "'the greatest' equal[led] Muhammad Ali"—or the gloriously dressed robot equalled Vanna White—is a question for the jury. Id. at 415-16. Courts also have held that a defendant's use of variations of a name will not avoid liability if the surrounding context makes the plaintiff recognizable to the reasonable person. See 1 McCarthy, supra note 43, § 4:52. In one case, actor Charles Amador was enjoined from appearing as "Charlie Aplin" in a movie. Chaplin v. Amador, 269 P. 544 (Cal. Ct. App. 1928). The film showed Charlie Aplin imitating the mannerisms and appearance of Charlie Chaplin's famous "Little Tramp" character. Id. at 545. The film's producer solicited theatre owners to show the film by claiming it featured "Charlie Aplin in the well known character, famous the world over." Id. The court determined that the total context, including the defendant's name, contributed to deceiving the public. Id. at 546. Similarly, if a person "is known by a nickname, stage name, or pen name," the use of such a name can identify the plaintiff and lead to liability. See 1 McCarthy, supra note 43, § 4:56. The Supreme Court of Wisconsin held that former football star Elroy Hirsch should be granted a trial to show he was identified by the nickname "Crazylegs." See Hirsch v. S.C. Johnson & Son, Inc., 280 N.W.2d 129, 140 (Wis. 1979). Due to his unique running style, Hirsch received the nickname following a college football game. See id. at 131. Both as a professional football player and as a coach, Hirsch appeared in advertisements in which he was identified as "Crazylegs." Id. at 131-32. Defendant S.C. Johnson & Son used the name "Crazylegs" to advertise a shaving gel for females. Id. at 130. The court examined whether the defendant had gained a commercial advantage by using the name "Crazylegs" in its advertisements and held there was a triable issue of fact for a jury. See id. at 137-38.

protected. In some jurisdictions, tag lines, voices, and signatures are covered as well, while in others, imitations of a public figure’s voice or appearance might also fall within the right of publicity.

Terming the right of publicity a property right allows for the possibility that the right survives the death of the owner, and is thus alienable and inheritable. Lugosi v. Universal Pictures Co. was the first case to acknowledge the descent of publicity rights. In it, the producers of "Dracula" films starring the late actor Bela Lugosi licensed manufacturers to create games and shirts bearing Lugosi's likeness. Subsequently, Lugosi's

56. See Jacoby & Zimmerman, supra note 42, at 1336-37.
57. Id. at 1337 & n.92 (citing Carson v. Here’s Johnny Portable Toilets, Inc., 698 F.2d 831 (6th Cir. 1983) (holding one element of talk show host’s publicity rights was the “Here’s Johnny” tag line)).
58. Id. at 1337 (citing Midler v. Ford Motor Co., 849 F.2d 460 (9th Cir. 1988)). A jury awarded $2.6 million in compensatory damages, punitive damages, and attorney’s fees to singer Tom Waits after Frito-Lay ran a Doritos chips advertisement using a sound-alike of the singer. Waits v. Frito-Lay, Inc., 978 F.2d 1093, 1096 (9th Cir. 1992). Frito-Lay created an advertising campaign using a song inspired by Waits’ classic tune Step Right Up. Id. at 1097. Waits had a widely-known policy against doing commercials because he felt they detracted from a musician’s artistic integrity. Id. In searching for a lead singer, Frito-Lay felt it needed a person who “could not only capture the feeling of ‘Step Right Up’ but also imitate Tom Waits’ voice.” Id. The person selected was Stephen Carter, a fan of Waits who had made a career out of performing Waits’ music. Id. Although an alternate version of the commercial was created using a singer who did not sound like Waits, Frito-Lay ultimately opted against using it. Id. at 1098. Waits subsequently filed a suit for infringement of the common-law right of publicity and false endorsement under the Lanham Act. Id. at 1096. The Ninth Circuit drew upon its holding in Midler to affirm the jury award finding a right-of-publicity infringement. Id. at 1098-1100. The court explained, “We recognized in Midler that when voice is a sufficient indicia of a celebrity’s identity, the right of publicity protects against its imitation for commercial purposes without the celebrity’s consent.” Id. at 1098. The court found that the imitation of a distinctive voice fell within the scope of the right of publicity and therefore it deserved protection. Id. at 1099-1100.
60. In both Tennessee and New Jersey, the use of a look-alike performer who impersonates a performance of a famous person has been held an infringement of publicity rights. Scott L. Whiteleather, Still Dancing: An Article on Astaire v. Best Video and its Lasting Repercussions, 7 UCLA ENT. L. REV. 267, 275 (2000). In contrast, Nevada's statute exempts impersonators from right-of-publicity claims. Id. This exclusion is no doubt due to the large number of shows occurring each year in Las Vegas.
63. Id. at 1113-14.
widow and son brought an action for infringement of the right of publicity.\textsuperscript{64} Examining past precedents such as \textit{Haelan Laboratories}, the court held that the right of publicity did not end with the death of Lugosi, and therefore, recovery by Lugosi's beneficiaries by will was permitted.\textsuperscript{65}

Not all states recognize the inheritability of publicity rights,\textsuperscript{66} and even among those that do, there are substantial differences in treatment.\textsuperscript{67} States such as Indiana and Oklahoma allow the right of publicity to endure for 100 years after the deceased personality's death.\textsuperscript{68} In contrast, Tennessee permits the interest to continue as long as the heirs are exploiting it.\textsuperscript{69}

Because states differ on the scope of the right of publicity and its inheritability, the determination of which jurisdiction's laws control is a

\textsuperscript{64} \textit{Id.} at 1115.
\textsuperscript{65} See \textit{Id.} at 1115-17. By contrast, privacy rights die with the individual because they are considered personal in nature. \textit{Id.} at 1116.
\textsuperscript{66} Two states, New York and Wisconsin, explicitly reject a common-law postmortem right of publicity. 2 J. THOMAS MCCARTHY, \textit{THE RIGHTS OF PUBLICITY AND PRIVACY} §§ 9:31, 9:40 (2d ed. 2007). Neither New York nor Wisconsin has enacted statutes to overrule the court decisions. \textit{Id.} § 9:19; see also Rhett H. Laurens, \textit{Note, Year of the Living Dead: California Breathes New Life into Celebrity Publicity Rights}, 24 HASTINGS COMM. & ENT. L.J. 109, 120 (2001). Ironically, New York was the first state to acknowledge a right of publicity for living persons. Laurens, \textit{ supra} at 120. New York is unique because there is no right-of-publicity statute and its courts do not recognize publicity rights under common law. Eric J. Goodman, \textit{A National Identity Crisis: The Need for a Federal Right of Publicity Statute}, 9 DEPAUL-LCA J. ART & ENT. L. 227, 238 (1999). Rather, New York relies on a right-of-privacy statute to protect the publicity rights of living persons. \textit{Id.} at 238-39. To have an actionable claim, a person must demonstrate that "(1) defendant used his name, portrait or picture (2) for purposes of trade or advertising (3) without his written consent." \textit{Id.} at 239. Several proposed bills have been introduced as part of efforts to establish a right-of-publicity section in the New York Civil Code, but all have been unsuccessful. \textit{Id.} at 238.

\textsuperscript{67} Fourteen states have legislation that specifically recognizes the publicity rights of deceased personalities. See 2 MCCARTHY, \textit{ supra} note 66, § 9:18. Each state allows the postmortem rights to extend for a different time period following the deceased personality's death. These states include California (seventy years), Florida (forty years), Illinois (fifty years), Indiana (one hundred years), Kentucky (fifty years), Nebraska (no duration given), Nevada (fifty years), Ohio (sixty years), Oklahoma (one hundred years), Pennsylvania (thirty years), Tennessee (unlimited duration while rights are exploited; otherwise ten years), Texas (fifty years), Virginia (twenty years), and Washington (seventy-five years if identity has "commercial value," while ten years if it does not). See \textit{id.} §§ 9:20, 9:22, 9:24-26, 9:28-29, 9:32-36, 9:38-39. Additionally, five states have recognized a postmortem right of publicity by common law. \textit{Id.} § 9:18. These states include Connecticut, Georgia, Michigan, New Jersey, and Utah. See \textit{id.} §§ 9:21, 9:23, 9:27, 9:30, 9:37.

\textsuperscript{68} Jacoby & Zimmerman, \textit{ supra} note 42, at 1337 & n.97 (citing IND. CODE ANN. 32-36-1-8 (West 2002); OKLA. STAT. ANN. tit. 12, 1448(G) (West 2002)).

\textsuperscript{69} \textit{Id.} at 1337 (citing TENN. CODE ANN. 47-25-1104 (West 2002)). If there is no commercial use of the right, the statute provides for an unqualified ten-year postmortem term. 2 MCCARTHY, \textit{ supra} note 66, § 9:35. In effect, the estate has ten years to determine whether or not to make commercial use of the identity. \textit{Id.} Following this period, the continued duration of the statutory rights are conditioned on commercial use. \textit{Id.}
States employ different choice-of-law rules falling within three broad categories: (1) the law of the forum; (2) the law of the place of infringement; or (3) the law of the place of plaintiff's domicile. 70 First, applying the substantive law of the forum state presents the simplest rule for the courts to follow. 71 However, a concern posed by this rule is the possibility for a clever plaintiff to manipulate the law through forum-shopping. 72 In cases involving infringements in multiple states, defendants would be left to question which state's law will be applied. 73 Second, other states apply the law of the place where the infringing act occurs. 74 Because there will frequently be at least some infringing act taking place in the forum

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70. See 2 McCarthy, supra note 66, §§ 11:12-15.
71. See id. § 11:12; see also Motschenbacher v. R.J. Reynolds Tobacco Co., 498 F.2d 821, 823 (9th Cir. 1974) (hold that law of forum state applied because "California, as the forum, has an interest in convenience and presumably can most easily ascertain its own law.").
72. 2 McCarthy, supra note 66, § 11:12.
73. Id. The differences in state law have resulted in plaintiffs "shopping" for the state with the most favorable law for their position. Goodman, supra note 66, at 244. This phenomenon has made it increasingly difficult for attorneys to advise their clients on right-of-publicity issues because of the inability to predict where the suit will be brought. Id. An attorney may explain to his client how a California court will rule on the matter, only to have the suit filed in New York instead.
74. See 2 McCarthy, supra note 66, § 11:13; see also McFarland v. Miller, 14 F.3d 912, 914 (3d Cir. 1994) ("We apply New Jersey law to the question of unauthorized commercial use because the alleged unauthorized use occurred in New Jersey."). As another example, California law applies when a nonresident sues in California for an infringement of publicity rights that is published or distributed in the state. 2 McCarthy, supra note 66, § 11:13. When addressing choice-of-law questions, California employs a three-step governmental interest analysis:

First, the court determines whether the relevant law of each of the potentially affected jurisdictions with regard to the particular issue in question is the same or different. Second, if there is a difference, the court examines each jurisdiction's interest in the application of its own law under the circumstances of the particular case to determine whether a true conflict exists. Third, if the court finds that there is a true conflict, it carefully evaluates and compares the nature and strength of the interest of each jurisdiction in the application of its own law "to determine which state's interest would be more impaired if its policy were subordinated to the policy of the other state" and then ultimately applies "the law of the state whose interest would be the more impaired if its law were not applied."

Kearney v. Salomon Smith Barney, Inc., 137 P.3d 914, 922 (Cal. 2006) (quoting Bernhard v. Harrah's Club, 546 P.2d 719, 723 (Cal. 1976)). In Downing v. Abercrombie & Fitch, the Ninth Circuit held that California law applied when residents of Hawaii sued in California for infringement of the right of publicity arising from a catalog distributed in California. 265 F.3d 994 (9th Cir. 2001). The court proceeded through the three-step analysis detailed above. See id. at 1005-07. While California had enacted a right-of-publicity statute, Hawaii lacked such a statutory right, and, thus, there was a difference in the laws. See id. Despite this difference, there was no true conflict present because Hawaii had no interest in having its law applied. See id. The court stated:

It is pure fancy to believe that Hawaii would wish to restrict its residents from recovery that others could obtain in California solely because it had not enacted a statute like California's to complement its common-law action for the same offense. Hawaii had no interest in having its law applied to this action brought in California.

Id. at 1007. Because Hawaii did not have a legitimate interest in applying its law, the court never reached the "comparative impairment" part of the test, and California law was applied to the claims. Id.
state, the two rules have the potential to overlap; thus, the same concerns regarding forum-shopping are raised when infringement occurs in several states.\textsuperscript{75} Among those states where the defendant sells, a plaintiff could select the state with the most favorable law.\textsuperscript{76} Third, most states abide by the rule that the existence of postmortem publicity rights are determined by the law of the decedent’s place of domicile at death.\textsuperscript{77} Indiana has enacted arguably the most aggressive right-of-publicity statute in the United States.\textsuperscript{78} Not falling within any of the previously mentioned categories, the Indiana statute allows individuals to “enforce the interest without regard to where the violation occurred or where the rights holders are domiciled,” provided the infringing publication was distributed

\begin{footnotesize}
\textsuperscript{75} 2 MCCARTHY, supra note 66, § 11:13; see also supra notes 72-73 and accompanying text.

