



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

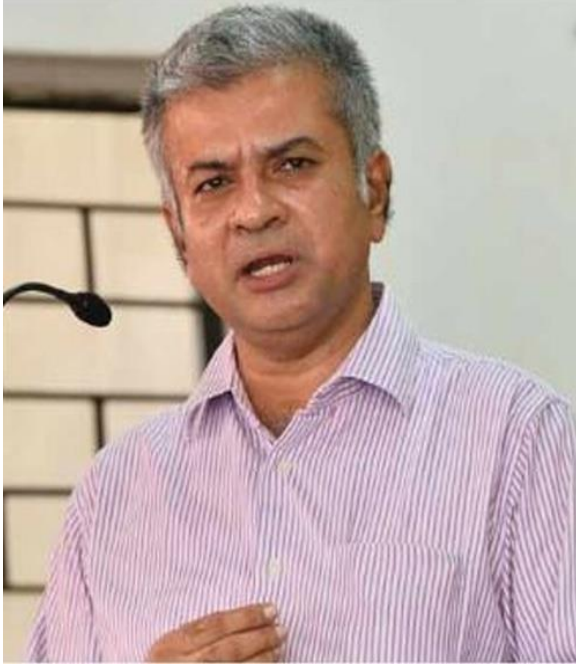
– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

W H I T E B L A C K  
L E G A L



## EDITORIAL TEAM

### Raju Narayana Swamy (IAS ) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) ( with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

### Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



# **Senior Editor**

## **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

## **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



## **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

## **Dr. Rinu Saraswat**



Associate Professor at School of Law, Apex University, Jaipur,  
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

## **Dr. Nitesh Saraswat**

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



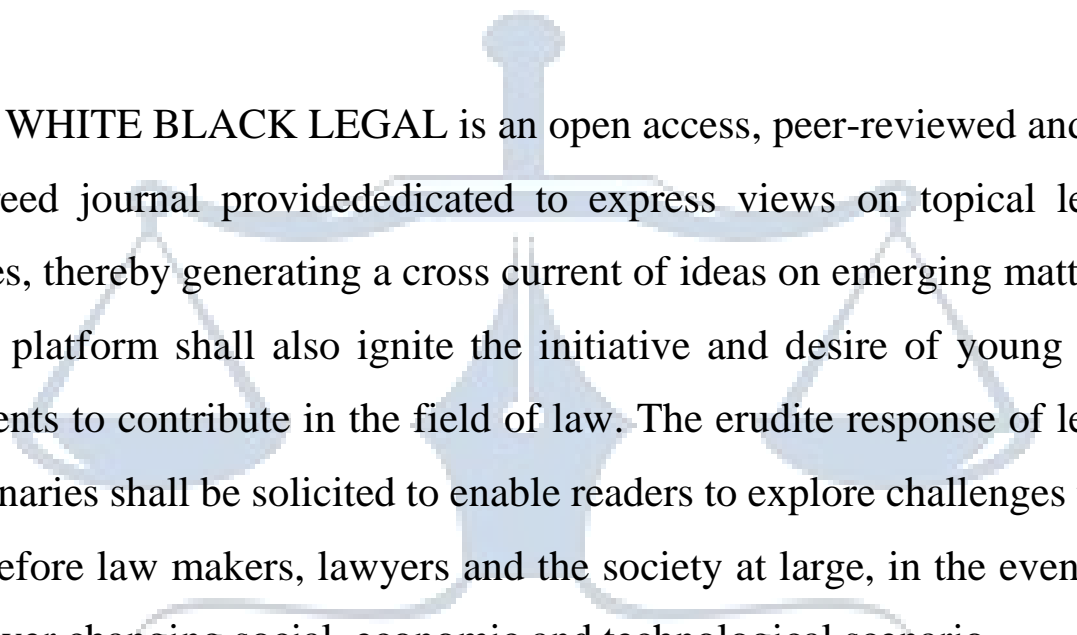
## **Subhrajit Chanda**



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

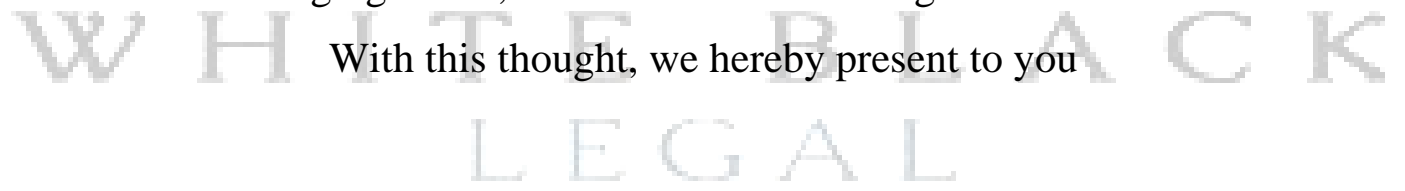
Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## *ABOUT US*



