

Right of Privacy

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A program of the Arts & Business Council of Greater Philadelphia



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Invasion of Privacy

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For Philadelphia Volunteer Lawyers for the Arts

States recognize a right of privacy — that is, the right to be left alone — under both state statutes and common law. The right of privacy was first posited by Samuel D. Warren and Louis D. Brandeis in a Harvard Law Review article arguing for right of privacy, but courts did not recognize this right until the landmark George case Pavesich v. New England Life Insurance Co. in 1905, in which an insurance company used a picture of a man who was not a public figure in an advertisement without his consent. Invasion of privacy is a personal tort directed at protecting an individual's "reasonable expectation of privacy."

The right of privacy and the right of publicity are similar, but simply put, the right of publicity is a subcategory of the right of privacy. Generally, the right of publicity protects a celebrity's commercial interest in the exploitation of his or her name or likeness.

The right of privacy is a personal one which is not assignable and does not survive the injured party's death. Most importantly, the right of privacy is generally more applicable to the average individual and may not protect a celebrity.

Who Can Bring a Right of Privacy Action?

Everyone has a right of privacy — the right to be left alone. The right of privacy is usually more applicable to the average individual than to public figures, such as politicians or celebrity actors, musicians and athletes, because they have voluntarily placed themselves in the public eye. The right of privacy does not extend to pictures of buildings or other objects that can be viewed in the public.

Types of Privacy Invasions

The four main categories of the right of privacy protect an individual from the mental harm that may result from an unwanted personal invasion.

Intrusion into an Individual's Private Affairs (§652B)

One is liable for intruding on the private affairs of another if one:

- intentionally encroaches on
- the solitude of private affairs of another
- in a way that would be highly offensive to a reasonable person

Claims against the media can occur when a newsgathering source wrongfully uses a camera, video camera or tape recorder. The Supreme Court held that a journalist's "ride-along" with police constituted a violation of the Fourth Amendment prohibition against unreasonable searches and seizure, and while the public officials were immune from liability, the media representatives were not. In another example, the California Supreme Court held that videotaping victims of an accident on the way to a hospital in a helicopter can be an invasion of privacy.

Publication of Private Facts (§652D)

One is liable for publicizing the private life of another when the facts one publicizes are:

- highly offensive to a reasonable person, and
- not of legitimate public concern

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Publication of truthful information regarding the private life of a person that is also highly offensive to a reasonable person is an invasion of privacy when it concerns a matter not of legitimate public concern. If the information comes from a public record, such as a police report, birth certificate, or court proceeding, then the media are probably not liable for publication of that information. Examples of private facts may include facts about a person's health or sexual activity. Thus, when reporting information that may be considered indecent or obscene, it is wise to print with caution.

False Light in the Public Eye (§652E)

One is liable for placing another in a false light in the public eye when one:

- publicizes a matter concerning another
- which places that person in a false light
- which is highly offensive to a reasonable person in the plaintiff's position
- with knowledge or reckless disregard as to the falsity of the matter publicized and the light in which the plaintiff is placed.

A publication that presents an individual in a "false light" may be considered an invasion of privacy and also may be considered defamation, although the torts are not the same. In a defamation action, the information published must be false to be defamatory, and truth is an absolute defense. (Be careful here — this means that, if you sue someone for defamation because he or she says, for instance, that you have an embarrassing disease or were doing drugs, then you may be asked under oath whether the statement is true; if it is true, you lose.) Examples of false light right of privacy violations are distortion of photographs or embellishments on a story.

Appropriation of the Name or Likeness of Another (§652B)

Liability arises when one appropriates the name or likeness of another for one's own benefit. The tort here does not hinge on the offensiveness of the appropriation- it is more akin to property law. One may not "steal" another person's reputation, social standing by using that person's name.

Misappropriation is the commercial use of an individual's name or likeness without consent. What is considered a commercial use is not always apparent, and courts will consider whether the item has a central commercial purpose.

Written Consent

Parties wishing to use an individual's name, likeness or identity in an article or other media production should first obtain a written consent from the individual. Consent should be in writing because the existence of oral consent may be disputed later. Some states, including New York, require written consent. Also, written consent is needed to outline the scope of the use of the individual's name, likeness or identity

It is advisable to obtain written consent whenever possible, but there are some situations when it is not practical to obtain written consent. Those situations exist for newsworthy events or when no person is identified or able to be identified, for example taking photographs in a crowd at a parade. It is important to remember that it is never permissible to use the name or likeness of individuals for advertising purposes without first obtaining their consent.

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