\textsuperscript{76} 2 MCCARTHY, supra note 66, § 11:13.

\textsuperscript{77} Id. § 11:15. In looking at postmortem publicity rights, several cases show the important impact choice-of-law rules can have on a court’s decision. In Groucho Marx Prods. v. Day and Night Co., the heirs of the deceased Marx Brothers sued in New York federal court to prevent the theatrical presentation of a New York play imitating the Marx Brothers’ comedic style. 523 F. Supp. 485, 486 (S.D.N.Y. 1981), rev’d on other grounds, 689 F.2d 317 (2d Cir. 1982). The estates charged the defendants with misappropriating their publicity rights in the names and likenesses of the Marx Brothers. Id. The district court found for the plaintiffs using New York law, which recognized a descendible and assignable right of publicity. Id. at 489-91. Additionally, the Marx Brothers had exploited their rights during their lifetimes, a requirement for the rights to pass to the estate. Id. at 492. The Second Circuit reversed the district court and applied California law. Groucho Marx Prods. v. Day and Night Co., 689 F.2d 317 (2d Cir. 1982). Using New York property choice-of-law rules, the court held that California law applied to whether publicity rights formed a part of the Marx Brothers’ estate. Id. at 320-21. The court found especially significant that the brothers were domiciled in California at their deaths. Id. at 320. Because California did not recognize a postmortem right of publicity at that time, the court determined that the right of publicity was not a part of the estate. Id. at 323. Similarly, in ACME Circus Operating Co. v. Kuperstock, the court again used California choice-of-law principles to find that the right of publicity was a property right existing at the place of the decedent’s domicile. 711 F.2d 1538, 1541 (11th Cir. 1983); see also Valerie B. Donovan, Unauthorized Use of Deceased’s Persona: Current Theories and the Need for Uniform Legislative Treatment, in 2 PRIVACY AND PUBLICITY: READINGS FROM COMMUNICATIONS AND THE LAW 131-36 (Theodore R. Kupferman, ed., 1990) (discussing the Groucho Marx and ACME Circus cases to show how choice-of-law decisions affect the descent of publicity rights). The New York Court of Appeals drew on the Groucho Marx and ACME Circus decisions in a suit involving the publicity rights of the late playwright Tennessee Williams. Se. Bank, N.A. v. Lawrence, 489 N.E.2d 744 (N.Y. 1985). The question of descendability was decided based upon Florida law where Williams was domiciled at his death. See id. at 745. The New York court chose to adhere to the rule that whether such property is included in the decedent’s estate is to be decided by the law of the state of decedent’s domicile at death. See id. Finally, a federal court in California applied British law, which did not recognize publicity rights, to find that Princess Diana’s estate had no postmortem right of publicity that could be asserted against an infringer in California. See Cairns v. Franklin Mint Co., 24 F. Supp. 2d 1013, 1023-29 (C.D. Cal. 1998). Because California’s choice-of-law rule considered the law of the decedent’s domicile, and Princess Diana had died domiciled in Great Britain, her estate had no claim for infringement in California. Id. at 1029.

\textsuperscript{78} IND. CODE ANN. 32-36-1-1 to -20 (West 2002).
\end{footnotesize}
or displayed in Indiana. This legislation seemingly extends to infringers for activities occurring outside of the state. CMG Worldwide, a leading celebrity agency with offices in Indiana, pushed the statute’s passage as part of efforts to ensure maximum protection for its famous clientele.

The wide disparities among the states in the recognition and treatment of publicity rights have led reformers to call for federal legislation to provide uniformity throughout the country. Those in favor of a federal statute point to the inconsistencies and confusion evident in state court decisions addressing publicity rights. If the various common-law and statutory approaches are permitted to continue, individuals’ rights will not be protected on a consistent basis as the law is manipulated through choice-of-law rules. Despite this veritable patchwork of laws, this Comment’s principal concern is with the law of California, the state where Goldman filed his suit seeking Simpson’s publicity rights. It is to California’s right-of-publicity framework that we now turn our attention.

III. CALIFORNIA AND THE RIGHT OF PUBLICITY

Because California law controls in the suit between Goldman and Simpson, the state’s right-of-publicity protections need to be examined in order to understand the present litigation.

A. Section 3344

Following the California courts’ recognition of the common-law right of publicity, the legislature supplemented the common law by creating a

79. Jacoby & Zimmerman, supra note 42, at 1335-36 (citing IND. CODE. ANN. 32-36-1-9 (West 2002)).
80. See id.
81. Goodman, supra note 66, at 239.
82. Donovan, supra note 77, at 142-47 (commenting on the need for Congress to enact federal right-of-publicity legislation to unify the disparate state laws). Particularly when dealing with choice-of-law questions, federal legislation would prevent the courts from having to reanalyze the law to determine the rights involved. Id. at 147. Also, a federal statute would reduce the number of appeals caused by the application of incorrect law. Id.; see also Goodman, supra note 66, at 265-77 (proposing model language for a federal right-of-publicity statute).
83. Donovan, supra note 77, at 146.
84. Id.
85. See infra notes 183-95 and accompanying text.
statutory cause of action. Section 3344 of the California Civil Code forbids "[a]ny person" without consent from knowingly using "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.”\(^{88}\) This provision protects only the identity of natural persons.\(^{89}\) Corporations and partnerships are not included because they are considered fictitious persons under the law.\(^{90}\) Upon its passage in 1971, the statute covered only three aspects of identity and persona: name, photograph, \(^{91}\) and likeness.\(^{92}\) However, protections for voice and signature later were added in 1985.\(^{93}\)

Several aspects of section 3344 are worth highlighting here. The language “on or in products, merchandise, or goods” and “selling . . . of” goods and services was added to clarify that the statute covers not only the use of personal identity in advertising, but also any use on the goods themselves.\(^{94}\) Additionally, the use must be made “knowingly,” as mistake or inadvertence will serve as a complete defense to an infringement suit.\(^{95}\) Not only must the use be a knowing one, but also a direct connection must exist between the use of the attribute and the commercial purpose.\(^{96}\) The statute’s silence on the issue of assignment and transferability implies that consent to use must be obtained directly from the person.\(^{97}\)

88. § 3344(a).

89. Id.

90. Legislative history suggests a corporation is not covered by the term “person” as used in section 3344. 1 McCarthy, supra note 43, § 6:28 n.1.

91. See § 3344. A “photograph” is defined as “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.” § 3344(b). A person is “readily identifiable” in 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.” § 3344(b)(1).

92. § 3344; see also White v. Samsung Elecs. Am., Inc., 971 F.2d 1395 (9th Cir. 1992) (holding that a robotic caricature or resemblance did not constitute a “likeness” under section 3344(a) that infringed White’s statutory right of publicity, although a triable issue of fact was created in regard to the common-law right of publicity). In contrast to section 3344, the scope of which is restricted to the appropriation of “name . . . or likeness,” the California common law covers appropriation of any indicia that identifies the plaintiff. 1 McCarthy, supra note 43, § 6:29. If an individual, such as White, is unable to qualify for California’s statutory right-of-publicity protection, she may still recover under the state’s more expansive common-law right. Id.

93. See 1 McCarthy, supra note 43, § 6:29. Because the statute only covers the use of the plaintiff’s “voice,” no liability is incurred by use of a sound-alike or imitation voice. Id. However, an infringement claim can still be brought under the common law. Id.

94. See id. § 6:31; see also Comedy III Prods., Inc. v. Gary Saderup, Inc., 21 P.3d 797 (Cal. 2001) (holding that the use of a celebrity image on art reproductions and t-shirts without consent is prohibited by section 3344).

95. § 3344(a).

96. See § 3344(c). A use is not considered actionable solely because it appears in material that is “commercially sponsored or contains paid advertising.” Id. Instead, a factual issue is raised as to whether the use of the person’s identity is “so directly connected with the commercial sponsorship or with the paid advertising” as to violate the statute. Id.

97. 1 McCarthy, supra note 43, § 6:36.
Furthermore, exemption from liability for certain uses of one’s identity is provided under the statute. Appropiation of one of the delineated aspects of identity in connection with any news, public affairs, sports broadcast, or political campaign does not require consent because such uses are protected by the First Amendment of the U.S. Constitution.

Finally, the statutory remedies include the greater of $750 or “actual damages suffered . . . 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.” Besides actual damages, a prevailing party also may be awarded punitive damages, legal costs, and attorney’s fees. While section 3344 does not explicitly provide for injunctions preventing further infringements, the court possesses the inherent power to grant them. To supplement the protection given to living persons under section 3344, the California legislature passed section 990 which provides the heirs of deceased personalities with a cause of action against right-of-publicity infringements.

B. Section 990

Enacted in 1985, California Civil Code section 990 established a fully descendible property right in a deceased personality’s right of publicity.

98. § 3344(d).
99. Id.; see also Goodman, supra note 66, at 237 (describing the exemptions available under the statute). Determining the difference between what is considered “news” and “public affairs” has been a topic of discussion for the courts. In Dora v. Frontline Video, Inc., 15 Cal. App. 4th 536, 546 (Ct. App. 1993), the Court of Appeals held that a documentary detailing the early days of surfing at Malibu Beach fell within the “public affairs” exemption. The court remarked on the significant effect of the surfing culture on dress, speech, behavior, and entertainment. Id. at 546. Because the statute mentioned both “news” and “public affairs,” there must be a certain category of “public affairs” that is not considered “news.” Id. at 545. The court assumed “public affairs” was “intended to mean something less important than news,” and pointed out that “[p]ublic affairs must be related to real-life occurrences.” Id.
100. § 3344(a).
101. Id.
102. 1 MCCARTHY, supra note 43, § 6:45.
103. See CAL. CIV. CODE § 990, amended and renumbered by CAL. CIV. CODE § 3344.1 (Deering 1999).
104. Id. Deceased personality is defined as follows:
“[D]eceased 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 purchases of, products, merchandise, goods, or service.
The statute protected a deceased personality’s name, voice, signature, photograph, and likeness for fifty years against the same types of appropriations described in section 3344. However, in order to bring an infringement suit, the use of the deceased personality’s attributes need not be made “knowingly,” an important distinction from section 3344 and the living celebrity’s right of publicity. Section 990 also required the deceased personality’s name, voice, signature, photograph, or likeness to have commercial value at the time of death, regardless of whether these attributes had been used during the deceased personality’s life.

Due to the difficulty of tracking the ownership of postmortem publicity rights, the statute established a registration system under which a person claiming to be a “successor-in-interest” to, or a “licensee” of, these rights could record a claim with the California Secretary of State. Although the process was voluntary, the legislature encouraged registration of claims by providing that no damages could be recovered for right-of-publicity infringements occurring prior to claim registration. The recoverable damages were the same as those given under section 3344, although the exemptions from liability were more extensive in scope.

§ 990(h).

105. § 990(a), (g). “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 . . . shall be liable.” § 990(a). The protection granted lasted for fifty years following the deceased personality’s death. § 990(g).

106. § 990(a).

107. § 990(h); see Whiteleather, supra note 60, at 277 (discussing the provisions of section 990 before comparing them with newly enacted section 3344.1).

108. § 990(f). “The claim includes the name and address of the claimant, and a description of the basis and scope of the rights claimed.” 1 McCARTHY, supra note 43, § 6:40. The Secretary of State preserves a record of the claim for a minimum of seventy years beginning at the death of the personality. Id.

109. § 990(f)(1).

110. § 990; CAL. CIV. CODE § 3344 (Deering 2006), held preempted in part by federal Copyright Act by Laws v. Sony Music Entm’t, 448 F.3d 1134, 1145-46 (9th Cir. 2006), cert. denied, 127 S. Ct. 1371 (2007).

111. § 990(n). The statute was not applicable to the use of a deceased personality’s name, voice, signature, photograph, or likeness, in the following situations: (1) A play, book, magazine, newspaper, musical composition, film, radio or television program; (2) Material of political or newsworthy value; (3) Single and original works of fine art; (4) An advertisement or commercial announcement for a use allowed by (1), (2), or (3). § 990(h). Critics of the statute believed it exempted too many uses and, thus, granted only a small area of protection to deceased celebrity personas. See Whiteleather, supra note 60, at 278. However, supporters argued that section 990’s protection was intended to be limited in scope and the exemptions defined the parameters of that protection. Id. Despite this difference, sections 990 and 3344 have an exemption in common. Similar to section 3344(d), section 990(j) does not require consent to use a person’s name, voice, signature, photograph, or likeness in connection with a news, public affairs, or sports broadcast, or a political campaign. See supra note 99 and accompanying text.
In the fall of 1999, a package of amendments was signed into law dealing with California’s postmortem right of publicity. Known as the “Astaire Celebrity Image Protection Act,” the amendment made key modifications to California Civil Code section 990, including renumbering the provision to section 3344.1. First, the period of protection was extended from fifty years to seventy years to coincide with a similar extension given to copyright holders. Second, the exemptions of section 990(n) were repealed and new exemptions added. Third, the revised statute enabled a plaintiff to bring a suit when an unauthorized use occurred in California, instead of basing standing on the decedent’s domicile at death. Fourth, the amendment required the Secretary of State to list successors-in-interest on the Internet.