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you





# **BALANCING RIGHTS: THE INTERSECTION OF PRIVACY AND PUBLICITY IN THE DIGITAL AGE**

AUTHORED BY - NAOM ZOENGMAWII & DR. JANE EYRE MATHEW

## **ABSTRACT**

This paper explores the complex interplay between the right to privacy and the right to publicity, focusing on their legal foundations, key differences, and the challenges they face in the digital era. It examines how courts and legislatures navigate these rights, particularly in the context of social media, celebrity culture, and technological advancements. By analyzing landmark cases and statutory frameworks, the paper provides insights into how these rights are protected, infringed, and balanced.

## **INTRODUCTION**

The right to privacy and the right to publicity represent two critical aspects of personal rights in contemporary society. Privacy rights safeguard individuals from unwarranted intrusion, while publicity rights protect the commercial value of a person's identity. This paper aims to dissect these rights, exploring their origins, legal interpretations, and current relevance.

In the rapidly evolving landscape of the digital age, the concepts of privacy and publicity are undergoing significant transformation. The right to privacy and the right to publicity, while distinct, often intersect in ways that challenge traditional legal frameworks. The right to privacy protects individuals from unwarranted intrusions into their personal lives, ensuring they can maintain control over personal information and activities. Conversely, the right to publicity safeguards the commercial value of a person's identity, allowing individuals, particularly public figures, to control and profit from the use of their name, likeness, and other recognizable aspects of their persona.

The origins of these rights highlight their differing foundations. The right to privacy, famously articulated in the 1890 Harvard Law Review article by Samuel Warren and Louis Brandeis, was conceived as "the right to be let alone," a reaction to the intrusive nature of burgeoning media technologies. Over time, this right has been expanded through various legal interpretations, becoming

a cornerstone of personal liberty in modern jurisprudence. The right to publicity, on the other hand, emerged from the commercial realm, recognizing the economic interests individuals have in their own identity. This right gained prominence in the mid-20th century, notably with the *Haelan Laboratories* case, which acknowledged the commercial exploitation of one's likeness.

As society becomes increasingly interconnected through social media and other digital platforms, the lines between public and private spheres are increasingly blurred. Individuals today navigate a complex web of personal and public identities, where their private lives can be exposed and commercialized with unprecedented ease. This paper explores the intricate relationship between privacy and publicity rights, examining how they are defined, protected, and challenged in the context of contemporary legal and technological developments.

By analyzing key legal cases, statutory frameworks, and emerging issues in the digital age, this paper aims to provide a comprehensive understanding of how privacy and publicity rights coexist and conflict. It will delve into the historical development of these rights, their current legal standing, and the evolving challenges they face. Ultimately, this exploration seeks to highlight the need for a balanced approach that respects individual autonomy while acknowledging the commercial realities of a digital society.

## **HISTORICAL BACKGROUND**

### 1. Right to Privacy

The concept of the right to privacy has its roots in the late 19th century, emerging as a response to the intrusive nature of new media technologies and the growing presence of the press. The seminal work in this area is the 1890 Harvard Law Review article by Samuel D. Warren and Louis D. Brandeis, titled "The Right to Privacy." Warren and Brandeis articulated a vision of privacy as "the right to be let alone," advocating for legal protections against unwarranted intrusions into an individual's private life.

The right to privacy gained formal recognition and development through various judicial decisions in the 20th century. Notable among these is *Griswold v. Connecticut* (1965), where the U.S. Supreme Court recognized a constitutional "right to marital privacy" that invalidated a state law prohibiting the use of contraceptives. This decision laid the groundwork for subsequent cases that expanded privacy rights, including *Roe v. Wade* (1973), which affirmed the right to privacy in the context of a woman's



right to choose an abortion.

## 2. Right to Publicity

The right to publicity evolved from common law principles, primarily in response to the commercial exploitation of individuals' identities. This right protects against the unauthorized commercial use of a person's name, likeness, and other recognizable aspects of their persona. The landmark case that laid the foundation for the right to publicity is *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* (1953). In this case, the Second Circuit Court of Appeals recognized that individuals have an exclusive right to license the commercial use of their identity, separate from any privacy concerns. This recognition led to the development of statutory protections in various states. California and New York, for instance, have robust statutory frameworks that explicitly protect publicity rights. California's Civil Code Section 3344 and New York's Civil Rights Law Sections 50 and 51 provide legal recourse for unauthorized commercial exploitation of a person's identity.

