

Date of Hearing: June 24, 2025

Fiscal: No

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

SB 683 (Cortese) – As Amended June 18, 2025

SENATE VOTE: 38-0

SUBJECT: Privacy: use of a person's name, voice, signature, photograph, or likeness: injunctive relief

SYNOPSIS

Civil Code section 3344 grants individuals a property right – the “right of publicity” – to ensure they can control the commercial use of their name, voice, signature, photograph, or likeness. That section expressly makes violators liable for statutory damages, actual damages, lost profits, punitive damages, and attorney’s fees and costs. Code of Civil Procedure section 527, meanwhile, authorizes courts to issue temporary restraining orders (TROs) and preliminary injunctions in civil actions.

This author-sponsored measure expressly links the two by providing that a person who brings a right of publicity lawsuit may seek an injunction or TRO pursuant to section 527. In the event the court grants a TRO, the bill requires the entity that is misusing the person’s likeness to cease doing so within two business days after the order is served upon them, unless otherwise specified by the order. The bill is supported by a coalition that includes the Asian Law Alliance, the Family Violence Law Center, and the National College Players Association. The First Amendment Coalition and the Motion Picture Association oppose the bill.

This bill was previously heard by the Judiciary Committee, where it passed on an 11-0 vote.

THIS BILL:

- 1) Expressly provides that a party to a right-of-publicity lawsuit may seek an injunction or TRO under existing section 527 of the Code of Civil Procedure.
- 2) Requires a respondent to a TRO order to remove, recall, or otherwise cease the publication or distribution of the petitioner’s name, voice, signature, photograph, or likeness within two business days from the day the order is served, unless otherwise specified by the order.

EXISTING LAW:

- 1) Provides that any person who knowingly uses another’s name, voice, signature, photograph or likeness, in any manner, on or in products, merchandise, or goods, or for the purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person’s prior consent, is liable for statutory damages, actual damages, lost profits, punitive damages, and attorney’s fees and costs. (Civ. Code § 3344(a).)
- 2) Excludes from 1) a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign. (Civ. Code § 3344(d).)

- 3) States that the above described remedies are cumulative and are in addition to any others provided for by law. (Civ. Code § 3344(g).)
- 4) Authorizes court to grant injunctions in specified cases, including when it would produce great or irreparable injury, pecuniary compensation would not afford adequate relief, or where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. (Code Civ. Proc. § 526(a).)
- 5) Provides that a preliminary injunction may be granted at any time before judgment if a verified complaint or affidavit shows satisfactorily that sufficient grounds exist therefor, provided that notice is given to the opposing party. (Code Civ. Proc. § 527(a).)
- 6) Prohibits a TRO from being granted without notice to the opposing party, unless both of the following apply:
 - a) It appears from facts shown in the affidavit or verified complaint that great or irreparable injury will result to the applicant before the matter can be heard on notice.
 - b) The applicant or their attorney certifies under oath that (1) the opposing party or their attorney was informed within a reasonable time before the application, (2) a good faith attempt was made to inform the opposing party or their attorney, or (3) the applicant should not be required to inform the opposing party or their attorney. (Code Civ. Proc. § 527(c).)
- 7) If a TRO is granted, requires, among other things that:
 - a) A hearing on a preliminary injunction be held within 15 days of the issuance of the TRO, or 22 days for good cause.
 - b) The party who obtained the TRO must, within 5 days (unless the court requires faster), serve the opposing party a copy of the complaint if not previously served, the order to show cause stating the date, time, and place of the hearing, any affidavits to be used in the application, and a copy of the points and authorities in support of the application. (Code Civ. Proc. § 527(d).)

COMMENTS:

1) **Author's statement.** According to the author:

We are living at a time when materials are used to sell and promote an increasing variety of products in every conceivable medium at a time when advancing technology provides the means for virtually unlimited manipulation of images and their instantaneous distribution. To the extent the misuse is distributed widely, the damage done is irreparable, even if owners of the rights win an exhaustive lawsuit. Not only do authorized users suffer by this theft, but owners of the rights lose important compensation and career opportunities.

This bill would benefit consumers by providing additional remedies against unauthorized use of image and likeness by requiring removal of material within two business days if a judge grants a temporary restraining order, pending adjudication. One of the strongest interests

consumers have is the use over their own name, voice, signature, photograph and likeness, our laws must provide protection to the individual citizen from an invasion of privacy.”