112. See CAL. CIV. CODE § 3344.1 (Deering 2006).
113. § 3344.1(o). The act received its name because Fred Astaire’s widow, Robyn, was a driving force behind the amendments. 1 McCarthy, supra note 43, § 6:34. She hoped to improve the statutory scheme that resulted in a 1997 court loss. Id. In that suit, the court held the inclusion of a ninety-second film clip of Fred Astaire dancing at the beginning of a Fred Astaire Dance Studio instruction video was immune from liability under the exemption found in section 990(n)(4). Astaire v. Best Film & Video Corp., 116 F.3d 1297 (9th Cir. 1997), opinion amended, 136 F.3d 1208 (9th Cir. 1998).
114. § 3344.1.
115. § 3344.1(g); see Whiteleather, supra note 60, at 286.
116. In his treatise, McCarthy explains the revised exemptions found in 3344.1(a)(2):
[T]he unpermitted use of the protected identity of a deceased person is exempt from statutory liability if: (1) it appears in a play, book, magazine, musical composition, audiovisual work, radio or television program, single and original work of art, work of political or newsworthy value; and (2) it is a fictional or nonfictional entertainment, or a dramatic, literary, or musical work; or (3) it is an advertisement or commercial announcement for any work that qualifies in the above two categories.
1 McCarthy, supra note 43, § 6:35 (citations omitted). Although a use fits into one of the above categories, the use may still not be exempt if the plaintiff proves a direct connection between the use and goods or services amounting to solicitation or advertisement of those goods or services by the deceased personality. § 3344.1(a)(3). One section 990 exemption kept intact does not impose liability for use of a protected identity in news, public affairs, sports broadcast, or political campaign. § 3344.1(j). This exemption also applies to living celebrities under section 3344. See supra note 99 and accompanying text.
117. § 3344.1(n). Under section 990, the deceased personality had to be domiciled in California at death in order for a suit to be brought. See Whiteleather, supra note 60, at 286-87. The concern was that a television commercial could be produced without liability if it was shown in California and featured a celebrity who died domiciled in Georgia. Id. Regardless of the celebrity’s domicile, the celebrity would be damaged by this unauthorized use. Id. Section 3344.1(n) closes this potential loophole and allows persons damaged in California to find redress there. Id.
118. § 3344.1(f)(3). It was hoped that posting on the Internet the names and addresses of those people claiming rights in the deceased personality’s persona would prevent unauthorized users from
Section 990(b) (now 3344.1(b)) treats the deceased person's statutory rights as property "freely transferable, in whole or in part, by contract or by means of trust or testamentary documents." The statutory rights can be transferred before death either by the deceased personality or by a transferee to a subsequent purchaser. Alternatively, the statutory rights may be transferred after death by those individuals to whom the rights pass or by a transferee to a purchaser.

Having considered California's statutory scheme for the right of publicity, we are now prepared to apply this law to the arguments advanced by Goldman and Simpson.

IV. ANALYSIS OF THE LAWSUIT: GOLDMAN V. SIMPSON

After a civil jury found Simpson liable in the 1997 wrongful death action, Goldman undertook a range of post-enforcement remedies seeking to satisfy the civil judgment. However, these remedies proved unsuccessful arguing they were unable to determine who owned the rights. See Whiteleather, supra note 60, at 286.

119. § 3344.1(b); see Cairns v. Franklin Mint Co., 24 F. Supp. 2d 1013, 1025 (C.D. Cal. 1998) ("The postmortem publicity rights recognized in § 990 are property rights.").

120. § 3344.1(b); see also 1 MCCARTHY, supra note 43, § 6:36.

121. § 3344.1(b); see also 1 MCCARTHY, supra note 43, § 6:36.


Id. A federal judge refused to hear the lawsuit, citing a lack of jurisdiction and stating the suit should be filed in a Florida court. Id. However, a California state court judge later issued a restraining order preventing Simpson from spending money earned from past movie and book deals, as well as the latest If I Did It book. O.J. Simpson Ordered to Stop Spending, CNN.COM, Feb. 8, 2007, http://www.cnn.com/2007/LAW/02/08/simpson.lawsuit.ap/index.html. The judge deferred any ruling on whether the Goldman family could collect any of the book advance. Goldman's Get O.J. Simpson's Royalties, Judge Says, CNN.COM, Feb. 21, 2007, http://www.cnn.com/2007/LAW/02/20/oj.simpson.ap/index.html [hereinafter Goldman's Get Royalties]. Goldman met with more success in a suit seeking royalty payments from Simpson's past movies, commercials, and television shows. Id. While a California state court judge ordered that the payments be directed to the Goldman family, an attempt to secure Simpson's future earnings was rejected. Id. The amount of these royalty payments is unknown at present, and both sides have claimed victory.

Id. Simpson's attorney Yale Galanter contends the royalties Simpson earns from previous work in films

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in securing the estimated $38 million judgment, owing in part to California and Florida statutes exempting certain assets from seizure. \footnote{123}{Court Ruling on Submitted Matter at 1, Goldman v. Simpson, No. SC036340 (L.A. Super. Ct., Oct. 31, 2006) [hereinafter Court Ruling]. Once there was a valid judgment in California, the U.S. Constitution’s Full Faith and Credit Clause requires other states to honor the California judgment. Found in Article IV of the Constitution, the Full Faith and Credit Clause reads, “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.” U.S. CONST. art. IV, § 1. The Clause promotes the unity of the states and provides for enforcement of civil claims and court rulings across state lines. \textit{See} Sherrer v. Sherrer, 334 U.S. 343, 355-56 (1948) (“The full faith and credit clause is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation.”). Without its enactment, the portability of court orders, nationwide recognition of legal status, out-of-state taxation, spousal and child support, and the collections of fees would be impossible without separate action. Despite the Full Faith and Credit Clause, certain exemptions in both California and Florida prevent the Goldmans from collecting on their judgment. Simpson’s NFL pension, $25,000 per month, is exempt from a civil judgment in California, although the court can seize any money Simpson earns. \textit{See} CAL. CIV. PROC. CODE § 704.115 (Deering 2006) (exempting private retirement plans from enforcement of money judgments); \textit{see also} Goldman Won’t Go After Simpson’s Pension, CNN.COM, Aug. 28, 1997, \url{http://edition.cnn.com/US/9708/28/simpson.pension/} (reporting on the Goldman family decision not to seek Simpson’s pension because of the exemption under California law). Florida law prevents the Goldmans from seizing Simpson’s home there. \textit{See} FLA. CONST. art. X, § 4. The Florida homestead exemption is extremely broad in scope, offering nearly total protection from the forced sale of property to meet creditor’s demands. \textit{See id.} Under the exemption, there is no limit to the value of property that can be shielded from creditors, provided the property occupies no more than a half-acre if located within a municipality, or 160 acres if situated outside a municipality. \textit{Id.} at (a)(1). The homestead exemption applies when a primary residence is set up in Florida. \textit{Id.}}

The arguments advanced by both Goldman and Simpson concern issues of personal jurisdiction, California judgment law, and the scope of the right of publicity.

By filing the motion asking for the assignment and transfer of Simpson’s publicity rights, Goldman sought a court order “directing [Simpson] to simply sign over a document conveying the right, title, and interest in his right of publicity over to [Goldman] so that [Goldman] may commercially exploit it as he sees fit.” \footnote{124}{Court Ruling, supra note 123, at 1.}
A. Fred Goldman's Arguments

1. A California Court Possesses Personal Jurisdiction over Simpson.

Goldman contends California courts have personal jurisdiction over Simpson for three reasons. First, under established California law, the court that enters a judgment against a defendant retains jurisdiction throughout the judgment’s enforcement. Second, Simpson has maintained contacts with the state through appearances designed to exploit his publicity rights. Third, Simpson has waived any jurisdictional objections by filing opposition papers and a motion to dismiss, thus making a general appearance.

125. Plaintiff’s Consolidated Reply and Opposition in Support of Motion at 3:20-25, Goldman v. Simpson, No. SC036340 (L.A. Super. Ct. Oct. 10, 2006) [hereinafter Plaintiff’s Consol. Reply]; see CAL. CIV. PROC. CODE § 410.50(b) (Deering 2006) (providing once jurisdiction attaches in an action, jurisdiction over both the parties and subject matter continues throughout latter proceedings). While there is an absence of case law discussing this statute, Goldman’s point is well-taken. A valid judgment was entered in 1997 when the civil jury found Simpson liable in the wrongful death action. Once the California courts exercised jurisdiction in that action, they maintain jurisdiction throughout later proceedings. Other states are required to give full faith and credit to the California judgment. See infra text accompanying note 123.

126. Plaintiff’s Consol. Reply, supra note 125, at 4:3-7. A California court may exercise personal jurisdiction over a party, provided it is consistent with the federal and state constitutions. See CAL. CIV. PROC. CODE § 410.10 (Deering 2006). In the landmark case of International Shoe v. Washington, the Supreme Court held: [D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he must have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'

326 U.S. 310, 316 (1945). California has applied the “minimum contacts” analysis by adopting a structure that divides jurisdiction into two types: general and specific jurisdiction. See Cornelison v. Chaney, 545 P.2d 264 (Cal. 1976). General jurisdiction pertains to cases where a defendant has extensive and continuous contact with California. Id. at 266. In such cases, the defendant is subject to the California court’s jurisdiction even if the cause of action is unrelated to the defendant’s in-state activities. Id. Alternatively, specific jurisdiction encompasses cases where the activities of the defendant in California are less wide-ranging. Id. For this reason, the court may exercise jurisdiction only if there is a connection between the cause of action and the defendant’s activities in the state. Id. In the present litigation, Simpson continues to come to California in order to sign autographs and make public appearances that capitalize on his right of publicity. See Andrew Blankstein, O.J. Stars at Horror Confab, L.A. TIMES, Oct. 1, 2005, at B1. Such activities constitute “minimum contacts” with California sufficient for its courts to exercise personal jurisdiction over Simpson. In fact, Simpson’s persona is arguably national in scope and reaches all parts of the United States. Even if not considered pervasive enough for general jurisdiction, Simpson’s appearances are related to his right of publicity, which is the cause of action in the present suit brought by Goldman. Therefore, specific jurisdiction still would exist.

127. Plaintiff’s Consol. Reply, supra note 125, at 4:9-5:7 (citing Roberts v. Superior Court, 30 Cal. App. 714, 720 (Ct. App. 1916) (holding that the filing of a responsive pleading is considered an acceptance of personal jurisdiction). The Roberts court emphasized, "[i]t is the character of the relief asked, and not the intention of the party that it shall or shall not constitute a general appearance, which is material." Roberts, 30 Cal. App. at 720. If the defendant’s only participation in the suit is objecting to lack of personal jurisdiction, there is no general appearance. See Cal. Dental Ass’n v. Am. Dental Ass’n, 590 P.2d 401, 404 (Cal. 1979). However, a person who raises any issue other than jurisdiction will be considered to have made a general appearance and forfeited
2. The Right of Publicity Is a Transferable Property Right.

In addition to the jurisdictional claims, Goldman maintains that courts have considered the right of publicity as a property right that is both assignable and transferable. California has used both statutes and case law to attach property traits to the right of publicity.

Under California law, all property of the judgment debtor is subject to enforcement of a money judgment, including intangible property such as copyrights and patents. As a form of property, publicity rights also are

...
subject to enforcement to comply with a money judgment.\textsuperscript{131} When property is intangible or cannot be executed upon, the court’s equitable authority may be invoked to require the debtor’s rights or interests in the property to be transferred or assigned to the judgment creditor.\textsuperscript{132}

In \textit{Pacific Bank v. Robinson}, the California Supreme Court held that a judgment debtor owning a patent was required to assign all his rights in the patent to a receiver for purposes of paying a judgment.\textsuperscript{133} Finding no difference between tangible and intangible property, the court determined the policy behind the law was to subject all forms of property of a judgment debtor to satisfy his debts.\textsuperscript{134} Goldman compares the right of publicity to patent rights and finds the court’s rationale in \textit{Pacific Bank} controlling.\textsuperscript{135}

\textsuperscript{131} No. SC036340 (L.A. Super. Ct. Oct. 20, 2006) [hereinafter Plaintiff’s Supplemental Brief]. Without such a prohibition, the entirety of Simpson’s property is subject to enforcement under the statute. \textit{Id.} at 14:9-10. While California’s judgment enforcement scheme fails to allow for the transfer and assignment of publicity rights, it does not prohibit such actions either. \textit{Id.} at 14:11-14. As Goldman views the statute, it reaches all property of a judgment debtor, including intangible property. \textit{Id.} at 14:14-16. Despite the general rule of section 695.010, the introductory clause acknowledges that by law, some of the judgment debtor’s property is not subject to enforcement of a money judgment. \textbf{CAL. CIV. PROC. CODE} § 695.010 (Law Revision Commission Comment). Included in this category is property exempt by statute, such as Simpson’s NFL pension. \textbf{See supra} note 123. Unfortunately, the legislative history and case law on the statute does not address whether publicity rights are covered within its broad provisions. As a result, the all-inclusive language “all property” would appear to be open to Goldman’s interpretation.

