

## **IC 32-36**

### **ARTICLE 36. PUBLICITY**

#### **IC 32-36-1**

##### **Chapter 1. Rights of Publicity**

#### **IC 32-36-1-0.2**

##### **Application of certain amendments to prior law**

Sec. 0.2. The amendments made to IC 32-13-1-8 (before its repeal, now codified at section 8 of this chapter) by P.L.54-2001 apply only to written consents obtained after July 1, 2001.

*As added by P.L.220-2011, SEC.530.*

#### **IC 32-36-1-1**

##### **Application of chapter**

Sec. 1. (a) This chapter applies to an act or event that occurs within Indiana, regardless of a personality's domicile, residence, or citizenship.

(b) This chapter does not affect rights and privileges recognized under any other law that apply to a news reporting or an entertainment medium.

(c) This chapter does not apply to the following:

(1) The use of a personality's name, voice, signature, photograph, image, likeness, distinctive appearance, gestures, or mannerisms in any of the following:

(A) Literary works, theatrical works, musical compositions, film, radio, or television programs.

(B) Material that has political or newsworthy value.

(C) Original works of fine art.

(D) Promotional material or an advertisement for a news reporting or an entertainment medium that:

(i) uses all or part of a past edition of the medium's own broadcast or publication; and

(ii) does not convey or reasonably suggest that a personality endorses the news reporting or entertainment medium.

(E) An advertisement or commercial announcement for a use described in this subdivision.

(2) The use of a personality's name to truthfully identify the personality as:

(A) the author of a written work; or

(B) a performer of a recorded performance;

under circumstances in which the written work or recorded performance is otherwise rightfully reproduced, exhibited, or broadcast.

(3) The use of a personality's:

(A) name;

(B) voice;

- (C) signature;
- (D) photograph;
- (E) image;
- (F) likeness;
- (G) distinctive appearance;
- (H) gestures; or
- (I) mannerisms;

in connection with the broadcast or reporting of an event or a topic of general or public interest.

(4) A personality whose:

- (A) name;
- (B) voice;
- (C) signature;
- (D) photograph;
- (E) image;
- (F) likeness;
- (G) distinctive appearance;
- (H) gesture; or
- (I) mannerisms;

have commercial value solely because the personality has been formally charged with or convicted of a crime.

*As added by P.L.2-2002, SEC.21. Amended by P.L.149-2012, SEC.17.*

#### **IC 32-36-1-2**

##### **"Commercial purpose" defined**

Sec. 2. As used in this chapter, "commercial purpose" means the use of an aspect of a personality's right of publicity as follows:

- (1) On or in connection with a product, merchandise, goods, services, or commercial activities.
- (2) For advertising or soliciting purchases of products, merchandise, goods, services, or for promoting commercial activities.
- (3) For the purpose of fundraising.

*As added by P.L.2-2002, SEC.21.*

#### **IC 32-36-1-3**

##### **"Name" defined**

Sec. 3. As used in this chapter, "name" means the actual or assumed name of a living or deceased natural person that is intended to identify the person.

*As added by P.L.2-2002, SEC.21.*

#### **IC 32-36-1-4**

##### **"News reporting or an entertainment medium" defined**

Sec. 4. As used in this chapter, "news reporting or an entertainment medium" means a medium that publishes, broadcasts, or disseminates advertising in the normal course of its business, including the following:

- (1) Newspapers.
- (2) Magazines.
- (3) Radio and television networks and stations.
- (4) Cable television systems.

*As added by P.L.2-2002, SEC.21.*

#### **IC 32-36-1-5**

##### **"Person" defined**

Sec. 5. As used in this chapter, "person" means a natural person, a partnership, a firm, a corporation, or an unincorporated association.

*As added by P.L.2-2002, SEC.21.*

#### **IC 32-36-1-6**

##### **"Personality" defined**

Sec. 6. As used in this chapter, "personality" means a living or deceased natural person whose:

- (1) name;
- (2) voice;
- (3) signature;
- (4) photograph;
- (5) image;
- (6) likeness;
- (7) distinctive appearance;
- (8) gesture; or
- (9) mannerisms;

has commercial value, whether or not the person uses or authorizes the use of the person's rights of publicity for a commercial purpose during the person's lifetime.