### Evolution Through Case Law and Legislation

Throughout the 20th and 21st centuries, both privacy and publicity rights have been shaped by significant legal cases and legislative actions. Privacy rights have expanded to encompass various aspects of personal autonomy, with courts recognizing the importance of safeguarding personal information in the digital age. The Privacy Act of 1974 in the United States, for example, establishes safeguards for personal data held by federal agencies, reflecting the growing concern over data privacy.

In contrast, the right to publicity has primarily focused on the commercial aspects of one's identity. The rise of celebrity culture and the increasing economic value of personal brands have driven the need for strong publicity rights. Legislative efforts, such as California's endorsement of posthumous publicity rights, underscore the importance of protecting the commercial interests associated with an individual's identity even after death.

### Contemporary Context

The digital age has introduced new complexities to the interplay between privacy and publicity rights. Social media platforms, pervasive surveillance technologies, and the ease of data sharing have transformed how personal information and identities are managed and protected. The General Data Protection Regulation (GDPR) in the European Union represents a comprehensive effort to address

these challenges, providing robust protections for personal data and emphasizing individual consent and control.

In summary, the historical development of privacy and publicity rights reflects a dynamic legal landscape that continues to evolve in response to societal and technological changes. The following sections of this paper will delve deeper into the legal foundations, key differences, and contemporary challenges associated with these rights, highlighting the ongoing need to balance personal autonomy with commercial interests in the digital age.

## LEGAL FOUNDATIONS

### 1. Right to Privacy

The right to privacy is grounded in a combination of constitutional, statutory, and common law principles. Its legal foundations reflect an evolving understanding of personal autonomy and the need to protect individuals from unwarranted intrusions.

#### Constitutional Basis

In the United States, the right to privacy is not explicitly mentioned in the Constitution, but it has been inferred from several amendments, particularly:

**Fourth Amendment:** Protects against unreasonable searches and seizures, establishing a zone of privacy in one's personal and home life.

**Ninth Amendment:** Suggests the existence of other fundamental rights retained by the people, which the courts have interpreted to include privacy.

**Fourteenth Amendment:** Through the Due Process Clause, the Supreme Court has recognized various privacy rights, particularly in cases involving personal autonomy and family matters.

#### Key Supreme Court decisions have expanded the scope of privacy rights:

**Griswold v. Connecticut (1965):** Established the right to marital privacy regarding contraceptive use, setting a precedent for broader privacy rights.

**Roe v. Wade (1973):** Extended the right to privacy to a woman's decision to have an abortion, further solidifying privacy as a fundamental right.

**Lawrence v. Texas (2003):** Recognized the right to privacy in consensual adult sexual relationships, overturning laws that criminalized homosexual conduct.

## Statutory Protections

Various statutes at both federal and state levels provide explicit privacy protections:

**Privacy Act of 1974:** Regulates the collection, maintenance, and dissemination of personal information by federal agencies, emphasizing individuals' rights to access and correct their data.

**Health Insurance Portability and Accountability Act (HIPAA):** Establishes standards for the protection of health information, ensuring privacy and security of medical records.

**General Data Protection Regulation (GDPR):** A comprehensive regulation in the European Union that protects personal data and privacy, setting strict guidelines for data collection, processing, and transfer.

## Common Law

At common law, privacy rights are recognized through tort claims such as:

**Intrusion upon Seclusion:** Protects individuals from unauthorized intrusions into their private affairs.

**Public Disclosure of Private Facts:** Protects against the dissemination of private information that is not of public concern and would be offensive to a reasonable person.

**False Light:** Protects individuals from publicity that falsely portrays them in a misleading manner.

**Appropriation of Name or Likeness:** While closely related to the right to publicity, this tort also addresses privacy concerns by protecting against unauthorized commercial use of one's identity.

## **2. Right to Publicity**

The right to publicity is primarily concerned with the commercial exploitation of an individual's identity. It is rooted in common law principles and reinforced by statutory provisions in various jurisdictions.

### Common Law Origins

The right to publicity originated from the recognition that individuals, particularly celebrities and public figures, have an economic interest in controlling the use of their identity for commercial purposes. The landmark case of *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* (1953) marked the formal recognition of this right, where the court acknowledged an individual's "right of publicity" distinct from privacy rights.

## Statutory Protections

Many states have enacted specific statutes to protect publicity rights, with significant variations across jurisdictions. Key examples include:

California: California Civil Code Section 3344 provides explicit protection for the unauthorized commercial use of an individual's name, voice, signature, photograph, or likeness. The state also recognizes posthumous publicity rights, allowing heirs to control the commercial use of a deceased person's identity.