\textsuperscript{132} Motion for Assignment, \textit{supra} note 128, at 8:9-18.

\textsuperscript{133} \textit{Id.} at 5:2-6; \textit{see Pac. Bank v. Robinson, 57 Cal. 520, 524 (1881)}; \textit{see also Peterson v. Sheriff of City and County of S.F., 46 P. 1060, 1060 (Cal. 1896)} (“[T]he government has provided that [a patent] may be transferred by assignment, and that is the only method by which it can be transferred. And if a creditor of the patentee can have the patent right subjected to the satisfaction of his judgment at all, it can be done only by a court of equity acting in personam, and compelling the patentee to make an assignment.”).

\textsuperscript{134} Motion for Assignment, \textit{supra} note 128, at 6:5-8 (quoting \textit{Pac. Bank, 57 Cal. at 524}) (“Patent rights being, therefore, assignable by the voluntary act of the owner, and by act and operation of law, it followed that a court of equity could compel the defendant to assign them to a receiver, to be sold and applied to the satisfaction of judgments against him.”). A receiver is an officer of the court selected to supervise property and is not an agent of either party. \textit{Lewis v. Hankins, 214 Cal. App. 3d 195, 200 (Ct. App. 1989)}. Appointing a receiver is considered a last resort because of the expense involved. \textit{See Olsan v. Comora, 73 Cal. App. 3d 642 (Ct. App. 1977)} (describing appointment of a receiver to collect earnings and payments received by defendant’s dental practice until the rest of the judgment was satisfied).

\textsuperscript{135} \textit{Pac. Bank, 57 Cal. at 522}. The court explained:

By the law of this State all goods, chattels, money, and other property, both real and personal, or any interest therein of the judgment debtor, are liable to execution. And if there be property which cannot be reached by execution, and which the judgment debtor refuses to apply to the satisfaction of the judgment, he may be compelled, upon examination, in proceedings supplementary to execution, to deliver it in satisfaction of the judgment; i.e., to a receiver appointed to dispose of it in aid of the execution. The principle as well as the policy of the law is, therefore, to subject every species of property of a judgment debtor to the payment of his debts. No species of property would seem to be exempt, except such as is especially exempted by law, and any property not directly liable to execution may be reached for the satisfaction of the judgments.

Motion for Assignment, \textit{supra} note 128, at 5:11-18 (quoting \textit{Pac. Bank}, 57 Cal. at 522) (citations

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Additionally, Goldman finds support for his position in statutory provisions. In 1982, California Code of Civil Procedure section 708.510 was passed as part of a revised statutory scheme designed to address defects in the area of post-judgment enforcement. This section authorizes the court to

order the judgment debtor to assign to the judgment creditor or to a receiver . . . all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following types of payments . . . (2) Rents; (3) Commissions; [and] (5) Payments due from a patent or copyright.

Goldman contends this section can be utilized to reach assets not subject to execution as well as future income or rights to payment. He argues the right to payment can be equated to publicity rights that grant the right to payment for use of an individual’s persona. Therefore, section 708.510 is illustrative of the court’s power to order broad assignments of property to satisfy debts, including assignments of intangible property. These statutory powers extend the court’s equitable powers, and demonstrate the legislature’s support of efforts to “subject all property of a judgment debtor to satisfaction of a judgment.”

The proper method for executing on intangible property rights such as patents is to secure a court order instructing the patent holder to assign the patent. The assignment need not be executed by the patentee personally. Instead, the court may authorize a court officer to effect the assignment, which will be binding on the patentee. Similarly, Goldman asks the court either to direct Simpson to assign his right of publicity outright or to permit a court official to carry out the assignment.

 omitted).

135. Motion for Assignment, supra note 128, at 5:8-6:28.
136. CAL. CIV. PROC. CODE § 708.510 (Deering 2006).
137. Motion for Assignment, supra note 128, at 7:5-9 (quoting § 708.510(a)).
138. Id. at 7:10-11.
139. Id. at 7:16-19.
141. Id. at 6:4-6.
142. Motion for Assignment, supra note 128, at 7:20-22.
143. Id. at 7:22-8:1.
144. Id. at 7:23-8:8 (citing Zanetti v. Zanetti, 77 Cal. App. 2d 553, 560 (Ct. App. 1947)).
145. Id. at 7:23-8:2.
3. Awarding Simpson’s Right of Publicity to Goldman Would Stop Further Injustice.

Goldman’s third argument addresses the seeming injustice of denying him relief while Simpson exploits his publicity rights for financial advantage.146 According to Goldman, Simpson continues to abuse his right of publicity through the sale of pictures, autographs, and jerseys, as well as through public appearances.147 In addition, Simpson has participated in Juiced, a reality television project in which he mocks the deaths of Ron Goldman and Nicole Brown.148 Despite generating what Goldman believes are substantial sums of money from these appearances, Simpson continues to avoid paying the civil judgment.149 Goldman claims the only means to prevent Simpson from evading the judgment is through the transfer and assignment of his publicity rights.150 Such a transfer would allow Goldman to bring suit against anyone who used Simpson’s name or likeness commercially, including event organizers and memorabilia manufacturers.151


Next, Goldman dismisses concerns about the possible precedent set by this case for “good” celebrity judgment debtors, who through negligent actions find themselves subject to multi-million dollar judgments.152

146. Id. at 8:22-10:9.
148. Motion for Assignment, supra note 128, at 9:22-27. On Juiced, Simpson plays practical jokes on surprised victims using props from the murders of Nicole Brown and Ron Goldman, such as the white Ford Bronco. See O.J. Pulls Bronco Prank for Pay TV Show, MSNBC.COM, May 15, 2006, http://www.msnbc.msn.com/id/12754888. In one stunt, Simpson attempts to sell the Bronco at a used car lot and tells an interested buyer, “It was good for me—it helped me get away.” Id.
149. See Goldmans Seek Control, supra note 27.
150. Motion for Assignment, supra note 128, at 10:1-4.
151. Id. at 10:4-6.
152. Plaintiff’s Supplemental Brief, supra note 130, at 11:12-15. A 2006 suit involving R&B singer Brandy provides such an example. Following a December 2006 automobile accident in which
According to Goldman, such a fear assumes that preserving the self-respect of judgment debtors outweighs making creditors whole again. By permitting celebrity debtors to hold onto their publicity rights, the court denies judgment creditors an important means of satisfying their outstanding debts. Meanwhile, celebrities continue exploiting their publicity rights, and their debts remain unpaid to the judgment creditor’s detriment. If a celebrity debtor is truly “good,” argues Goldman, he or she will use the right of publicity to pay off the judgment, and thus, remove the need for legal action. Alternatively, a “bad” celebrity judgment debtor will refuse to pay and leave the judgment creditor without remedy. It is in these situations that a court should transfer the potentially profitable right of publicity to the creditor.

one woman died, Brandy was sued by the woman’s parents in a wrongful death action. Brandy Faces $50 Million Civil Suit, THESHOWBUZZ.COM Jan. 29, 2007, http://www.showbuzz.cbsnews.com/stories/2007/01/29/people_hot_water/main2409924.shtml. The parents have asked for $50 million in compensatory and punitive damages. Subsequently, two additional suits were filed against Brandy on behalf of the woman’s two minor sons and husband. Ken Lee, Brandy Faces a Third Wrongful Death Lawsuit, PEOPLE.COM, May 3, 2007, http://www.people.com/people/article/0,,20037856,00.html. Brandy’s negligent action could end up costing her millions. If for some reason Brandy were unable to pay the damages, the parents could pursue her publicity rights. Goldman is addressing the concern about how the precedent set by the assignment and transfer of Simpson’s rights would affect someone “good” like Brandy. Indeed, for “good” celebrities, the precedent set by awarding Simpson’s publicity rights to Goldman would be a cause for alarm. For most, if not all, celebrities, the ability to make money off their fame is their most valuable asset. However, such concerns must be balanced against the right of creditors to collect the judgments they are owed.

153. Plaintiff’s Supplemental Brief, supra note 130, at 11:18-21. The question is a basic one: in a debtor-creditor action, whose rights do we prefer? Do we prefer the dignity and reputation of the debtor or the wholeness of the creditor? An assumption that favors the debtor would be in contrast to the debtor-creditor system’s preference for bringing together all the debtor’s assets and making them available to unpaid creditors. Jacoby & Zimmerman, supra note 42, at 1340-41. Not only do legal institutions enforce contract terms between the parties, but they also give creditors the value of the debtor’s unrelated assets. Id. at 1341. Laws establish statutory liens favoring creditors and give unsecured creditors means to secure the value of a debtor’s property. Id. at 1342. As one example, a judgment creditor may be permitted to garnish the debtor’s wages or ask a sheriff to levy the debtor’s property. Id.


155. Id.

156. Id. at 12:20-22. A so-called “good” celebrity judgment debtor will make appearances and endorse products in order to capitalize on the celebrity’s fame and generate money for paying the judgment. Id.

157. Id. at 12:22-23.

158. Id. at 12:23-13:1.
5. The Transfer of Publicity Rights Presents No Significant Logistical Problems.

Finally, Goldman proposes that a dollar-for-dollar credit against the judgment be provided for any money generated by Simpson's right of publicity. This method eliminates any court involvement, as a private accounting process can determine the total revenue created by the publicity rights and credit the judgment accordingly. Should Simpson dispute the amount of the credit, he can seek recourse in an appropriate court.

B. O.J. Simpson's Arguments


In his response to Goldman's motion, Simpson draws on California's right-of-publicity statutes in an effort to show that they do not allow the transfer Goldman requests. California Civil Code sections 3344 and 3344.1 are aimed at preventing the "unauthorized commercial use of name, voice, signature, photograph or likeness." These five components comprise a person's identity, a property right. California law allows the individual and the individual's heirs to license the commercial use of the individual's persona, and to bring suit against any unauthorized use within the state. Simpson reasons that the statutes' silence regarding the assignment and transfer of the right of publicity indicates the legislature did not intend the right to stretch beyond the individual and any heirs.

159. Id. at 13:6-9.
160. Id. at 13:9-17.
161. Id. at 13:12-13.
162. Opposition of Defendant, supra note 127, at 4:4-6:12.
163. Id. at 4:4-6; see CAL. CIV. CODE § 3344 (Deering 2006), held preempted in part by federal Copyright Act by Laws v. Sony Music Entm’t, 448 F.3d 1134, 1145-46 (9th Cir. 2006), cert. denied, 127 S. Ct. 1371 (2007); see also supra notes 86-103 and accompanying text (discussing section 3344 as part of California's statutory right of publicity).
164. See § 3344.
166. Opposition of Defendant, supra note 127, at 4:15-5:2. In his reply brief, Goldman asserts that section 3344.1 of the California Civil Code expressly recognizes the transferability of the right of publicity. Plaintiff's Consol. Reply, supra note 125, at 8:16-24. Under the statute, publicity rights can be transferred by contract, trust, or testamentary documents, either before or after the death of the deceased personality. Id. Despite Goldman's argument, Simpson may have a valid point. While the statute's language is quite clear in specifying the right of publicity is a freely transferable property right, it is equally clear in detailing who can transfer the right. See § 3344.1(b). Before the deceased personality's death, the transfer can be executed by the deceased personality or by a transferee. Id. After death, the individuals in whom the rights vest or one of their transferees can undertake the transfer. Id. A judgment creditor does not fall within these categories. Likewise,
Moreover, only Simpson can decide to form a licensing contract for the endorsement of a product. The court simply cannot force him to enter licensing contracts by assigning or transferring his right of publicity to Goldman.

2. The Court Lacks Jurisdiction to Assign or Transfer Simpson’s Publicity Rights.

Furthermore, Simpson contends the California courts lack jurisdiction to transfer or assign his right of publicity. For personal property, California Civil Code section 946 mandates the law of the domicile of the owner should govern. Because Simpson is currently domiciled in Florida, his personal property, including his right of publicity, is located in that state. Therefore, Florida law should control the suit because Simpson’s right of publicity moved with him to Florida.

Section 3344 is silent on issues of assignment and transfer, specifying only that a person must obtain consent before knowingly using an aspect of a person’s identity for a commercial purpose. See § 3344.