2) **The right of publicity.** The use of a person’s name or image without consent for commercial purposes has long been recognized as a common-law invasion of privacy. In 1974, California Civil Code section 3344 codified the right to publicity, imposing liability on any person who knowingly uses another’s name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without prior consent.¹

In 1977, the United States Supreme Court framed the right in terms of economic rather than privacy interests:

The State’s interest in permitting a “right of publicity” is in protecting the proprietary interest of the individual in his act in part to encourage such entertainment. The State’s interest is closely analogous to the goals of patent and copyright law, focusing on the right of the individual to reap the reward of his endeavors and having little to do with protecting feelings or reputation? “The rationale for [protecting the right of publicity] is the straight-forward one of preventing unjust enrichment by the theft of good will. No social purpose is served by having the defendant get free some aspect of the plaintiff that would have market value and for which he would normally pay. [Citation.]”²

After two California Supreme Court cases in 1979 found that California’s statutory right to publicity was not transferable upon death,³ the Legislature extended the right to the heirs of deceased “personalities” – individuals whose likeness had commercial value at the time of their death.⁴

Digital replicas. Technological advances have had major implications for likeness rights. “Digital replicas” is the term for computer-generated avatars of an individual’s likeness—including their face, body, voice, movement; indeed, their very identity—that can appear authentic and be manipulated to create entirely new “performances,” even if the actor had no active role in the making of the performance. For example, James Dean, despite passing away over 60 years ago, was cast in a 2019 movie using a digital replica.⁵

Meanwhile, “[a]spiring musicians, actors, and models routinely sign predatory blanket, long-term (sometimes perpetual) assignments and licenses of their publicity rights as a condition of getting representation, a record deal, a role, or a photo shoot,” writes Professor Jennifer Rothman, a leading scholar on the issue. “Similarly, the NCAA has had student-athletes sign

¹ Stats. 1971, Ch. 1595.

² *Zacchini v. Scripps-Howard Broad. Co.* (1977) 433 U.S. 562, 573.

³ *Lugosi v. Universal Pictures* (1979) 25 Cal.3d 813; *Guglielmi v. Spelling-Goldberg Productions* (1979) 25 Cal.3d 860.

⁴ Stats. 1984, Ch. 1704.

⁵ “James Dean set to star in new film through digital resurrection, horrifying fans” (Nov. 7, 2019) *NBC News*, <https://www.nbcnews.com/pop-culture/celebrity/james-dean-set-star-new-film-through-digital-resurrection-horrifying-n1078051>.

contracts as a condition of participation in college athletics that the NCAA claimed assigned to it the perpetual rights to those students' names and likenesses for use in any context.”⁶

Last session, two bills enacted protections related to digital replicas in the entertainment industry. AB 2602 (Kalra, Stats. 2024, Ch. 259) deemed unenforceable contractual provisions governing digital replicas (1) that do not sufficiently delineate the uses of the digital replica, or (2) for which the performer lacked proper representation, either by an attorney or labor union representative. Additionally, to prevent the unauthorized reanimation of dead celebrities, AB 1836 (Bauer-Kahan, Stats. 2024, Ch. 258) established a specific cause of action for beneficiaries of deceased celebrities for the unauthorized use of a digital replica of the celebrity in audiovisual works or sound recordings.⁷

This session, SB 11 (Ashby) would expressly incorporate the definition of “digital replica” from AB 1836 into section 3344. As described below, SB 683, although not specific to digital replicas, addresses a key remedy for individuals seeking to protect their likeness rights more broadly.

3) What this bill would do. Under existing law, courts may grant injunctive relief before issuing a final judgment in specified cases, including to prevent great or irreparable injury, or when pecuniary compensation would not afford adequate relief, or where it would be extremely difficult to ascertain the amount of compensation that would afford adequate relief.⁸ Plaintiffs generally must also show a likelihood of prevailing on the merits. Preliminary injunctions require notice to be provided to the opposing party.⁹ Notice is not required for a TRO, provided that certain requirements are met, such as a good faith effort, under oath, to provide such notice.¹⁰ If a TRO is granted, a noticed hearing on a preliminary injunction must generally be held within 15 days.¹¹ A preliminary injunction, once issued, generally stays in effect until a decision is reached on the merits.

This bill would clarify that a person who brings a right-of-publicity lawsuit may seek a preliminary injunction or a TRO. If a TRO is granted, the respondent must remove, recall, or otherwise cease the publication or distribution of the petitioner's name, voice, signature,

⁶ Jennifer E. Rothman, *The Right of Publicity: Privacy Reimagined for a Public World* (Harvard University Press, 2018), p. 117.

