



# Right of Publicity

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# Greece

Xenophon Paparrigopoulos, Alexandros Koliiothomas and Dana Mabger

Potamitisvekris

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## Sources of law

### 1 Is the right of publicity recognised?

The right of publicity is recognised in Greece as a right of a person to control commercial uses of aspects of his or her persona. Recognition of the right originated primarily within the domain of the right of personality as per the provisions of articles 57, 58 and 59 of the Greek Civil Code and the Greek Constitution.

### 2 What are the principal legal sources for the right of publicity?

The principal legal sources from which the right of publicity is derived include national legislation, legal doctrine and case law, European legislation and international treaties such as the European Convention on Human Rights.

### 3 How is the right enforced? Which courts have jurisdiction?

Civil courts enforce the right, and the jurisdiction is ascertained according to the residence of the defendant or where the harmful event took place, or both.

### 4 Is the right recognised per se, or by reference to other laws?

The right is not recognised per se but by reference to the Greek Civil Code, especially articles 57, 58 and 59 protecting personality, and the Greek Constitution.

The right is also recognised by reference to a number of legislative instruments, such as:

- L 2121/1993 relating to intellectual property;
- L 2239/1994 relating to trade marks;
- data protection laws: L 3917/2011, L 3783/2009, L 2472/1997, and L 3471/2006; and
- L 2725/1999 relating to amateur and professional sport (indirect recognition of the right of publicity of football players).

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## Existence of right

### 5 Who has or is entitled to the right of publicity?

The right of publicity is a right in personam, being an offspring of the broader right of personality. As such, in principle, only natural persons possess it.

However, legal persons can conceivably be entitled to such a right, as the right may be further transferred or licensed by his or her initial owner at subsequent stages.

### 6 Do individuals need to commercialise their identity to have a protectable right of publicity?

Case law and legal doctrine do not require commercialisation as a prerequisite to a protectable right of publicity. This means that non-public figures possess an enforceable right of publicity. Indeed, case

law (decision No. 168/1979, 3424/1989 and 2006/1993) has confirmed that no distinction is made between public and non-public figures insofar as the protection to the right of publicity is concerned. In Greece, as the right of publicity is based on the right of personality, it encompasses elements which by nature are related to the individual and are distinct from commercially exploitable rights, thus rendering the protectable right of publicity available also to individuals who do not commercialise their identity (inclusive of legal persons).

### 7 Can a foreign citizen have a protectable right of publicity?

Yes. The Greek Civil Code explicitly provides that foreign citizens have the same civil (ie, private) rights as citizens.

### 8 What is protected under the right of publicity?

The elements protected under the right of publicity have been determined essentially through case law and legal doctrine in the course of dealing with problems involving the commercially exploitable elements of the personality, problems which eventually led to the recognition of the right of publicity as a distinguishable right. These elements include, the image of the individual (including every visible element of the person that leads to their identification), the name (including pseudonyms), the voice, and other elements of the personality, which may acquire commercial value and be the object of commercial exploitation and as such fall within the realm of protection of the right of personality. In that respect, it has been held that the adaptation of lyrics of a famous Greek composer (Mikis Theodorakis) for advertising purposes constitutes infringement of the right of personality (Decision No. 16785/1980).

### 9 Is registration required for protection of the right? If so, what is the procedure and what are the fees for registration?

Registration is not required for protection of the right.

### 10 Does the existence, or the extent, of the right depend on where the individual lives or has lived?

The right would not be recognised to fictitious individuals; as far as the fate of the right post-mortem is concerned, see below.

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## Ownership of right

### 11 Can the right be transferred? In what circumstances?

According to legal theory, given that it is accepted that certain aspects of an individual's personality may also be commercially exploitable, the particular rights of personality which may be the object of commercial and advertising exploitation should be considered as transferable rights. However, the transferability of these rights should not undermine the broader moral nature of the right of personality.

**12** Can the right be licensed? In what circumstances?

As with transfers, the right can be licensed exclusively or non-exclusively insofar as financially exploitable aspects of one's personality are concerned, with the ability to license only the economic right to the exclusion of the moral right, which cannot be licensed.

**13** If the right is sold or licensed, who may sue for infringement?

Locus standi is determined on an ad hoc basis according to the contractual arrangement at hand. However, in the event that the contract is silent as to the locus standi issue, then both the licensor and the licensee have standing to sue for infringement.