167. Opposition of Defendant, supra note 127, at 6:8-10. Goldman dismisses the suggestion that he could indenture Simpson by compelling him to perform an act against his will. Plaintiff’s Consol. Reply, supra note 125, at 10:7-9. As Goldman states, “The right of publicity is a stand alone right separate and apart from any performance obligation of Simpson. It can be freely exploited with or without Simpson’s cooperation.” Id. at 10:10-12. Without Simpson’s involvement, the publicity rights may have less value, but they could still be utilized for such things as t-shirts that do not require any participation by Simpson. Id. at 10:12-14. Goldman cites to a law review article offering further support for the rejection of these enslavement concerns:

[S]tate-law created publicity rights are properly understood as purely passive in nature; any associated right to command active participation by a celebrity should be understood as arising separately as a result of a specifically negotiated contract term .... Simply put, publicity rights, standing alone, do not include the right to direct a person’s future labor.

Plaintiff’s Supplemental Brief, supra note 130, at 17:8-11 (quoting Jacoby & Zimmerman, supra note 42, at 1351-52) (emphasis omitted).


169. Defendant’s Notice of Motion and Motion to Dismiss Plaintiff’s Motion to Transfer and Assign “Right of Publicity” for Lack of Jurisdiction; Memorandum of Points and Authorities and Affidavit of Orenthal James Simpson in Support Thereof at 4:18-20, Goldman v. Simpson, No. SC036340 (L.A. Super. Ct. Oct. 3, 2006) [hereinafter Motion to Dismiss].

170. Id. at 3:11-13; see also Cairns v. Franklin Mint Co., 24 F. Supp. 2d 1013, 1025 (C.D. Cal. 1998) (affirming California’s choice-of-law rule for personal property as the law of the person’s domicile). Although Simpson frames his argument as a jurisdictional one, Goldman counters that section 946 is a choice-of-law provision that can only be applied if the California court has jurisdiction over Simpson. Plaintiff’s Consol. Reply, supra note 125, at 5:8-20. Florida law cannot be employed unless the court maintains jurisdiction. Id. at 5:20-22.

171. Motion to Dismiss, supra note 169, at 3:14-16.

172. Id. While a creative argument by Simpson, it does not affect the California court’s
Under Florida law, individuals can license the commercial use of their name or likeness while alive. However, transfer or assignment of the right of publicity is permitted only after death. Although Simpson is free to license his name or likeness and to delineate the scope of any license, such licensing differs from the wholesale giving away of his right of publicity.

Code of Civil Procedure section 708.510, relied on by Goldman, allows the court to assign payments due solely from property that is already assignable. Florida law specifically provides that Simpson’s right of publicity cannot be assigned or transferred except upon his death. Therefore, a California court does not have the requisite jurisdiction to require Simpson to appear regarding personal property in Florida.

jurisdiction over him. See CAL. CIV. PROC. CODE § 410.50(b) (Deering 2006). Once California acquired jurisdiction during the civil trial, it continues regardless of whether Simpson changes domicile beyond the otherwise applicable jurisdiction of the court. See id.

173. Motion to Dismiss, supra note 169, at 3:17-24; see FLA. STAT. § 540.08 (2006). The statute reads:

(1) No person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use given by:
   (a) Such person; or
   (b) Any other person, firm or corporation authorized in writing by such person to license the commercial use of her or his name or likeness; or
   (c) If such person is deceased, any person, firm or corporation authorized in writing to license the commercial use of her or his name or likeness, or if no person, firm or corporation is so authorized, then by any one from among a class composed of her or his surviving spouse and surviving children.

§ 540.08(1).

174. Motion to Dismiss, supra note 169, at 3:17-24; see also FLA. STAT. § 540.08 (right-of-publicity statute). Even assuming the court determined Florida law applied, Goldman argues that state’s law supports the assignability of publicity rights. Plaintiff’s Consol. Reply, supra note 125, at 9:8-20. The statute uses words such as “consent” that presuppose the ability to transfer the right. Id. at 9:8-20. Specifically, section 540.08 permits any use to be made once the right-of-publicity holder’s written consent has been secured. Plaintiff’s Supplemental Brief, supra note 130, at 15:24-16:2. Thus, a court order instructing Simpson to consent to the assignment of his publicity rights is enforceable even in Florida. Id. at 16:2-4.

175. Motion to Dismiss, supra note 169, at 4:4-7.

176. Id. at 4:8-11. The Legislative Committee Comments to section 708.510 emphasize that the statute does not make any property assignable that is not already assignable. Id.

177. Id. at 4:14-17.

178. Id. Simpson never addresses the personal jurisdiction arguments raised by Goldman: (1) Once jurisdiction has been acquired over a party, it continues to final judgment and any subsequent proceedings; (2) Simpson has sufficient contacts with California for its courts to exercise jurisdiction; and (3) Simpson waived any objections to personal jurisdiction by making a general appearance. See supra notes 125-27 and accompanying text. While Goldman seeks a court order over Simpson’s person, Simpson appears to focus more on subject matter and in rem jurisdiction. Motion for Assignment, supra note 128, at 3:4-5; Plaintiff’s Consol. Reply, supra note 125, at 2:7-8. He argues that because the property is located in Florida, the California court lacks the power to order the assignment. Opposition of Defendant, supra note 127, at 7:2-5. Goldman never argues in
3. Goldman Is Entitled to the Profits or Payments Simpson Receives from His Right of Publicity, Not the Right Itself.

In his opposition papers, Simpson also argues that Goldman misapplies Code of Civil Procedure section 708.510 in his motion. Far from sanctioning the outright assignment or transfer of intellectual property rights, such as patents and copyrights, section 708.510 merely permits the court to order the payments due from such rights. Even assuming patents and copyrights are analogous to the right of publicity, Simpson claims Goldman is entitled to payments Simpson receives from his right of publicity, rather than the actual right itself. By gaining control over how Simpson’s persona is used, Goldman “would have the theoretical right to, among other things, change Mr. Simpson’s name and to disparage his image on billboards across the country.”

rem jurisdiction; instead, his request for a court order requiring Simpson to sign over his publicity rights draws on in personam jurisdiction. Plaintiff’s Consol. Reply, supra note 125, at 3:6-7, 11.


180. Id. at 2:20-24.

181. Id. at 3:16-21. The text of the statute explicitly limits judgment debtors to assignment of payments due from patents or copyrights, rather than the actual patent or copyright itself. CAL. CIV. PROC. CODE § 708.510 (Deering 2006). While Goldman could seek to secure payments generated by Simpson’s right of publicity, this would be a time-consuming and expensive process. Fred Goldman, Justice Not Served, CBSNEWs.COM, June 9, 2004, http://www.cbsnews.com/stories/2004/06/07/earlyshow/main621633.shtml. Given Simpson’s history of refusing to pay the judgment, it seems likely he would try to circumvent any attempts by the Goldmans to collect the money. Id. The hostile antagonism between Goldman and Simpson has continued since the criminal and civil trials. On the tenth anniversary of his son’s murder, Fred Goldman stated he would have liked to see Simpson given a death sentence. Id. “Having him gone with a needle in his arm would have been just fine for me. I would have been more than glad to see him die.” Id.

182. Opposition of Defendant, supra note 127, at 2:28-3:2. Simpson expresses concern that Goldman would abuse Simpson’s publicity rights, such as requiring Simpson to associate himself with products that would damage his reputation. Id. at 2:25-3:2. In response, Goldman argues he would be prevented from engaging in such actions by defamation and privacy laws. Plaintiff’s Supplemental Brief, supra note 130, at 9:7-10. Simpson would be able to take legal action if Goldman took part in the types of disparaging activities described by Simpson. Id. at 9:10-12. Controlling Simpson’s right of publicity does not somehow invalidate defamation claims. Id. Furthermore, third-party licensees most likely would be hesitant to participate in such activities out of fear of retaliation by Simpson. Id. at 9:13-21. Goldman maintains he is not interested in forcing Simpson to make appearances; rather, Goldman merely wants the ability to control potentially valuable publicity rights and exploit them in the marketplace through such avenues as manufacturing and distribution. Id. at 10:1-4.
C. The Court Weighs In

1. The Court's Jurisdiction Is Not Defeated by Simpson's Motion.

The court starts its analysis by addressing the jurisdictional issues presented by Goldman's motion. Once jurisdiction has attached in an action, California Code of Civil Procedure section 410.50 provides that jurisdiction over the parties and subject matter is maintained throughout later proceedings. A party's change in residence or domicile following the entry of judgment does not defeat the court's jurisdiction.

Additionally, the issues raised in Simpson's motion to dismiss result in a general appearance. Whether an appearance is categorized as general or special is dependent on the relief sought, not the intent of the party. An objection predicated upon a lack of personal jurisdiction is considered by the court to be a special appearance. However, a person requesting relief only available to an active party in the case is judged to have made a general appearance.

While Simpson's motion to dismiss is framed as a jurisdictional objection, it is based exclusively upon California Civil Code section 946. This statute is merely a choice-of-law provision establishing that the disposition of personal property is controlled by the law of an individual's domicile. For support, the court relies on Cairns v. Franklin Mint Co., a

183. Court Ruling, supra note 123, at 2-3.
184. Id. at 2; see CAL. CIV. PROC. CODE § 410.50 (Deering 2006). In his motion, Goldman argued this very point as part of his three-pronged approach supporting the court's jurisdiction over the case. Plaintiff's Consol. Reply, supra note 125, at 3:18-19, 4:1-2, 7-8. The court agrees with Goldman's interpretation of this statute. See supra note 125 and accompanying text.
185. Court Ruling, supra note 123, at 2. Florida is required to honor the California judgment pursuant to the Full Faith and Credit Clause of the Constitution. See supra note 123.
186. Court Ruling, supra note 123, at 2. This was another of Goldman's jurisdictional arguments favoring California. By filing a motion to dismiss along with an opposition, Simpson made a general appearance and waived any jurisdictional objections. See supra note 125 and accompanying text.
187. Court Ruling, supra note 123, at 2-3; see supra note 127 (giving examples of general and special appearances).
188. Court Ruling, supra note 123, at 3.
189. Id.
190. Id.; see CAL. CIV. CODE § 946 (Deering 2006).
191. Court Ruling, supra note 123, at 3; see also CAL. CIV. CODE § 946 and supra note 170 (discussing Goldman's similar argument on this point). This point is valid. Choice-of-law issues come into play when it is necessary to reconcile the differences between the laws of various states. See Bernhard v. Harrah's Club, 546 P.2d 719, 720-21 (Cal. 1976). Such issues result in the courts of one state potentially having to apply the law of a different state. See id. Before a choice-of-law problem arises, however, the courts first must establish they can exercise personal jurisdiction over the defendant. See id. A choice-of-law issue does not substitute for a jurisdictional analysis, and, thus, Simpson's reference to the Cairns case does not answer the question of California's jurisdiction.

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case involving a postmortem claim of infringement of Princess Diana’s right of publicity. The district court in Cairns held that the establishment of a postmortem right of publicity did not affect the default choice-of-law rules in section 946; as a result, the law of Great Britain should control as Princess Diana’s domicile. In the instant suit, the Cairns decision could not be extended to defeat the court’s jurisdiction. Therefore, the court possessed jurisdiction to rule on Goldman’s motion.

2. California Judgment Law Fails to Support Goldman’s Motion.

Moving from questions of jurisdiction to California judgment law, the court fails to locate any California law explicitly discussing the transfer or assignment of publicity rights within the context of a money judgment. While the principal case cited by Goldman, Pacific Bank, has never been overturned, the most recent California citation to it appears in a 1958 decision. The court finds this lack of recent citation to Pacific Bank noteworthy, and attributes it in part to the comprehensive statutory scheme enacted to address defects in the law governing post-judgment

193. Id. at 1029.
194. Court Ruling, supra note 123, at 3.
195. Id.
196. Id. at 4-5.
197. Id. at 5. Goldman devotes a large portion of his original motion to excerpts from Pacific Bank and uses it to support his contention that the right of publicity can be transferred or assigned. Motion for Assignment, supra note 128, at 5:2-6:28; see also supra notes 133-35 and accompanying text. Although the case dealt with patents, Goldman compares the right of publicity to other intangible rights. Motion for Assignment, supra note 128, at 5:2-6:28. As noted by the current court, Burrows v. Jorgenson is the 1958 case referencing Pacific Bank. Court Ruling, supra note 123, at 5 (citing Burrows v. Jorgenson, 323 P.2d 150, 154-155 (Cal. Ct. App. 1958)). In analyzing Burrows, the court explains, Burrows did not address the propriety of assigning intangible property in its entirety, but for the more limited purpose of affirming the authority of a court to appoint a receiver in the post-enforcement context to conserve profits (there, rental income) pending the decision of a court upon the purported fraudulent transfer of leaseholds aimed at shielding them from enforcement of a default judgment. Id. The court finds this lack of authority referencing Pacific Bank to be significant in light of the enactment of section 708.510 of the California Code of Civil Procedure, and notes a recent federal case that rejects the outright assignment approach of Pacific Bank in favor of the constraints of section 708.510. Id. at 6-7 (citing Sleepy Hollow Inv. Co., No. 2 v. Prototek, Inc., 2006 U.S. Dist. LEXIS 35479 (N.D. Cal. Feb. 3. 2006)). In Sleepy Hollow, the plaintiff sought a court order assigning it, as the judgment creditor, title to selected patents of Prototek, in order to satisfy a judgment. Id. at 2. Alternatively, plaintiff moved for the assignment of Prototek’s right to payment under the patents. Id. Although the court rejected the request for outright assignment of the patents, it ordered the assignment to plaintiff of Prototek’s right to payment from the patents. See id. at 6-7.
enforcements.

