International Implications for the Right of Publicity

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I. Introduction

A. Overview of right of publicity law
B. Publicity rights emerged from privacy common law in U.S., but the two bases for protection can now be distinguished
C. Some foreign personality rights also based on privacy laws

II. International Conflicts of Laws Issues

A. England (and other states) v. Massachusetts: *Bi-Rite Enterprises v. Bruce Miner Co.*, 757 F.2d 440 (1st Cir. 1985)
C. England v. California: *Love v. Associate Newspapers, Inc.*, 611 F.3d 601 (9th Cir. 2010)

III. Rights of publicity and privacy abroad

A. Different bases for protection than within the United States
B. Protection akin to right of publicity and privacy laws, but not quite the same and often referred to as personality rights
C. Not every country has this protection
D. No harmonization, need to look at each country

IV. Examples of countries with laws akin to the right of publicity, or that do not recognize the concept

A. China - image rights
1. Law: Statute prohibits using another citizen’s image or portrait for profit, but the “newsworthiness” fair use exception is substantial, especially when it comes to celebrities and public figures.
2. Case: Emperor Puyi
   a) Facts: A public exhibition of the deceased Emperor Puyi’s personal diaries, clothing, and other artifacts was held, and the exhibitors charged an entrance fee. The Emperor’s brother sued.
   b) Outcome: The exhibitors prevailed.
   c) Rationale: Publicity rights die with the person, and Puyi was a public figure closely connected with Chinese history whose rights must exist in the public domain.
   d) Unresolved issue: Are deceased public figures inherently “newsworthy” for purposes of the fair use exception?
   e) Did you know?: Chinese courts can require violators of the statute to apologize to the injured party.

B. Canada - personality rights
1. Law: Canada protects individuals’ personality, image, and name under common law, and several provinces have “right of publicity”-type statutes.
2. **Case:** George Athans the professional water skier  
   a) **Facts:** A children’s summer camp used a drawing on its brochures based on a well-known image of Athans in a classic water skiing pose. Athans sued.  
   b) **Outcome:** Athans lost on his passing off claim, but was awarded a $500 licensing fee based on his exclusive right to the commercial use of his own identity and image.  
   c) **Rationale:** The summer camp’s actions amounted to the tort of appropriation of personality because Athans’ exclusive right to use his own image as he pleased was impaired.  

C. **United Kingdom** - no established personality rights  
1. **Law:** There is no recognized right of publicity in the UK. Instead, plaintiffs must rely on various causes of action such as copyright and trademark infringement, passing off, claims under the British Human Rights Act, violation of law of confidence, and defamation.  
2. **Case:** Supermodel Naomi Campbell  
   a) **Facts:** The Mirror newspaper ran a surreptitiously-obtained photo of supermodel Naomi Campbell leaving a Narcotics Anonymous meeting. Campbell sued the paper, alleging violations of the U.K. Human Rights Act.  
   b) **Outcome:** Campbell prevailed. This was the first case where the court recognized that the adoption of Article 8 of the European Human Rights Convention (through adoption of the British Human Rights Act) meant privacy is now protected under British law.  
   c) **Rationale:** The House of Lords found that, under the Act, a duty of confidence arises whenever the party subject to the duty knows or should know that the plaintiff could reasonably expect her privacy to be protected. Here, the newspaper wrongfully published private information which it knew Campbell reasonably expected to remain private.  

D. **Germany** - personality rights  
1. **Law:** Section 2 (1) of the German Constitution: "Everyone has the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or against morality."  
2. **Case:** German soccer goalie Oliver Khan prevailed in a suit against EA Sports, claiming unauthorized use of his name and image in the soccer video game FIFA World Cup 2002 in violation of German Civil Code provisions.  
3. **Case:** Princess Caroline of Hanover  
   a) **Facts:** Paparazzi published pictures of Princess Caroline on three separate vacations: one while her father, the Prince of Monaco, was gravely ill; a second at a winter sports resort; and a third in a rented villa. She sued for invasion of privacy.  
   b) **Outcome:** The court found publication of the photos from the first and third vacations permissible, but not those taken during her second trip.  
   c) **Rationale:** The public had a legitimate interest in seeing how Princess Caroline reconciled her private life with her father’s illness, and how
members of the royal family were opting for more frugal vacation options, such as rented villas. However, the public had no legitimate interest in seeing pictures of Princess Caroline on a winter vacation that had nothing to do with her public duties.

E. **Italy**- personality rights
   1. **Law:** Various Articles of the Italian Civil Code protect against unauthorized use of an individual’s name, photograph or image. Article 8 of the Industrial Property Code restricts the right to register and use marks that incorporate the reputation or name of a famous person. It also prohibits registering another (non-famous) person’s name as a trademark if doing so would damage the person’s reputation, dignity, or honor.
   2. **Case:** “El Pocho” the soccer star
      a) **Facts:** A clothing company registered and began using the mark EL POCHO 7, which was the nickname and jersey number of a famous soccer player in the Napoli Football Club, without permission. The Football Club, which held rights in El Pocho’s image, name, face, signature, and voice, sued.
      b) **Outcome:** The Napoli Football Club prevailed.
      c) **Rationale:** El Pocho was already famous by the time the clothing company registered his nickname and jersey number as a trademark, and exploiting his name was economically profitable. Since the company had nothing to do with El Pocho’s fame, it was not authorized to register or use his name or characteristics as a trademark.
   3. Did you know?: Italy’s protection of famous people applies to natural, but not legal, people. For example, when an alcoholic beverage company used an image of the famous La Scala theater on its bottles, the company prevailed in a lawsuit brought by the theater’s board.

F. **France**- personality rights; moral rights
   1. **Law:** French law protects personality rights under Article 9 of the French Civil Code; rights survive post-mortem; moral rights protect authors and artists, among others
   2. **Case:** Pablo Picasso Dispute. Settlement in light of rights under French law.
   3. Did you know?: French personality law protects individuals’ titles of nobility and family mottos.

V. **Social media**
   A. Facebook’s potential $20 million class action settlement over its “Sponsored Stories” feature
   B. YouTube
   C. Pinterest
   D. Twitter hashtags
   E. Tumblr
   F. Individuals should check terms of use and employ take-down procedures where applicable
   G. Companies need clear terms of use relating to identities

VI. **Conclusion**