*As added by P.L.2-2002, SEC.21.*

#### **IC 32-36-1-7**

##### **"Right of publicity" defined**

Sec. 7. As used in this chapter, "right of publicity" means a personality's property interest in the personality's:

- (1) name;
- (2) voice;
- (3) signature;
- (4) photograph;
- (5) image;
- (6) likeness;
- (7) distinctive appearance;
- (8) gestures; or
- (9) mannerisms.

*As added by P.L.2-2002, SEC.21.*

#### **IC 32-36-1-8**

##### **Consent required for commercial use of a personality's right of publicity; application to the rights of a deceased personality**

Sec. 8. (a) A person may not use an aspect of a personality's right

of publicity for a commercial purpose during the personality's lifetime or for one hundred (100) years after the date of the personality's death without having obtained previous written consent from a person specified in section 17 of this chapter. If a personality is deceased, the following apply to the rights described in this subsection:

(1) The rights apply to the personality whether the personality died before, on, or after July 1, 1994.

(2) If the personality died before July 1, 1994, the rights are considered to have existed on and after the date the personality died.

(3) Consistent with section 1(a) of this chapter, a claim for a violation of a personality's right of publicity may not be asserted under this chapter unless the alleged act or event of violation occurs within Indiana.

(4) A claim for a violation of a personality's right of publicity may not be asserted under this chapter unless the alleged act or event of violation occurs after June 30, 1994.

(b) A written consent solicited or negotiated by an athlete agent (as defined in IC 25-5.2-1-2) from a student athlete (as defined in IC 25-5.2-1-2) is void if the athlete agent obtained the consent as the result of an agency contract that:

(1) was void under IC 25-5.2-2-2 or under the law of the state where the agency contract was entered into; or

(2) was voided by the student athlete under IC 25-5.2-2-8 or a similar law in the state where the agency contract was entered into.

*As added by P.L.2-2002, SEC.21. Amended by P.L.149-2012, SEC.18; P.L.158-2013, SEC.336.*

### **IC 32-36-1-9**

#### **Jurisdictional acts**

Sec. 9. A person who:

(1) engages in conduct within Indiana that is prohibited under section 8 of this chapter;

(2) creates or causes to be created within Indiana goods, merchandise, or other materials prohibited under section 8 of this chapter;

(3) transports or causes to be transported into Indiana goods, merchandise, or other materials created or used in violation of section 8 of this chapter; or

(4) knowingly causes advertising or promotional material created or used in violation of section 8 of this chapter to be published, distributed, exhibited, or disseminated within Indiana;

submits to the jurisdiction of Indiana courts.

*As added by P.L.2-2002, SEC.21.*

### **IC 32-36-1-10**

## **Damages**

Sec. 10. A person who violates section 8 of this chapter may be liable for any of the following:

- (1) Damages in the amount of:
  - (A) one thousand dollars (\$1,000); or
  - (B) actual damages, including profits derived from the unauthorized use;whichever is greater.
- (2) Treble or punitive damages, as the injured party may elect, if the violation under section 8 of this chapter is knowing, willful, or intentional.

*As added by P.L.2-2002, SEC.21.*

## **IC 32-36-1-11**

### **Profits derived from unauthorized use; proof**

Sec. 11. In establishing the amount of the profits under section 10(1)(B) of this chapter:

- (1) the plaintiff is required to prove the gross revenue attributable to the unauthorized use; and
- (2) the defendant is required to prove properly deductible expenses.

*As added by P.L.2-2002, SEC.21.*

## **IC 32-36-1-12**

### **Additional remedies**

Sec. 12. In addition to any damages awarded under section 10 of this chapter, the court:

- (1) shall award to the prevailing party reasonable attorney's fees, costs, and expenses relating to an action under this chapter; and
- (2) may order temporary or permanent injunctive relief, except as provided by section 13 of this chapter.