A part of this major revision was California Code of Civil Procedure section 708.510. This provision empowers the court to order a judgment debtor to assign to a receiver or a judgment creditor the right to payment due from such intangibles as commissions, royalties, and payments from patents or copyrights. Accordingly, the language of section 708.510 serves to strictly limit any assignment to the right to payment due. It does not authorize the outright assignment or transfer of the specified intangibles.

The court next discusses the practical challenges of assigning the right of publicity to satisfy a money judgment and raises a number of potential questions. Among them are the following: (1) Must the court perform an auditing function in tracking credits against the judgment? (2) Would the assignee be entitled to file suit against third parties who infringe upon a celebrity’s publicity rights? (3) Finally, is assignment a customary remedy in the post-judgment enforcement context, or must the exhaustion of all other means of enforcement be shown? While the court does not provide answers to these questions, it finds these issues attest to the wisdom of section 708.510. As a result, the court determines that the law as presently written does not support the assignment and transfer of Simpson’s publicity rights.

3. California’s Right of Publicity for Living Celebrities Differs from the Postmortem Right.

The court ends its ruling by making an important distinction between the right-of-publicity protection given to living persons and deceased personalities under California law. Goldman’s motion is premised upon the right of publicity as property. While assignable during life, an

198. Court Ruling, supra note 123, at 5-6. 
199. The legislative history of the statute reveals it was intended to provide a new procedure for reaching certain types of property not subject to execution. Legislative Committee Comment, CAL. CIV. PROC. CODE § 708.510 (Deering 2006). This remedy can be used either by itself or in combination with other remedies for reaching rights to payments. Id.
201. Court Ruling, supra note 123, at 6; see supra notes 180-81 and accompanying text.
202. Court Ruling, supra note 123, at 6; see supra notes 180-81 and accompanying text.
203. Court Ruling, supra note 123, at 7.
204. Id. at 7-8. Some of the concerns raised by the court, dealing with the practicalities of the transfer of publicity rights as a remedy, will be taken up in Part VI of this Comment. See infra notes 268-77 and accompanying text.
205. Court Ruling, supra note 123, at 8.
206. Id.
207. Id. at 8-12.
208. Id. at 8-9. Goldman finds support for treating publicity rights as property in section 695.010 of the California Code of Civil Procedure. This provision specifies that the entirety of the judgment
attribute of property, the \textit{inter vivos} right of publicity is equally defined by privacy rights that weigh against any court-enforced transfer.\textsuperscript{209} The court points out there are important differences between California’s \textit{inter vivos} right of publicity and its postmortem counterpart.\textsuperscript{210} In \textit{Lugosi v. Universal Pictures}, a case decided prior to the enactment of section 3344.1, the California Supreme Court held that the protected right to exploit a person’s identity had to be utilized during life and did not extend to one’s heirs or successors.\textsuperscript{211} In its analysis, the California Supreme Court engaged in a discussion of the nature of the \textit{inter vivos} right of publicity that is still applicable. Rather than concentrating on property concepts, the court focused on a common-law right included within privacy law.\textsuperscript{212} Lugosi’s right to license the use of his persona for commercial purposes, or to choose to not do so, was a right personal to him.\textsuperscript{213} Thus, the trial court had erred in finding that his name and likeness were property.\textsuperscript{214} Because the right to refuse commercial exploitation is a personal one, there are celebrities who have chosen not to allow any use of their fame commercially.\textsuperscript{215}

In contrast to other states where privacy rights arise from common law, California’s right of privacy emanates from the state constitution and has been deemed to be more protective than the analogous federal privacy right.\textsuperscript{216} As a result, the court in the \textit{Goldman v. Simpson} suit concludes it is debtor’s property is subject to enforcement of a money judgment. See supra note 130 and accompanying text.

\textsuperscript{209} Court Ruling, supra note 123, at 9.

\textsuperscript{210} Id.; see also supra notes 86-121 and accompanying text (contrasting the right of publicity during the celebrity’s lifetime with the postmortem right).

\textsuperscript{211} Court Ruling, supra note 123, at 9 (citing \textit{Lugosi v. Universal Pictures}, 25 Cal. 3d 813 (1979)). \textit{Lugosi} later was superseded by section 3344.1 of the California Civil Code which provides for a postmortem right of publicity. \textit{Id.}

\textsuperscript{212} Id. at 10 (citing \textit{Lugosi}, 25 Cal. 3d at 819).

\textsuperscript{213} Id. (citing \textit{Lugosi}, 25 Cal. 3d at 820-21).

\textsuperscript{214} Id. (citing \textit{Lugosi}, 25 Cal. 3d at 824).

\textsuperscript{215} Some examples include performers Bette Midler and Tom Waits as well as actor Dustin Hoffman. See, e.g., \textit{Midler v. Ford Motor Co.}, 849 F.2d 460 (9th Cir. 1988) (commenting on Midler’s refusal to do television commercials); \textit{Waits v. Frito-Lay, Inc.}, 978 F.2d 1093, 1097 (9th Cir. 1992) (noting that Waits refused profitable product endorsements because Waits “has expressed his philosophy that musical artists should not do commercials because it detracts from their artistic integrity”); \textit{Hoffman v. Capital Cities/ABC, Inc.}, 33 F. Supp. 2d 867, 870 (C.D. Cal. 1999) (determining that Dustin Hoffman’s name and likeness have value “not only because of Mr. Hoffman’s stature as an actor, but because he does not knowingly permit commercial uses of his identity . . . [Hoffman] maintains a strict policy of not endorsing commercial products for fear that he will be perceived in a negative light by his peers and motion picture industry executives”), rev’d 255 F.3d 1180 (9th Cir. 2001).

\textsuperscript{216} Court Ruling, supra note 123, at 11. California’s protection of the right of privacy is evidenced by looking at the beginning of the state Constitution. Article I, section 1 provides: “All
not surprising California differentiates between the personal right of a celebrity during the celebrity’s lifetime and the property right passing to survivors upon the celebrity’s death. In extending Lugosi, the court warns against “turn[ing] a man into a commodity and mak[ing] him serve the economic needs and interest of others... against his will.”

Admittedly, the court acknowledges, Simpson has exploited his fame by participating in “slasher” conventions where videos glorify acts of violence resembling those that resulted in the murder of Ron Goldman. However, the transfer of the right of publicity based upon post-judgment conduct raises serious concerns in the court’s view. A judgment creditor’s right to sell, license, and use the celebrity’s identity may need to be separated from the performance right of the celebrity. Otherwise, allowing a judgment creditor to control the celebrity’s appearances may constitute involuntary servitude.

people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.” CAL. CONST. art. I, § 1. In contrast, the federal Constitution has no explicit provision ensuring a constitutional right of privacy. In the Fifth Amendment to the Bill of Rights, the text states that no person shall “be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. Likewise, in the Fourteenth Amendment, the same protection is offered with regard to state governments. U.S. Const. amend. XIV, § 1. Federal cases such as Planned Parenthood v. Casey, 505 U.S. 833, 846-51 (1992), and Roe v. Wade, 410 U.S. 113, 153 (1973), that safeguard an individual’s privacy rights in the area of reproduction find such a right implied within the liberty protection of these two amendments. The breadth of the California privacy protection as compared to its federal counterpart can be seen by examining the way privacy rights have been interpreted by California and federal courts, respectively. In Committee to Defend Reproductive Rights v. Myers, 625 P.2d 779, 780 (Cal. 1981), the California Supreme Court had to determine the validity of state Budget Act provisions that denied indigent women public funding of medical expenses if they aborted the child while providing full funding if the same women decided to continue the pregnancy. A U.S. Supreme Court decision, Harris v. McRae, 448 U.S. 297 (1980), was relied upon by the state of California in defending the Budget Act provision. Myers, 625 P.2d at 781. In Harris, a similar funding scheme was at issue, under which the federal government failed to fund medical expenses of women choosing to have an abortion while paying the expenses of those women continuing the pregnancy. Harris, 448 U.S. at 302. The U.S. Supreme Court upheld the validity of the funding scheme under the federal Constitution. Id. at 317-18. However, in Myers, the California court found the federal precedent was not controlling and under the state Constitution, the inequitable funding scheme violated a pregnant woman’s right to privacy. Myers, 625 P.2d at 798-99.

217. Court Ruling, supra note 123, at 11.
218. Id. (quoting Edward J. Bloustein, Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser, 39 N.Y.U. L. Rev. 962, 1000-03 (1964)).
219. Id. at 12; see also Blankstein, supra note 126 (reporting on Simpson’s appearance at a horror convention).
220. Court Ruling, supra note 123, at 12.
221. Id. In arguing for the inclusion of publicity rights in the assets of a debtor, law professors Jacoby and Zimmerman recognize such a step will require disentangling the property and personal interests that comprise the right of publicity. See Jacoby & Zimmerman, supra note 42, at 1350.
222. Court Ruling, supra note 123, at 12. Simpson voiced a variation of the involuntary servitude argument in his opposition papers. See supra notes 167-68 and accompanying text. Simpson claimed that in California it is only the celebrity who can decide whether or not to form a licensing
Based upon the sparse statutory and case law, the court determines that the outright transfer of a judgment debtor's *inter vivos* right of publicity finds no support in either the law or the court's equitable authority; as a result, the court dismisses Goldman's suit.\(^{223}\)

V. CRITIQUE

The court in the *Goldman v. Simpson* suit reaches a sound decision and one that is in line with the current state of the law. The assignment of publicity rights is not currently recognized in California as a means of satisfying a money judgment.\(^{224}\) Although California Code of Civil Procedure section 708.510 authorizes a court to order the assignment of the right to payments due from intangibles such as patents, it does not sanction the outright assignment or transfer of these same intangibles.\(^{225}\) Admittedly, Goldman may have a remedy in seeking any payments Simpson receives as a result of his publicity rights.\(^{226}\) However, the antagonism that has characterized the relationship between Goldman and Simpson since the criminal trial would make this process expensive, time-consuming, and likely unsuccessful.\(^{227}\) Unfortunately, the remedy Goldman seeks does not find support in California law. As the court concludes, the lack of statutory contract for product promotion. *See supra* notes 167-68 and accompanying text. The court cannot compel Simpson to enter such a contract. *See supra* notes 167-68 and accompanying text.

\(^{223}\) Court Ruling, *supra* note 123, at 13.

\(^{224}\) *See supra* notes 196-202, 223 and accompanying text.

\(^{225}\) *See supra* notes 200-02 and accompanying text.

\(^{226}\) *See supra* notes 200-02 and accompanying text.

\(^{227}\) The historic hostility between Goldman and Simpson has continued, as evidenced by Simpson's remarks in an interview with NBC's Katie Couric on the tenth anniversary of the murders. *See* Katie Couric, *O.J. Simpson: Ten Years Later*, MSNBC, June 18, 2004, http://www.msnbc.msn.com/id/5137198/ (giving a transcript of the interview between Couric and Simpson). Simpson refuses to pay the Goldman family because he maintains he is innocent of the murders. *Id.* He remarks: "I didn't do the crime. I'm not going to pay them a dime. And that's the name of that tune, you know." *Id.* Later in the same interview, Simpson states that he believes the Goldmans deserve nothing. *Id.* "I'm not paying a penny, I'm not doing nothing that the law doesn't dictate me to do. I followed the law to the letter. If it means giving [the Goldman family] money for something I didn't do, I won't work. I make no bones about this." *Id.* Likewise, Goldman hardly minces words when discussing his anger at Simpson's refusal to pay the judgment. *See 10 Years, supra* note 14. "Honestly, what would you expect different from a liar, a wife-beater and a murderer? Would you expect him to be honorable? He's never going to do ... the manly, honest thing. As long as he's alive is another day and another month and another year that a murderer walks unpunished." *Id.* Given the anger that still exists between the two, an order for Simpson to turn over payments generated from his right of publicity seems unlikely to be followed willingly.
and case law on point weighs against ordering the transfer and assignment of Simpson’s publicity rights. 228

The court acknowledges the injustice that seemingly compels a different outcome. 229 Denying Goldman relief while Simpson continues to exploit his fame sends the message that the satisfaction of the creditor is less important than the debtor’s reputation and dignity. 230 The law needs to advance and permit the assignment and transfer of publicity rights to unpaid creditors.