⁷ Some scholars have argued that legislatures should do even more to limit a third party's ability to use an individual's likeness. According to Professor Rothman, the shift from framing publicity rights in terms of economic rather than privacy interests fails to protect the dignity interests at stake when it comes to the control of one's identity. In Professor Rothman's view, “[a]llowing the transfer of a person's name and likeness and other indicia of identity significantly impairs the rights to liberty, freedom of speech, and freedom of association.” (“The Right of Publicity,” *supra*, at p. 125.) Professor Rothman raises the possibility that a holder of an individual's publicity rights could, over the objections of the individual, use their likeness in performances involving products or causes the individual finds abhorrent. Similarly, the rightsholder could theoretically limit the individual's ability to make appearances or participate in performances in a manner that competes with authorized uses of their digital likeness. Professor Rothman points to *Goldman v. Simpson*, wherein the trial court, which had transferred O.J. Simpson's copyright in a book to the family of Ronald Goldman as they attempted to collect on the \$33.5 wrongful death judgment against Simpson, refused to transfer his right of publicity because of the resulting restrictions on his personal freedom. The court concluded that rights to Simpson's name, likeness, and voice were personal to him and likened the forced transfer of those rights to involuntary servitude. (*Id.* at p. 118.)

⁸ Code Civ. Proc. § 526(a).

⁹ § 527(a).

¹⁰ § 527(c).

¹¹ § 527(d).

photograph, or likeness within two business days from the day the order is served, unless the court exercises its discretion to craft a different order.

Proponents assert that the bill will ensure a prompt remedy for individuals whose likeness has been misappropriated. If the misuse of the person's likeness is sufficiently widespread, the damage may be irreparable. Asian Law Alliance, in a point echoed by other supporters, argues that "[v]ictims deserve mitigation immediately, not after paid legal fees and claims have been filed in court. Establishing a right to a two day take down pending final adjudication will protect individuals and allow the court time to determine whether or not the content is constitutionally sound."

4) **Opposition concerns.** In opposition to the bill, the First Amendment Coalition and the Motion Picture Association assert that the bill will enable owners of publicity rights to effectively censor protected speech.

Several cases have addressed First Amendment defenses to right-of-publicity lawsuits, although the legal standards that have emerged from these cases are fuzzy and fact-specific. Drawing on the "fair use" doctrine from copyright law, the California Supreme Court, in 2001, adopted "a balancing test between the First Amendment and the right of publicity based on whether the work in question adds significant creative elements so as to be transformed into something more than a mere . . . likeness or imitation."¹² The test asks "whether the new work merely 'supersedes the objects' of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message."¹³ "Another way of stating the inquiry is whether the celebrity likeness is one of the 'raw materials' from which an original work is synthesized, or whether the depiction or imitation of the celebrity is the very sum and substance of the work in question."¹⁴ "When the value of the work comes principally from some source other than the [plaintiff]—from the creativity, skill, and reputation of the artist—it may be presumed that sufficient transformative elements are present to warrant First Amendment protection."¹⁵

Using this test, courts have found transformative a comic book's "half-human and half worm" caricature of two well-known musicians,¹⁶ as well as a video game's depiction of a popular 1990s singer as an anime "space-age reporter in the 25th century."¹⁷ By contrast, non-transformative uses have included literal depictions of celebrities, including lithographs of the Three Stooges,¹⁸ a Hallmark card featuring a celebrity heiress's head on a cartoon body of a waitress,¹⁹ and video games with realistic avatars of band members playing music,²⁰ as well as collegiate and professional athletes playing the sports that brought them renown.²¹

¹² *Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387, 391 (*Comedy III*).

¹³ *Id.* at p. 404.

¹⁴ *Id.* at p. 406.

¹⁵ *Ibid.*

¹⁶ *Winter v. DC Comics* (2003) 30 Cal.4th 881, 890.

¹⁷ *Kirby v. Sega of Am., Inc.* (2006) 144 Cal.App.4th 47, 59.

¹⁸ *Comedy III, supra*, 25 Cal.4th at p. 409.

¹⁹ *Hilton v. Hallmark Cards* (9th Cir. 2009) 599 F.3d 894, 911.

²⁰ *No Doubt v. Activision Publishing, Inc.* (2011) 192 Cal.App.4th 1018.

²¹ *Keller v. Electronic Arts Inc.* (9th Cir. 2013) 724 F.3d 1268, 1276-1277; *Davis v. Elec. Arts, Inc.* (9th Cir. 2015) 775 F.3d 1172, 1178. The "transformative" test has been criticized by some courts and academics. "Lower courts have struggled mightily[] . . . to figure out how to apply [the test] to expressive works such as films, plays, and

Section 3344(g) states that “[t]he remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.” Opponents appear to concede, and both Judiciary Committees have concluded, that TROs and preliminary injunctive relief under section 527 are, under existing law, already available to plaintiffs asserting publicity rights under section 3344. Nevertheless, opponents argue that a full trial and final judgment is necessary to protect speech rights; in their view, granting a takedown right during the pendency of the case invites unconstitutional censorship.