New York: Sections 50 and 51 of the New York Civil Rights Law prohibit the unauthorized use of a person's name, portrait, or picture for advertising or trade purposes, providing both civil and criminal remedies.

## Balancing with the First Amendment

Publicity rights are often balanced against First Amendment protections, especially in cases involving matters of public interest and freedom of speech. Courts have developed tests to navigate this balance, such as the "transformative use" test, which evaluates whether the use of an individual's likeness adds significant creative elements or new expression that justify First Amendment protection.

## International Perspective

The recognition and protection of publicity rights vary internationally. Some countries, like the United States, provide robust legal frameworks, while others, particularly in Europe, may offer more limited protections, often subsumed under broader privacy or intellectual property laws.

# KEY DIFFERENCES

The right to privacy and the right to publicity, while related in their concern with personal autonomy and control over personal information, differ fundamentally in their nature, scope, and legal treatment. Understanding these differences is crucial for navigating the legal landscape surrounding personal rights.

## **1. Nature of Rights**

### **Right to Privacy:**

Personal and Intrinsic: The right to privacy is inherently personal, focusing on an individual's right to control personal information and to be free from unwarranted intrusions. It is about safeguarding



personal dignity and autonomy.

Non-Commercial: Privacy rights do not typically involve commercial interests. They protect individuals from invasive actions or disclosures that could harm their personal life or peace of mind.

### **Right to Publicity:**

Commercial and Extrinsic: The right to publicity is primarily concerned with the commercial value of an individual's identity. It enables individuals to control and profit from the use of their name, likeness, and other recognizable aspects.

Economic Focus: Publicity rights are tied to the economic exploitation of personal identity, often relevant to celebrities and public figures whose personas have substantial market value.

## **2. Scope and Limitations**

### **Right to Privacy:**

Temporal Limit: Privacy rights generally terminate upon the death of the individual. Posthumous privacy rights are limited, and deceased individuals typically do not have enforceable privacy claims.

Broad Protection: Privacy rights cover a wide range of personal information and activities, from personal communications and home life to sensitive data like health and financial information.

### **Right to Publicity:**

Posthumous Rights: Many jurisdictions recognize the right to publicity beyond an individual's lifetime, allowing heirs to control and benefit from the deceased's identity. For example, California provides posthumous publicity rights for up to 70 years after death.

Narrower Focus: Publicity rights are specifically concerned with the commercial use of an individual's identity. They protect against unauthorized endorsements, advertisements, and merchandise that exploit a person's name, likeness, or other recognizable attributes.

## **3. Legal Protections and Remedies**

### **Right to Privacy:**

Constitutional and Statutory Protections: Privacy rights are grounded in constitutional provisions (e.g., Fourth and Fourteenth Amendments in the U.S.), as well as specific statutes like the Privacy Act of 1974 and HIPAA.

Common Law Torts: Privacy is also protected through common law torts such as intrusion upon

seclusion, public disclosure of private facts, false light, and appropriation of name or likeness (where it overlaps with publicity).

Remedies: Legal remedies for privacy violations typically include damages for emotional distress, injunctions to prevent further breaches, and sometimes punitive damages for egregious invasions.

### **Right to Publicity:**

State Statutes and Common Law: Publicity rights are primarily protected by state laws and common law principles, with significant variation across jurisdictions. Some states have specific statutes (e.g., California Civil Code Section 3344), while others rely on common law.

First Amendment Considerations: Publicity rights are often balanced against First Amendment freedoms. Courts employ tests like the transformative use test to determine whether the use of a person's likeness is protected as free speech.

Remedies: Remedies for violation of publicity rights include monetary damages for unauthorized commercial exploitation, injunctions to stop the misuse, and sometimes statutory damages or attorney's fees.

## **4. Balancing with Other Rights**

### **Right to Privacy:**

Balancing with Public Interest: Privacy rights are balanced against the public's right to know and freedom of the press. Courts often weigh individual privacy against the newsworthiness of the information or the public interest in its disclosure.

Technology and Data Protection: Modern privacy concerns include data protection and cybersecurity, leading to comprehensive regulations like GDPR that emphasize consent, transparency, and control over personal data.

### **Right to Publicity:**

Balancing with Free Speech: Publicity rights must be balanced against the right to free speech and expression. The transformative use test and the predominant use test are judicial tools used to navigate this balance, especially in artistic, journalistic, or critical works.

Commercial Exploitation vs. Artistic Expression: Courts distinguish between unauthorized commercial use and protected artistic expression, ensuring that publicity rights do not unduly restrict creative freedoms.