*As added by P.L.2-2002, SEC.21.*

## **IC 32-36-1-13**

### **Injunctive relief; enforceability against news reporting or entertainment medium**

Sec. 13. Injunctive relief is not enforceable against a news reporting or an entertainment medium that has:

- (1) contracted with a person for the publication or broadcast of an advertisement; and
- (2) incorporated the advertisement in tangible form into material that has been prepared for broadcast or publication.

*As added by P.L.2-2002, SEC.21.*

## **IC 32-36-1-14**

### **Impoundment of materials pending resolution of action**

Sec. 14. (a) This section does not apply to a news reporting or an entertainment medium.

- (b) During any period that an action under this chapter is pending,

a court may order the impoundment of:

- (1) goods, merchandise, or other materials claimed to have been made or used in violation of section 8 of this chapter; and
- (2) plates, molds, matrices, masters, tapes, negatives, or other items from which goods, merchandise, or other materials described in subdivision (1) may be manufactured or reproduced.

(c) The court may order impoundment under subsection (b) upon terms that the court considers reasonable.

*As added by P.L.2-2002, SEC.21.*

### **IC 32-36-1-15**

#### **Destruction or other disposition of offending materials**

Sec. 15. (a) This section does not apply to a news reporting or an entertainment medium.

(b) As part of a final judgment or decree, a court may order the destruction or other reasonable disposition of items described in section 14(b) of this chapter.

*As added by P.L.2-2002, SEC.21.*

### **IC 32-36-1-16**

#### **Property rights**

Sec. 16. The rights recognized under this chapter are property rights, freely transferable and descendible, in whole or in part, by the following:

- (1) Contract.
- (2) License.
- (3) Gift.
- (4) Trust.
- (5) Testamentary document.
- (6) Operation of the laws of intestate succession applicable to the state administering the estate and property of an intestate deceased personality, regardless of whether the state recognizes the property rights set forth under this chapter.

*As added by P.L.2-2002, SEC.21.*

### **IC 32-36-1-17**

#### **Exercise and enforcement of rights and remedies**

Sec. 17. (a) The written consent required by section 8 of this chapter and the rights and remedies set forth in this chapter may be exercised and enforced by:

- (1) a personality; or
- (2) a person to whom the recognized rights of a personality have been transferred under section 16 of this chapter.

(b) If a transfer of a personality's recognized rights has not occurred under section 16 of this chapter, a person to whom the personality's recognized rights are transferred under section 18 of this chapter may exercise and enforce the rights under this chapter and seek the remedies provided in this chapter.

*As added by P.L.2-2002, SEC.21.*

**IC 32-36-1-18**

**Exercise and enforcement of rights and remedies following death of intestate personality; fractional interests**

Sec. 18. (a) Subject to sections 16 and 17 of this chapter, after the death of an intestate personality, the rights and remedies of this chapter may be exercised and enforced by a person who possesses a total of not less than one-half (1/2) interest of the personality's recognized rights.

(b) A person described in subsection (a) shall account to any other person in whom the personality's recognized rights have vested to the extent that the other person's interest may appear.

*As added by P.L.2-2002, SEC.21.*

**IC 32-36-1-19**

**Termination of untransferred rights following personality's death**

Sec. 19. If:

(1) a deceased personality's recognized rights under this chapter were not transferred by:

- (A) contract;
- (B) license;
- (C) gift;
- (D) trust; or
- (E) testamentary document; and

(2) there are no surviving persons as described in section 17 of this chapter to whom the deceased personality's recognized rights pass by intestate succession;

the deceased personality's rights set forth in this chapter terminate.

*As added by P.L.2-2002, SEC.21.*

**IC 32-36-1-20**

**Rights and remedies supplemental to others provided by law**

Sec. 20. The rights and remedies provided for in this chapter are supplemental to any other rights and remedies provided by law.

*As added by P.L.2-2002, SEC.21.*