While so-called “good” celebrity judgment debtors may be concerned by such a precedent, it is these types of debtors who will use their fame to make payments on the judgment, not to circumvent it. 231 Without such a post-judgment remedy, celebrity debtors like Simpson will be able to prevent creditors from securing the most valuable asset, the celebrity’s fame.

VI. FUTURE IMPLICATIONS: IMPACT OF GOLDMAN V. SIMPSON FOR CELEBRITIES

The Goldman motion asking the court to order the assignment and transfer of Simpson’s right of publicity raises several interesting questions that could arise in a future suit involving another celebrity judgment debtor. Each of these questions will be discussed in turn because the answers could have significant consequences for how publicity rights are treated in the coming years.

At the start, it is important to recognize such an assignment and transfer would place publicity rights in the context of the debtor-creditor system by regarding them as an asset subject to seizure by an unpaid creditor. 232 Indeed, commentators have argued that the right of publicity should be treated like other intellectual property rights such as patents, copyrights, and trademarks. 233 Such a view would mean celebrity debtors would possess a lucrative asset in their identities that could be transferred or assigned to a creditor. 234

228. See supra notes 196-202, 223 and accompanying text.
229. Court Ruling, supra note 123, at 12.
230. Jacoby & Zimmerman, supra note 42, at 1340-41 (“The debtor-creditor system exhibits a preference for marshalling nearly all assets and making them available to satisfy unpaid creditors, regardless of any discomfort and indignity the process inflicts on the debtor.”).
231. See supra notes 152-58 and accompanying text.
232. See Jacoby & Zimmerman, supra note 42, at 1322.
233. See id. at 1344-45.
234. See id. at 1322-23.
A. Does the Right of Publicity Include only the Celebrity’s Identifying Characteristics or Does It Encompass Aspects of Performance by the Famous Person?

One concern raised by the Goldman suit is defining precisely what the creditor would acquire from this type of assignment and transfer. Would the creditor merely obtain the ability to use the celebrity debtor’s name or likeness, or would the creditor also gain the ability to ask the celebrity debtor to make public appearances? Placing publicity rights into the debtor-creditor framework requires separating out the personal interests from the property interests intrinsic in the right of publicity. Because the right of publicity is a property right that can be valuable without any celebrity involvement, the celebrities’ future services are not a part of their publicity rights.

Even assuming publicity rights included the ability to force the celebrity debtor to perform at the creditor’s request, enforcing such an interest would be difficult due to involuntary servitude concerns. Any performance would be for the benefit of the creditor who would control the celebrity debtor’s future labors. This type of coerced personal service is disfavored.

235. See id. at 1350.
236. See id. at 1323.
237. Many of the most profitable publicity rights, such as those of Fred Astaire, are completely passive in nature. See id. at 1352. Because Astaire is dead, he can hardly be expected to personally take part in any new type of commercial exploitation of his identity. See id. Nevertheless, his attributes, name, and existing images are still usable without Astaire having to do anything. See id.
238. An example emphasizing this point is offered by commentators:
In a voluntary transaction, the purchaser or licensee of another’s publicity rights might bargain to obtain both the ability to use a celebrity’s name or likeness and the ability to call on the celebrity to perform in future commercials or to make public appearances on behalf of a product or service. The parties may not be concerned with articulating whether the publicity right covers both the use of his identity and of the celebrity’s labor. But if, for example, Michael Jordan’s publicity rights were sold to a third party to satisfy creditors’ claims, the purchaser ought not to expect that she could require Jordan to travel around the country to promote a new energy drink as its official spokesperson. Id. at 1351. While this example is in the context of a bankruptcy proceeding, it is still relevant to a debtor-creditor situation such as the civil judgment owed by Simpson.
239. See id. at 1352. Slavery and involuntary servitude are banned by the Thirteenth Amendment to the U.S. Constitution. Id. at 1352 n.166. This amendment reads, “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” U.S. CONST. amend. XIII, § 1. Passed in the aftermath of the Civil War, the amendment generally applies in situations of race discrimination. Jacoby & Zimmerman, supra note 42, at 1352 n.166. While never explicitly interpreted by the U.S. Supreme Court, the amendment suggests all citizens are protected from involuntary servitude. Id.
in contract law as evidenced by the law’s aversion to personal service contracts.\textsuperscript{241}

The ability to exploit publicity rights without the celebrity’s active participation, combined with the law’s dislike of compelled personal performance, lends credence to the argument that a celebrities’ services are not a component of their publicity rights.\textsuperscript{242} Moreover, the right of publicity can be included as one of the debtor’s assets while still allowing control over future labor to be maintained by the celebrity debtor.\textsuperscript{243}

\textbf{B. What Would Be the Impact of Such an Assignment and Transfer on the Celebrity’s Future Earning Capacity?}

Once the celebrity debtor’s right of publicity is assigned or transferred to a creditor, the celebrity must abstain from trying to exploit it so as not to be an infringer.\textsuperscript{244} While it might be tempting to enter contracts for advertisements or product promotions, the celebrity would be unable to do so without competing directly with the creditor and negating the value of the publicity rights.\textsuperscript{245} This problem of celebrities infringing on publicity rights transferred to other people is not unique to the debtor-creditor situation and has occurred in other areas.\textsuperscript{246}

One possible difficulty is defining the activities that infringe on the publicity rights.\textsuperscript{247} Future activities will need to be evaluated to determine whether the celebrity’s activities are “appropriate uses of human capital or are inappropriate attempts to exploit publicity rights that the celebrity no longer owns or controls.”\textsuperscript{248} This type of determination, although complex, is common in infringement suits.\textsuperscript{249}

Another difficulty is posed by the fact that celebrities who have parted with their publicity rights will be limited in the ways they can produce income.\textsuperscript{250} However, the celebrity and creditor could work together to find

\textsuperscript{241.} See id. at 1354. Traditional contract law does not compel the performance of personal service contracts, even if the agreement was entered voluntarily. \textit{Id.} Rather than specific performance, a party can only gain monetary damages as a remedy. \textit{Id.}
\textsuperscript{242.} Id. at 1355.
\textsuperscript{243.} Id.
\textsuperscript{244.} See id.
\textsuperscript{245.} See id. at 1355-56.
\textsuperscript{246.} Id. at 1356 (citing Gross v. Seligman, 212 F. 930, 931 (2d Cir. 1914)); see also Haelan Labs., Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866, 870 (2d Cir. 1953) (holding a baseball player could not transfer exclusive rights to his image and then grant those same rights to another party).
\textsuperscript{247.} Jacoby & Zimmerman, supra note 42, at 1356.
\textsuperscript{248.} Id.
\textsuperscript{249.} Id.
\textsuperscript{250.} See id.
the most worthwhile means of using the publicity rights. Perhaps the creditor could negotiate with the celebrity to secure a personal appearance that would result in a valuable benefit for both parties.

C. What Effect Does the Assignment and Transfer of Publicity Rights Have on Celebrities' Control over Their Identities?

Forced assignment and transfer of publicity rights allows the creditor absolute control over how those rights are used and what commercial associations are made with the celebrity's identity. The court in Halean held that a property designation for celebrity personas made sense because it believed famous people only wanted to make money from their notoriety. The court did not foresee celebrities defending themselves against the exploitation of their identities because they desired to safeguard their privacy. Because publicity rights have never entirely abandoned their privacy origins, however, the familiar tension between privacy and property is implicated by the possibility of transferring publicity rights to a creditor for the satisfaction of debts.

Rather than exploiting the right of publicity to generate money, some celebrities may choose to enforce their rights by preventing all commercial uses of their personas. Other celebrities, while not wanting to prohibit all commercial uses, may desire some level of control over how their identities are exploited. Celebrities may not want to risk overexposure or associate themselves with questionable products or companies. Moreover, celebrities may have a personal objection to a product. The courts have

251. Id. at 1357.
252. See id. at 1358.
254. See id.
256. Id. at 1359. An early case in which the right of publicity was used defensively to prevent commercial exploitation involved an objection to the sale of plastic busts of Dr. Martin Luther King. See Martin Luther King, Jr., Ctr. for Soc. Change, Inc., v. Am. Heritage Prods., Inc., 296 S.E.2d 697 (Ga. 1982). The court held that publicity rights had an important role for those who did not want their image used commercially. Id.; see also supra note 215 (discussing other examples involving Bette Midler, Tom Waits, and Dustin Hoffman).
258. Id. at 1360.
259. Id. Former Dodger pitcher Don Newcombe objected to a Coors beer advertisement featuring a drawing of a person resembling him. Newcombe v. Adolf Coors Co., 157 F.3d 686, 689 (9th Cir. 1998). His protest to the advertisement stemmed from the fact he was a recovering alcoholic who campaigned about the dangers of alcohol as a spokesperson for the National Institute on Drug and
held that publicity rights protect not only economic interests, but also these dignitary and reputational ones.\textsuperscript{260}

Those opposed to the assignment and transfer of the right of publicity argue that the right is unique in its implication of these personal-dignity and reputation interests.\textsuperscript{261} Such critics point out that "certain forms of wealth may be seen as so intimately connected to the human psyche that it would be morally offensive to permit creditors free reign in exploiting them after the debtor has failed to pay."\textsuperscript{262} By forcing celebrity debtors to surrender control of their identities to creditors, who possess the ability to connect the celebrity with unwanted ventures, the right of association arguably is violated.\textsuperscript{263}

While some states, including Illinois, have passed laws exempting publicity rights entirely from the debtor-creditor system,\textsuperscript{264} such exemptions are based on the erroneous belief that protecting debtors’ interests in reputation is more important than securing relief for creditors.\textsuperscript{265} Indeed, placing publicity rights outside the reach of creditors also conveys the message that such rights favor the famous at the expense of the creditor seeking relief.\textsuperscript{266} Ultimately, “the question is whether it is reasonable and fair to create a form of property that is legally cognizable only when it favors the famous or their assigns, but not when the benefits of doing so would flow to . . . people to whom a celebrity owes money.”\textsuperscript{267}

D. \textit{How is the Court to Deal with the Practical Difficulties Created by an Assignment of the Right of Publicity in the Context of a Money Judgment?}

In its ruling, the Simpson court raises a number of concerns regarding the practicalities of assigning or transferring publicity rights in the money judgment context. The first is whether the court would be required to assume an auditing role in monitoring credits against the judgment.\textsuperscript{268} Goldman suggests a dollar-for-dollar credit against the judgment be provided for monies created by Simpson’s publicity rights.\textsuperscript{269} While a

\begin{footnotesize}
\begin{itemize}
\item Alcohol Abuse. \textit{Id.} While considered more of a dignitary, rather than economic, interest, the court decided in his favor. \textit{Id.} at 694.
\item \textsuperscript{260} See Jacoby & Zimmerman, supra note 42, at 1360.
\item \textsuperscript{261} See id.
\item \textsuperscript{262} \textit{Id.} at 1361.
\item \textsuperscript{263} \textit{Id.} at 1360.
\item \textsuperscript{264} \textit{Id.} at 1361 n.195 (citing 765 ILL. COMP. STAT. ANN. 1075/15 (West 2002)).
\item \textsuperscript{265} See \textit{id.} at 1361.
\item \textsuperscript{266} \textit{Id.} at 1364.
\item \textsuperscript{267} \textit{Id.} at 1367.
\item \textsuperscript{268} See supra note 204 and accompanying text.
\item \textsuperscript{269} See supra notes 159-61 and accompanying text (discussing Goldman’s proposal for court
\end{itemize}
\end{footnotesize}
private accounting process could calculate and track the total revenue generated, it is likely that some court supervision would be necessary, perhaps in the form of an annual accounting of the amount remaining on the judgment. Such an administrative role may further add to the burdens on overcrowded courts, especially if the celebrity debtor contests the amount of a credit. In such a situation, a hearing would need to be held to give the celebrity debtor the opportunity to voice his objections and obtain a court ruling.

The second difficulty is whether the person to whom the publicity rights are assigned would be permitted to bring suit against third parties infringing on the celebrity's likeness. The assignment of publicity rights would presumably give a creditor the ability to sue any infringers. For example, if a manufacturer sold t-shirts with Simpson's picture on them, without consent, Goldman would be entitled to seek any money made from the merchandise. Such actions would require additional time and resources on the part of the creditor. Furthermore, the assignment of publicity rights would not deprive celebrity debtors of legal remedies against blatant misuses of their identities. The celebrities would retain the right to bring defamation claims if their images were disparaged by the creditor or others.

A third question is whether assignment of publicity rights would be a routine post-judgment remedy or whether it would be offered only upon a showing that all other enforcement mechanisms failed to secure the judgment. If such an assignment is allowed as a matter of course,

270. As an example, Goldman's suit was filed in the Santa Monica courthouse of the Los Angeles Superior Court. *Simpson Retains Rights*, *supra* note 29. As the largest trial court in the United States, the Los Angeles County Superior Court has over fifty courthouses, almost 600 judicial officers, and more than 5,000 staff. *Los Angeles Superior Court Ann. Rep.* 2006-5 (2006), http://lasuperiorcourt.org/courtnews/uploads/14200628112158annualreport2006.pdf. In the year 2006 alone, 2,647,346 cases were filed in the Los Angeles County Superior Court. *Id.* Court supervision in the form of an annual accounting to track the amount remaining on a judgment would present administrative challenges given the already large volume of cases flowing through the court system.