# SCOPE AND LIMITATIONS

## 1. Right to Privacy

### Scope:

**Personal Information Protection:** The right to privacy encompasses the protection of personal information, including but not limited to health records, financial data, and personal communications.

**Spatial Privacy:** This includes the protection of physical spaces such as homes and personal spaces from intrusion.

**Decisional Privacy:** Refers to personal autonomy in making intimate decisions, such as family planning and lifestyle choices.

**Informational Privacy:** Encompasses the control over the dissemination and use of personal data, particularly relevant in the context of digital data and online activities.

### Limitations:

**Public Interest and Newsworthiness:** Privacy rights can be overridden by the public's right to know, particularly if the information is deemed newsworthy or of public interest. For instance, public figures have a reduced expectation of privacy concerning matters related to their public roles.

**Consent:** Voluntary disclosure of personal information or consent to its use can limit privacy claims. Once consent is given, it can be difficult to reclaim privacy rights over that information.

**Law Enforcement and National Security:** Privacy rights may be limited in the context of law enforcement and national security. For example, warrants can permit searches and seizures that would otherwise violate privacy.

**Technological and Social Media:** The proliferation of digital technologies and social media platforms has complicated privacy protections, often requiring individuals to navigate complex privacy settings and data usage policies.

## 2. Right to Publicity

### Scope:

**Commercial Use of Identity:** The right to publicity protects against unauthorized commercial use of an individual's name, likeness, voice, signature, and other identifiable aspects. This includes endorsements, advertisements, and merchandise.

**Transferability and Licensability:** Publicity rights can be transferred, licensed, or inherited. This means individuals can enter into agreements to commercially exploit their identity, and these rights can be passed on to heirs or assigned to others.

Posthumous Rights: In many jurisdictions, the right to publicity extends beyond an individual's death, allowing heirs to control and profit from the deceased person's identity. The duration and specifics of these rights vary by state.

### **Limitations:**

First Amendment and Free Speech: Publicity rights are limited by the First Amendment in the U.S., which protects freedom of speech and expression. Uses of a person's identity in artistic, journalistic, or critical works are often shielded from publicity claims under free speech protections.

Transformative Use: Courts often employ the transformative use test to balance publicity rights with artistic expression. If the use of an individual's likeness is transformative, adding significant new expression or meaning, it may be protected as free speech.

Newsworthiness and Public Interest: Similar to privacy rights, publicity rights do not apply when the use of a person's identity is deemed newsworthy or of public interest. This often includes uses in news reports, biographies, documentaries, and other informational works.

Incidental Use: Incidental use of a person's identity, where their likeness appears incidentally and is not the focus of the commercial use, may not constitute a violation of publicity rights. This can include background appearances in media or casual mentions.

### **Conclusion**

The scope and limitations of privacy and publicity rights reflect their distinct purposes and the contexts in which they operate. Privacy rights focus on protecting personal autonomy and information from unwarranted intrusion, with limitations primarily around public interest and consent. Publicity rights protect the commercial value of an individual's identity, with significant limitations related to free speech and public interest. Understanding these nuances is essential for navigating legal protections and potential conflicts in a modern, digital society.

## **CHALLENGES IN THE DIGITAL AGE**

The digital age has brought significant advancements in technology and communication, but it has also introduced complex challenges for both the right to privacy and the right to publicity. The pervasive nature of the internet, social media platforms, and emerging technologies has fundamentally altered how these rights are understood and protected.



## **1. Social Media and Online Presence**

### **Blurring of Public and Private Spheres:**

Social media platforms like Facebook, Instagram, and Twitter encourage users to share personal information, blurring the lines between public and private life. Users often inadvertently waive their privacy rights through complex and opaque terms of service agreements.

Public figures and ordinary individuals alike face difficulties in maintaining control over their personal information once it is shared online. Viral content, reposts, and unauthorized sharing exacerbate this issue.

### **Right to Be Forgotten:**

The "right to be forgotten" allows individuals to request the removal of personal information from the internet. This concept, enforced by the GDPR in the EU, faces challenges in balancing the right to privacy with the public's right to access information. Implementing this right globally is complex due to varying legal standards and the borderless nature of the internet.

## **2. Technological Advancements**

### **Data Mining and Profiling:**

Companies collect vast amounts of personal data for targeted advertising, creating detailed profiles of individuals' behaviors, preferences, and identities. This practice raises significant privacy concerns, as individuals often lack awareness and control over how their data is used.

The rise of big data analytics and artificial intelligence (AI) further complicates privacy protections, as these technologies can infer sensitive information and predict behaviors from seemingly innocuous data.

