MORAL RIGHTS, PRIVACY, AND PUBLICITY RIGHTS

MORAL RIGHTS

Moral rights are separate from copyright. A notion from Continental European legal systems. Typically include:

1) *droit de divulgation*–right of authors to control the circumstances in which their work will be released to the public.
2) right to withdraw a work from circulation;
3) *droit de paternité* –right to claim attribution, and freedom from being falsely named, as author;
4) integrity –right to prevent mutilation of a work; and
5) *droit de suite* –right to share the proceeds of future sales, as might pertain to works of art. These rights are perceived as remaining with the author/creator even after he or she has released economic interest in the work.

Moral rights are outside of the marketplace and inalienable. Thus, the application of the moral rights would impede free commerce in intellectual and artistic production long supported by Anglo-American copyright and represent a charter for censorship. Peter Jaszi, "Toward a Theory of Copyright: The Metamorphoses of 'Authorship,'" *Duke Law Journal* (April 1991) 496-500.

RIGHTS OF PRIVACY AND PUBLICITY

Privacy and publicity rights are fundamentally not part of intellectual property rights, but they are often confused by both owners, users, and archivists. There is an archival responsibility to not allow copyright to be invoked to support privacy or publicity rights. Overall, privacy and publicity rights recognize that one has a personal and financial interest in one's name, image, voice, and other distinctive or identifying aspects.

KEY ISSUES OF PRIVACY RIGHTS

Generalization is difficult because privacy and publicity rights are a matter of state, not federal legislation and because they are also governed by common law. In general, "privacy" is the right to be free from unwarranted exposure and resultant emotional harm and is classically described as having "four prongs:"

1) Intrusion on a person's seclusion
2) Public disclosure of private facts
3) Being publicly placed in a false light
4) Appropriation of one's name or likeness

To be actionable, the disclosure must be offensive and objectionable to persons of reasonable sensitivity. In general, public figures have less of a right of privacy than private individuals, and the extent of violation is determined by the extent to which the disclosure was drawn from the person's presence in a public place. Finally, privacy rights are not absolute but in tension with the First Amendment.

Privacy pertains only to the individual concerned. As a matter of law, it cannot apply to deceased persons since action for invasion of privacy must be by the person whose privacy has been invaded. The only exceptions are the privacy of a living person being intruded upon by something coming out of the privacy of the deceased and the matter of appropriation of name or likeness. [*National Archives and Records Administration v. Allan J.Favish* 541 U.S. 157. The *Restatement of the Law Second. Torts 2d* (St. Paul, Minnesota, American Law Institute, 1977), section 652 I, and section 652 I in update volumes.]

PUBLICITY.

The right of publicity is the right of an individual, especially a public figure, to control the commercial value of his/her name, image, voice, or other identifying features and to prevent others from appropriating that name, image, voice, or feature for financial gain. While very close to the appropriation prong of privacy, the right of publicity is more a matter of control of property than an individual inalienable right. Unlike privacy, the right of publicity can survive death for varying lengths of time, based on state law. (e.g., 10 years in Tennessee, 50 in Illinois and California, 100 in Indiana).

Claims of violation of right of publicity are subject to some limits: factual representations focused on news reporting or education are generally allowable. However, commercial uses, especially advertising, are not permitted. In Illinois, "commercial" use includes fund-raising by non-profits.