

Term, Breadth, and Waivability

Mark Roesler, Esq.*

Thank you, June Besek. It is nice to be here this morning. My daughter graduated from Columbia a few years ago, so it is particularly nice to be back on campus. Thank you for inviting me. Here is a very brief overview of what I have done. I founded CMG Worldwide in 1981. Since then, we have had the pleasure of working with slightly less than two thousand various personalities, many of those deceased. We have a wide range of experience working with personalities in the entertainment, sports, music, and historical areas. Although we are primarily based in Los Angeles and have offices in Las Vegas and Nashville for our music clients, we have maintained our headquarters in Indianapolis. As Professor Besek mentioned earlier, we have been involved in various cases involving celebrities; we have worked with various state statutes; and, we are trying to advance the right of publicity for various celebrities.

The concept of the commercial value for a celebrity is not a novel concept. It has been around since the early era of celebrities like Charlie Chaplin, Humphrey Bogart, and Ingrid Bergman. They all insisted that their names be used above the titles of the films. They recognized the significant value to their name and likeness. We have also witnessed Walt Disney who created an entertainment empire and even named the company after himself. Further, we see designers like Ralph Lauren, and entertainers like Michael Jackson, whose estate has earned significant sums of money after his death.

All of these celebrities rely on the concept of the right of publicity to protect the significant value of the goodwill created during their lifetimes. It does not really make sense at the moment of their death that somehow the law would diminish or strip that value. We have done a lot of work in the taxation and the IRS area of valuing celebrities at the time of their deaths. During a celebrity's life time, the celebrity can generate substantial revenue from their work and amass intellectual property rights. At the moment of death, the celebrity, their heirs, their designees or whoever controls those rights are left primarily and only with the intellectual property rights to exploit.

* Founder, Chairman, and CEO of CMG Worldwide, Inc. This is a transcript of my remarks given on October 19, 2019, at the Kernochan Center's Symposium, "Owning Personality: The Expanding Right of Publicity."

© 2019 Roesler. This is an open access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction, provided the original author and source are credited.

The question I have is why should there be a difference between how somebody like the Walt Disney Company protects the intellectual property rights and how the Michael Jackson estate protects the intellectual property rights? Why should there be any difference between how they can protect those intellectual property rights?

The celebrities and the IP that individuals create is really the central core of the U.S. media entertainment industry, which is the largest in the world. It is three quarters of a billion dollars and it includes motion pictures, television programs, commercials, streaming content, music and audio recordings, broadcast radio, book publishing, video games, ancillary services and products. That is expected to grow in the next five years to \$830 billion.¹ All of that is very significant to the entertainment world and it is also very significant to the entities that these various celebrities have control.

With respect to movies and various personalities we have represented, both deceased and alive, we have always respected the First Amendment. For the most part, our clients respect the First Amendment and the ability to make movies and expressive works. One example is a current movie out with one of our clients Neil Armstrong.² In this context, we negotiated various product placements. In that particular case, Omega, the watch company, worked with our client, the family of Neil Armstrong, to secure permission to run separate advertisement for something like that. Some of the family members are involved with various consulting capacities, but they do not interfere with the ability of the studios to produce that type of work.

1. *Media and Entertainment Spotlight: The Media and Entertainment Industry in the United States*, SELECT USA, <https://perma.cc/J9EM-3EZY> (last visited Mar. 1, 2019).

2. *FIRST MAN* (Universal Pictures 2018).