### **Surveillance and Privacy:**

Government and corporate surveillance capabilities have expanded with the advent of advanced technologies, including facial recognition, geolocation tracking, and biometric data collection. These tools can significantly infringe on individual privacy, often without consent or awareness.

Legal frameworks struggle to keep pace with these technological advancements, leading to gaps in protection and enforcement.

### **3. Deepfakes and Digital Manipulation**

Impact on Publicity Rights:

Deepfake technology allows for the creation of highly realistic but fake videos and images, often involving the likenesses of public figures. This raises substantial concerns regarding unauthorized use and the potential for reputational damage.

The legal system faces challenges in addressing the misuse of deepfakes, balancing the right to publicity against free speech and artistic expression.

Combatting Misinformation:

The spread of deepfakes and digitally manipulated content contributes to misinformation and disinformation, undermining public trust and complicating the protection of both privacy and publicity rights. Effective legal and technological solutions are needed to identify and mitigate the impact of such content.

### **4. Legal and Regulatory Challenges**

Jurisdictional Issues:

The global nature of the internet complicates the enforcement of privacy and publicity rights. Different countries have varying legal standards, making it difficult to address violations that cross borders.

International cooperation and harmonization of laws are needed to provide consistent protection, but achieving this is challenging given the diverse legal landscapes and priorities of different nations.

Evolving Legal Frameworks:

Existing laws often lag behind technological advancements, creating gaps in protection. Legislatures and courts must continuously adapt to address new privacy and publicity issues arising from emerging technologies.

Comprehensive regulations like the GDPR in the EU set high standards for data protection and privacy but may not be fully replicated in other regions, leading to inconsistent protections.

Balancing Competing Interests:

Courts and regulators must balance the protection of privacy and publicity rights with other fundamental rights, such as freedom of speech and the press. This balance is particularly challenging

in cases involving newsworthiness, artistic expression, and public interest.

### Conclusion

The digital age presents unprecedented challenges for the protection of privacy and publicity rights. Social media, advanced data analytics, surveillance technologies, and digital manipulation tools like deepfakes complicate the landscape, requiring adaptive and forward-thinking legal approaches. Addressing these challenges necessitates a balance between protecting individual rights and accommodating the free flow of information and technological innovation. Legal frameworks must evolve to keep pace with technological advancements, ensuring that privacy and publicity rights remain robust and effective in the digital era.

## **JUDICIAL APPROACHES**

Courts play a critical role in interpreting and enforcing the rights to privacy and publicity, often navigating complex and evolving landscapes of law, technology, and societal norms. Judicial approaches to these rights reflect the need to balance individual protections with competing interests such as free speech, public interest, and technological innovation. This section explores key judicial approaches to privacy and publicity rights, highlighting notable cases and legal principles that shape these areas of law.

### **1. Right to Privacy**

#### **Constitutional Interpretations:**

*Griswold v. Connecticut* (1965): This landmark case established a constitutional right to privacy through the "penumbras" and "emanations" of other constitutional protections, particularly within the context of marital privacy and contraceptive use.

*Roe v. Wade* (1973): Expanded privacy rights to encompass a woman's right to choose an abortion, framing it within the broader concept of personal autonomy and privacy.

*Lawrence v. Texas* (2003): Struck down sodomy laws, affirming the right to privacy in consensual adult sexual relationships, emphasizing personal liberty and autonomy under the Due Process Clause of the Fourteenth Amendment.

#### Common Law Privacy Torts:

**Intrusion upon Seclusion:** Courts have recognized this tort when an individual's private affairs are

intentionally intruded upon in a manner that would be highly offensive to a reasonable person. For example, in *Dietemann v. Time, Inc.* (1971), the court found intrusion when journalists used hidden cameras in a private home.

**Public Disclosure of Private Facts:** This tort addresses the publication of private information that is not of public concern and would be offensive to a reasonable person. In *Cox Broadcasting Corp. v. Cohn* (1975), the Supreme Court held that accurate reporting of information obtained from public records did not violate privacy rights.

**False Light:** Involves portraying someone in a misleading light that would be offensive to a reasonable person. The case of *Cantrell v. Forest City Publishing Co.* (1974) established the necessity of proving actual malice in false light claims involving public figures.

**Appropriation of Name or Likeness:** Although closely related to publicity rights, this tort protects privacy by preventing unauthorized commercial use of someone's identity. The case of *Carson v. Here's Johnny Portable Toilets, Inc.* (1983) found appropriation in the use of a famous catchphrase without permission.

## **2. Right to Publicity**

### **Common Law and Statutory Developments:**

*Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* (1953): This case was pivotal in recognizing the right to publicity, allowing individuals to control and profit from the commercial use of their persona.