The argument seems to presuppose judges cannot appropriately exercise their discretion to balance the interests at stake. Moreover, section 3344 is relatively narrow in scope – it applies only to *commercial* misappropriation of a person’s likeness. Section 3344(d) expressly exempts use of a likeness “in connection with any news, public affairs, or sports broadcast or account, or any political campaign.” Finally, as noted in the Assembly Judiciary Committee analysis:

[C]ourts remain bound by longstanding constitutional constraints and procedural safeguards before issuing any TRO, including evaluating irreparable harm and likelihood of success on the merits. As such, TROs will still be unavailable where the use is protected speech. For example, in *Michaels v. Internet Entertainment Group, Inc.* (C.D. Cal. 1998) 5 F.Supp.2d 823, the court granted a preliminary injunction based in part on a claim under Section 3344, finding that the plaintiffs had demonstrated a likelihood of success on the merits and that monetary damages would be inadequate to remedy the harm. The court issued the injunction despite First Amendment objections, because the use at issue—unauthorized online distribution of a sex tape—was plainly commercial and nonexpressive. *Michaels* thus illustrates both the availability of injunctive relief under existing law and the courts’ ability to distinguish between protected expression and actionable commercial exploitation.²²

ARGUMENTS IN SUPPORT: Family Violence Law Center writes: “Victims deserve mitigation immediately, not after paid legal fees and claims have been filed in court. Establishing a right to a two day take down pending final adjudication will protect individuals and allow the court time to determine whether or not the content is constitutionally sound.”

National College Players Association adds: “Despite existing remedies allowing courts to award damages and order removal, legal proceedings can take years to be resolved, leaving affected parties exposed to indefinite harm. SB 683 provides a path for affected individuals to file a temporary restraining order or preliminary injunctive relief to have nonconsensual, harmful use of image or likeness provisionally removed from circulation.”

ARGUMENTS IN OPPOSITION: First Amendment Coalition argues:

television programs.” (*De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845, 863.) “[O]nce we realize that the larger purpose of any such test is to determine the constitutional value of particular communicative acts, we can also see that the doctrine is woefully inadequate.” (Robert C. Post & Jennifer E. Rothman, *The First Amendment and the Right(s) of Publicity* (2020) 130 Yale L.J. 86, 158.) Additionally, the Ninth Circuit has indicated that the more stringent “strict scrutiny” test may apply rather than the “transformative” test. (*Sarver v. Chartier* (9th Cir. 2016) 813 F.3d 891, 903 (*Sarver*); citing *Reed v. Town of Gilbert* (2015) 135 S. Ct. 2218, 2226.) “*Sarver*, however, limited application of strict scrutiny to case in which the plaintiff was not a celebrity.” (Robert C. Post & Jennifer E. Rothman, *supra*, 130 Yale L.J. at p. 131.) And cases subsequent to *Sarver* have continued to apply the “transformative” test. (See e.g., *De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845, 863; *Woloszynska v. Netflix, Inc.* (N.D.Cal. 2023) U.S.Dist.LEXIS 194648.)

²² Asm. Jud. Comm. Analysis, AB 683 (2025), pp. 5-6.

Given the fundamental rights at stake — freedom of speech, freedom of the press — judges should have the benefit of adversary presentation before issuing any order that could impact First Amendment rights. The emergency order might be dissolved later and the claim would ultimately be subject to dismissal or anti-SLAPP motion, but by then the damage of the prior restraint would be done. This problem is especially acute due to the enhanced risk of error in expedited or ex parte presentations in support of a temporary restraining order or preliminary injunction that do not allow complete adversary presentation or development of a full record.

A deep-pocketed plaintiff could afford to pay attorney fees as a cost of silencing and harassing critics in the media or elsewhere. And that's assuming the defendant can afford counsel to mount a legal defense. Celebrities have already attempted to prevent newspapers from using their name, image, and likeness for protected speech. See, e.g., *Montana v. San Jose Mercury News, Inc.*, 34 Cal. App. 4th 790 (1995). In that case, the newspaper prevailed after prolonged litigation, but it had funds to pay counsel to defend the case. The same cannot be said for all reporters or publications today.

Motion Picture Association writes:

[C]ourts already have the authority to issue injunctive relief under Code of Civil Procedure § 527. But even more concerning, the Bill would encourage litigants to seek, and courts to issue, injunctions that constitute prior restraints on First Amendment-protected speech, including motion pictures and television programs produced and distributed by the MPA's members and their affiliates.

REGISTERED SUPPORT / OPPOSITION:

Support

Alum Rock Counseling Center
 Asian Americans for Community Involvement
 Asian Law Alliance
 California Partnership to End Domestic Violence
 Family Violence Law Center
 National College Players Association
 Sag Aftra
 Somos Mayfair
 Valor US

Oppose

First Amendment Coalition
 Motion Picture Association

Oppose Unless Amended

Recording Industry Association of America

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