271. *See supra* note 204 and accompanying text.

272. Indeed, this argument is one raised by Goldman. Motion for Assignment, *supra* note 128, at 10:4-6. A transfer of Simpson's publicity rights would allow Goldman to bring suit against anyone who used Simpson's name or likeness commercially, including event organizers and memorabilia manufacturers. *Id.*


274. *Id.*

275. *See supra* note 204 and accompanying text.
creditors may seek this potentially profitable remedy without considering other options for judgment collection that are easier for the courts to execute. While a celebrity's identity may indeed be worth millions, the concerns over involuntary servitude and compelled performance\(^\text{276}\) would suggest that other remedies should be employed first. If these are shown to be ineffective, however, the assignment of publicity rights should be an option at the creditor's disposal, particularly when the celebrity has deliberately circumvented paying the debt as Simpson has done.\(^\text{277}\)

VII. CONCLUDING THOUGHTS

Through the years, the treatment of fame has shifted from that of a purely personal characteristic to that of a commodity.\(^\text{278}\) This process has resulted in new forms of wealth for celebrities who create valuable identities that can be exploited for a profit\(^\text{279}\). States increasingly have recognized the right of publicity through common law, statute, or a combination of both.\(^\text{280}\) Yet, those advocating for more expansive publicity rights may not have considered the consequences of assigning property status to an interest. When fame is turned into a commodity, the possibility arises of treating it as an asset within the debtor-creditor context. As the court hearing the Goldman motion correctly ruled, the assignment of publicity rights is not currently recognized by the law as a means of satisfying a money judgment.\(^\text{281}\) However, this remedy should be available to unpaid creditors to collect the debt owed to them.

The case of Fred Goldman and O.J. Simpson presents a particularly poignant example of the need for such measures. Despite being found liable by a civil jury for the death of Ron Goldman,\(^\text{282}\) Simpson continues to exploit his fame and defiantly refuses to pay the judgment owed.\(^\text{283}\) By not allowing Goldman to acquire Simpson's publicity rights, the court seemingly sacrifices the satisfaction of the creditor for the sake of the debtor's reputation and dignity. This is particularly true when the creditor has exhausted other available forms of judicial relief, as Goldman has done.

\(^{276}\) See supra notes 235-43 and accompanying text (commenting on whether the right of publicity includes elements of performance).

\(^{277}\) The court in Goldman v. Simpson seems to suggest this is a better remedy when dealing with estates rather than with living persons due to the personal and privacy rights implicated. Court Ruling, supra note 123, at 9-11.

\(^{278}\) Jacoby & Zimmerman, supra note 42, at 1322.

\(^{279}\) Id.

\(^{280}\) See supra note 43 and accompanying text.

\(^{281}\) See supra note 224 and accompanying text.

\(^{282}\) See supra notes 24-26 and accompanying text.

\(^{283}\) See supra note 147 and accompanying text (discussing the ways Simpson continues to use his publicity rights to turn a profit).
since the judgment was awarded in 1997.284 However, it must be acknowledged that the right of publicity presents certain difficulties in this context. Chief among them is the need to balance the right of the creditor to use a celebrity's identity with the celebrity's right to the benefits of the celebrity's future labor.285 Nevertheless, these challenges should be overcome and creditors should be afforded relief, especially when they have waited, as Goldman has, nearly ten years to receive the judgment.

While there is a renewed sense of hope following a court ruling awarding Goldman the royalties from Simpson's past movie and television work,286 the civil judgment is still far from satisfied.287 Goldman has long

284. See supra note 122 and accompanying text (detailing the variety of suits and legal measures Goldman has pursued to collect the civil judgment).

285. See supra notes 235-43 and accompanying text. The possible violation of associational rights and the administrative burdens caused by this remedy are other areas of concern. See supra notes 252-77 and accompanying text.

286. See Goldmans Get Royalties, supra note 122. Despite the failure to secure Simpson's publicity rights, Goldman has initiated other legal proceedings in both California and Florida courts in an attempt to collect the judgment. While these court actions have continued the rollercoaster ride for Goldman, there may finally be reason for optimism, as evidenced by the award of royalties. In February 2007, in a somewhat ironic move, the Goldmans sought the rights to If I Did It and prepared to auction the book as a means of partially satisfying the civil judgment. Chris Francescani & Brian Cohen, Role Reversal in Battle Over O.J. Simpson Book, ABCNEWS.COM, Apr. 3, 2007, http://abcnews.go.com/US/story?id=3002369&page=1 [hereinafter Role Reversal]. The plan struck many observers as curious because only months earlier the Goldmans had publicly decried the publication of the book. Id. Los Angeles Superior Court Judge Gerald Rosenberg sided with the Goldmans and set the auction for April 17, 2007, in Sacramento, the California headquarters of publisher HarperCollins. O.J.'s "If I Did It" to be Sold at Auction, BOSTON.COM, March 14, 2007, http://www.boston.com/ae/celebrity/articles/2007/03/14/ojs_if_i_did_it_to_be_sold_at_auction/?m; Role Reversal, supra. The proposed sale, however, had problems from the start. Role Reversal, supra. Simpson lawyer Yale Galanter said that Lorraine Brooke Associates, the company created to receive the profits from the book and television interview deal, was not served properly. Id. Also, the Sacramento County Sheriff's Department, charged with carrying out the auction, wrote a letter questioning the department's jurisdiction over the Florida-based company. Id. To make matters worse, the alliance between the Brown and Goldman families was broken as Denise Brown vocally opposed the auction and the Goldmans' new plan to seek publication of the book. Id. She stated: "The Goldmans' sudden reversal of positions to justify the auction of these rights ... is transparent to their true motive, which is to collect money . . . . This overzealous pursuit to collect on the judgment does not morally justify a means to the end." Id. Finally, days before the scheduled auction, attorneys for Lorraine Brooke Associates announced it was filing for bankruptcy, putting the auction on hold until a later date. Greg Risling, O.J. Simpson Book Rights Auction on Hold, ABCNEWS.COM, Apr. 16, 2007, http://abcnews.go.com/Entertainment/wireStory?id=3045031. Lorraine Brooke Associates is owned by Simpson's four children and has long been considered by Goldman to be a sham operation designed to hide the supposed $880,000 received from the book and television deal from ever being seized. Id. In the ensuing bankruptcy proceeding, Florida judge A. Jay Cristol ruled that Lorraine Brooke Associates should be liquidated and the book's rights given to an independent trustee. Laura Wides-Munoz, Company Trustee Has O.J. Book Rights, ABCNEWS.COM, May 17, 2007, http://abcnews.go.com/US/wireStory?id=3186921. Furthermore,
believed that Simpson’s notoriety helped the football star avoid a guilty verdict in the criminal case. In an ironic turn of events, it is this very same fame Goldman hopes to capitalize on to secure the judgment long overdue. Unless the assignment of publicity rights is recognized as a post-judgment remedy, Goldman may never receive the “poetic justice” that has eluded him for over a decade.

all copies of the book, including manuscripts, excerpts, and summaries were ordered by Judge Cristol to be turned over to avoid any unauthorized distribution. *Company Ordered to Turn Over O.J. Book, ABCNews.COM, May 26, 2007, http://abcnews.go.com/US/wireStory?id=3215552.* After a deposition by Simpson’s daughter Arnelle, who heads Lorraine Brooke Associates, Judge Cristol ordered the rights to “If I Did It” to be given to the Goldman family. *Chris Francescini & Brittany Bacon, “If I Did It”: O.J.’s Daughter’s Idea, ABCNEWS.COM, June 15, 2007, http://abcnews.go.com/TheLaw/story?id=3282110&page=1.* The judge accused Simpson of setting up Lorraine Brooks Associates, named after his children, as a means to defraud creditors. *Id.* This June 15, 2007, ruling allows Fred Goldman to auction off the book rights to the highest bidder and keep the proceeds. *Id.* On July 3, 2007, the Goldman family purchased the book rights from the bankruptcy trustee appointed by the court back in May. *Goldman Family Buys Rights to O.J. Book, MSNBC.COM, July 3, 2007, http://www.msnbc.msn.com/id/19581585/#storyContinued.* As part of the settlement, the Goldmans own the copyright, media, and movie rights as well as Simpson’s name, likeness, and right of publicity connected with the book. *Id.* Additionally, the trustee receives ten percent of the first $4 million in gross proceeds generated and then a designated percentage of any additional proceeds. *Id.* The book rights will be held by Ron Goldman LLC. *Id.* Following the sale by the trustee, Goldman attorney David Cook declared, “Ron Goldman LLC will own Simpson’s name, likeness, signature and story and will hawk it to satisfy this terrible judgment. Justice has arrived in Miami.” *Id.* This statement evidences the hostility still present between the Goldman family and Simpson, even ten years after the civil judgment. Not surprisingly, the sale of the book rights has generated additional questions and issues. The family of Nicole Brown insists it should receive forty percent of any book proceeds, with the remainder given to the Goldman family. *Browns Seek Piece of Simpson’s ‘If I Did It,’ CNN.COM, July 12, 2007, http://www.cnn.com/2007/US/law/07/12/simpson.book.ap/index.html?iref=newssearch.* The Brown family maintains, “Fred Goldman and the Browns are equal judgment creditors,” and thus, both families should share in the profits. *Id.* However, the Goldmans along with the trustee claim the Browns should only recover after the Goldmans’ claim has been satisfied. *Id.* Furthermore, lawyers for Simpson maintain that his name and likeness and the use of them should not be given to the Goldmans as part of the deal. *Id.* In response, the Goldmans contend the book would be worthless if Simpson’s name could not be used. *Id.* In a court hearing held on July 30, 2007, Judge Cristol approved the settlement with the trustee, clearing the way for the publication of the book. *Patrick Oppmann & Susan Candiotti, O.J.’s book proceeds will go to Goldman family, CNN.COM, July 30, 2007, http://www.cnn.com/2007/US/law/07/30/simpson.book/index.html.* The judge also denied the Brown family’s claim to a higher percentage of the proceeds. *Id.* The book, retitled *If I Did It: Confessions of the Killer,* was published in September 2007 by Beaufort Books. *Sales soar for Simpson’s “If I Did It,” CNN.COM, Sept. 19, 2007, http://www.cnn.com/2007SHOWBIZ/books/09/19/books.simpson.ap/index.html.* In a separate legal maneuver by Goldman, a Los Angeles judge ordered Simpson to give any money a Florida lawyer is holding for him to the Goldmans. *L.A. Judge Gives O.J. Funds to Goldmans, ABCNEWS.COM, May 23, 2007, http://abcnews.go.com/US/wireStory?id=3207397.* Approximately $3,500 is believed to be held for Simpson in a client trust account in Florida. *Id.* While a small amount, the move is significant because the ruling reaches across state lines to money in Florida. *Id.*

287. *See supra notes 27, 122 and accompanying text.*
289. *Id.* To this day, Goldman maintains that Simpson murdered his son and has stated it would be “poetic justice” to take away Simpson’s fame. *Id.*
VIII. EPILOGUE

Following the writing of this article, a noteworthy amendment was made to the framework for postmortem publicity rights in California. Senate Bill 771 was passed by the California legislature on September 7, 2007, and later signed into law on October 10, 2007.290 The bill’s purpose is to clarify California Civil Code section 3344.1 by offering retroactive protection to the publicity rights of celebrities who died before 1985, the date of the statute’s original passage.291 The changes to section 3344.1 specify that the property rights in the deceased personality are freely transferable by contract, trust, or other testamentary instrument, even if executed before 1985.292 The rights vest in the persons specified by the testamentary instrument in effect at the deceased personality’s death.293 If the instrument contains no express provision transferring the publicity rights, any provision disposing of the residue of the deceased personality’s assets will guide the transfer of the rights.294 Any contract entered into by the deceased personality during life for the assignment of publicity rights is also valid.295 Furthermore, in order for heirs listed in the previous version of the statute to retain their publicity rights, the rights must have been exercised by May 1, 2007.296 In the absence of any action by the statutory heirs, the rights will vest in the heirs.

291. See id. Under the prior version of section 3344.1, postmortem publicity rights were recognized as of January 1, 1985, the date of the statute’s passage. CAL. CIV. CODE § 3344.1(h) (Deering 2006). A celebrity who died before 1985 could not transfer by testamentary instrument publicity rights that did not yet exist. Only statutorily included heirs, such as a surviving spouse, children, grandchildren, or parents could exercise such rights. § 3344.1(d).
293. Id.
294. Id.
295. Id.
296. Id.
specified in any testamentary instrument, in accordance with the newly amended version of section 3344.1.297

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