*Zacchini v. Scripps-Howard Broadcasting Co.* (1977): The Supreme Court recognized the right to publicity by ruling that broadcasting a performer's entire act without consent violated their right to control the commercial use of their performance.

### Balancing with First Amendment:

*Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001): The California Supreme Court introduced the transformative use test to balance publicity rights with free speech. This test evaluates whether the use of a person's likeness adds significant creative elements, thereby transforming it into something more than mere likeness.

*Hart v. Electronic Arts, Inc.* (2013): The Third Circuit applied the transformative use test, ruling that



the use of a college football player's likeness in a video game was not sufficiently transformative and thus violated his right to publicity.

#### Posthumous Publicity Rights:

*Estate of Presley v. Russen* (1981): This case affirmed posthumous publicity rights, allowing the estate of Elvis Presley to control the commercial use of his likeness after his death.

California Civil Code Section 3344.1: This statute explicitly provides for posthumous publicity rights, allowing heirs to control and benefit from the commercial use of a deceased person's identity for 70 years after death.

### **3. Technological and Digital Contexts**

#### **Data Privacy and Protection:**

*Carpenter v. United States* (2018): The Supreme Court ruled that accessing historical cell phone records constitutes a search under the Fourth Amendment, thus requiring a warrant. This decision highlights the court's recognition of privacy rights in the context of digital data.

European Union's General Data Protection Regulation (GDPR): While not a judicial decision, the GDPR has influenced court rulings by setting high standards for data protection and privacy, emphasizing consent and individual control over personal data.

#### Social Media and Digital Platforms:

*Frosch v. Grosset & Dunlap, Inc.* (1977): In a pre-digital case related to unauthorized use of a celebrity's image, the courts set precedents for protecting publicity rights in commercial contexts, principles that continue to be relevant in digital media.

Influencers and Content Creation: Courts are increasingly addressing cases where social media influencers' rights to publicity intersect with platform policies and user-generated content, though comprehensive case law is still developing.

#### Conclusion

Judicial approaches to the right to privacy and the right to publicity reflect the dynamic interplay between protecting individual rights and accommodating societal interests such as free speech and technological advancement. Courts continually adapt legal principles to address new challenges arising from digital technologies, social media, and global data flows. Through key cases and evolving

legal standards, judicial interpretations strive to balance personal autonomy with the public's right to information and creative expression. As technology continues to evolve, ongoing judicial innovation will be essential in safeguarding these fundamental rights.

## CASE STUDIES

Examining specific case studies provides concrete examples of how courts have navigated the complexities of privacy and publicity rights, particularly in the context of evolving technologies and societal norms. This section delves into notable cases that highlight key issues and judicial reasoning in these areas.

### 1. Right to Privacy Case Studies

Griswold v. Connecticut (1965):

Background: Estelle Griswold, the executive director of the Planned Parenthood League of Connecticut, was arrested for providing contraceptive advice to married couples, in violation of Connecticut law.

Supreme Court Decision: The Court struck down the law, recognizing a "right to marital privacy" derived from the "penumbras" of other constitutional protections, particularly within the Bill of Rights.

Significance: This case established the constitutional basis for privacy rights, setting a precedent for future cases involving personal autonomy and intimate decision-making.

Roe v. Wade (1973):

Background: "Jane Roe" (Norma McCorvey) challenged Texas laws criminalizing most abortions, arguing that they infringed on her right to privacy.

Supreme Court Decision: The Court ruled that the right to privacy, as implied by the Due Process Clause of the Fourteenth Amendment, encompasses a woman's right to choose to have an abortion. However, this right must be balanced against the state's interests in regulating abortions.

Significance: This landmark decision expanded the scope of privacy rights and highlighted the tension between individual autonomy and state regulation. Although recently overturned by *Dobbs v. Jackson*

Women's Health Organization (2022), Roe remains a pivotal case in privacy rights jurisprudence.

**Carpenter v. United States (2018):**

**Background:** The government obtained Timothy Carpenter's historical cell phone location records without a warrant, arguing that the third-party doctrine allowed this under the Fourth Amendment.

**Supreme Court Decision:** The Court ruled that accessing historical cell phone records constitutes a search under the Fourth Amendment, thus requiring a warrant. The decision emphasized the need to adapt privacy protections to modern digital realities.

**Significance:** This case represents the Court's recognition of privacy rights in the context of digital data, setting important precedents for how personal information is protected in the digital age.

## **2. Right to Publicity Case Studies**

**Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc. (1953):**

**Background:** Haelan Laboratories sued Topps Chewing Gum for using a baseball player's photograph without permission, claiming an exclusive contract.

**Second Circuit Decision:** The court recognized the "right of publicity," allowing individuals to control and profit from the commercial use of their persona.

**Significance:** This case formally introduced the right to publicity into U.S. common law, distinguishing it from traditional privacy rights.

**Zacchini v. Scripps-Howard Broadcasting Co. (1977):**

**Background:** Hugo Zacchini, a "human cannonball" performer, sued Scripps-Howard Broadcasting for airing his entire act without permission, arguing it violated his right to publicity.

**Supreme Court Decision:** The Court ruled in favor of Zacchini, stating that broadcasting his entire act without consent infringed on his right to control the commercial value of his performance.

**Significance:** This decision underscored the right to publicity, even in the context of news coverage, and highlighted the need to balance publicity rights with First Amendment protections.

**Comedy III Productions, Inc. v. Gary Saderup, Inc. (2001):**

**Background:** Gary Saderup created and sold lithographs and t-shirts bearing a likeness of The Three Stooges without authorization from Comedy III Productions, which held the publicity rights.

**California Supreme Court Decision:** The court introduced the transformative use test, determining

that *Saderup*'s use was not sufficiently transformative to be protected by free speech.

**Significance:** This case established a crucial standard for balancing the right to publicity against artistic expression and First Amendment rights.

### 3. Technological and Digital Context Case Studies

Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González (2014):

**Background:** Mario Costeja González requested the removal of links to an old newspaper article about his debt from Google's search results, invoking his right to be forgotten under EU law.

**European Court of Justice Decision:** The Court ruled in favor of González, affirming the right to be forgotten and obligating Google to remove the links.

**Significance:** This case established a significant precedent for data protection and privacy in the digital age, influencing global discourse on the right to be forgotten and data control.

Hart v. Electronic Arts, Inc. (2013):

**Background:** Ryan Hart, a former college football player, sued EA Sports for using his likeness in their NCAA Football video game without his consent.

**Third Circuit Decision:** The court applied the transformative use test and ruled in favor of Hart, finding that EA's use of his likeness was not transformative enough to warrant First Amendment protection.

**Significance:** This case highlighted the challenges in balancing publicity rights with creative and expressive works in the context of video games and digital media.

### Conclusion

These case studies illustrate the nuanced judicial approaches to privacy and publicity rights, reflecting the courts' efforts to balance individual protections with competing interests. From foundational cases that established key legal principles to contemporary decisions addressing digital age challenges, these examples demonstrate the evolving nature of privacy and publicity rights in response to societal and technological changes.

## CONCLUSION

Privacy and publicity rights are fundamental aspects of individual autonomy and identity, integral to the protection of personal information and the control over one's likeness and persona. Through a combination of constitutional interpretation, statutory frameworks, and common law principles, legal systems strive to safeguard these rights while balancing competing interests such as free speech, public interest, and technological innovation.

The historical development of privacy and publicity rights, from seminal cases like *Griswold v. Connecticut* and *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* to contemporary challenges such as *Carpenter v. United States* and *Comedy III Productions, Inc. v. Gary Saderup, Inc.*, reflects the dynamic nature of legal jurisprudence in adapting to changing societal norms and technological landscapes.

In the digital age, where the internet, social media, and advanced technologies have transformed how personal information is shared, collected, and utilized, the protection of privacy and publicity rights faces unprecedented challenges. Courts are tasked with interpreting laws and precedents in novel contexts, addressing issues such as data privacy, surveillance, deepfakes, and online platforms' influence.

Judicial approaches to privacy and publicity rights involve intricate balancing acts, weighing individual autonomy against societal interests and technological advancements. Key principles such as the right to be forgotten, transformative use, and the distinction between public figures and private individuals shape court decisions and legal frameworks, providing guidance in navigating complex legal terrain.

As technology continues to evolve and shape human interaction and communication, the protection of privacy and publicity rights remains a dynamic and evolving area of law. Courts play a crucial role in interpreting these rights, ensuring that legal principles adapt to address emerging challenges while upholding fundamental values of individual dignity, autonomy, and freedom. Through thoughtful judicial reasoning and ongoing legal innovation, privacy and publicity rights will continue to be safeguarded in the digital age and beyond.



## References

Warren, S.D., & Brandeis, L.D. (1890). The Right to Privacy. *Harvard Law Review*, 4(5), 193-220.

*Griswold v. Connecticut*, 381 U.S. 479 (1965).

*Roe v. Wade*, 410 U.S. 113 (1973).

*Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866 (2d Cir. 1953).

Privacy Act of 1974, 5 U.S.C. § 552a.

General Data Protection Regulation (GDPR), Regulation (EU) 2016/679.



W H I T E   B L A C K  
L E G A L