**14** How long does protection of the right last?

The right is granted protection for the span of the person's lifetime as long as there is a commercially exploitable right. In the case in which the object of the right is protected by the relevant trademark provisions, the right lasts for as long as the trademark is renewed or the right is protected by the relevant copyright provisions.

**15** Is the right protected after the individual's death? For how long? Must the right have been exercised while the individual was alive?

There is no express provision in the Greek legislation regulating the post mortem protection of the right of publicity and its duration. However, legal doctrine suggests that post-mortem protection of the right is possible by applying mutatis mutandis article 932(c) of the Greek Civil Code. According to the aforementioned article, as it applies mutatis mutandis, the family of the deceased retains the right to financially exploit and protect elements of the personality of the deceased to the extent that the exercise of the right does not conflict with the legitimate expectations of the public to receive information and the specific right has not become commonplace.

A strict rule does not exist as to the post-mortem duration of the right. Given, however, that the right concerns the commercial aspects of one's personality, it is submitted that the post mortem duration of the right lasts for as long as the right has an economic value.

It is required that the financially exploitable right was exercised during the individual's lifetime.

**16** If post-mortem rights are recognised, who inherits the rights upon the individual's death? How is this determined?

The principles of inheritance law apply and as such the right is inherited by the individual's heirs or successors. According to inheritance law this is determined by the will of the deceased. For persons who die intestate the standard intestate succession rules (next of kin) of the Greek Civil Code apply.

**17** Can the right be lost through the action or inaction of its owner?

As a general principle, the right cannot be lost while a person is alive, because, as mentioned above, commercialisation is not a prerequisite to a protectable right of publicity. However, there are certain mitigating circumstances applicable to any kind of right, which come into consideration when enforcing the right. Impairment of the right is an example in the event that a person is not vigilant with respect to infringers. Such an impairment may come as a consequence of the inaction of the owner or delayed reaction in enforcing the right.

**18** What steps can right owners take to ensure their right is fully protected?

As the right does not depend on registration and is vested automatically upon birth irrespective of whether its holder is a public figure or not, the right does not, in principle, need protection beyond vigilance with respect to infringers while its holder is alive.

However, individuals may take certain steps to maximise protection of the right, including registration of the right as a trademark, entering into contracts in which explicit protection of the exploitable aspects of personality is provided, expressly addressing the right in their wills for the benefit of their heirs or successors.

**Infringement****19** What constitutes infringement of the right?

As far as infringement is concerned, it seems clear that the right of publicity is a distinct and a sui generis right as compared to the non-commercial, moral aspect of the right of personality as we know it today. It is about protecting property in the broadest sense, in other words, the asset side of personality through which the holder of the right is vested with the power not only to prevent non-consensual commercial use of aspects of his or her personality but also to ensure that the individual is the only one to gain the financial benefit of such use.

Thus the non-consensual use of an individual's aspects of his or her personality for commercial-financial purposes constitutes infringement of the right of publicity even if such a use does not lead to or cause damage to his or her reputation or violation of the right of privacy.

Greek case law usually uses the following terms to find infringement of the right of publicity: 'for profit' (Areios Pagos 782/2005), 'for the purposes of increasing circulation within a particular circle of readers', 'for advertising purposes' (Areios Pagos 1010/2002 and Court of Appeal 3501/2003), 'for advertising and commercial in general purposes' (Multimember Court of First Instance of Athens 2364/2002), 'for commercial advertising' (Court of Appeal 3346/1996), 'purely for commercial purposes, i.e. to attract more attention of buyers, so that financial gain is enhanced' (Court of Appeal 2006/1993). Thus, according to Greek case law the term 'commercial exploitation' includes financial speculation, commercial advertising and increase of circulation within a particular circle of readers.

**20** Is an intent to violate the right necessary for a finding of infringement?

Intent is not a prerequisite for a finding of infringement. On the contrary, intent is a prerequisite for a successful damages claim under article 914 of the Civil Code and for moral damages under article 59 of the Civil Code (see decision No. 3346/1996 of the Court of Appeal). For the determination of the amount of damages to be awarded due to moral damage, account is taken, inter alia, of the following: the kind of violation, the extent of damage, the circumstances under which the harmful event took place, the degree of intent, the financial and social condition of the litigants, contributory negligence, and the behaviour of the defendant following the harmful event.

**21** Does secondary liability exist for the right? What actions incur such liability?

According to the provisions of the Civil Code (articles 57, 59, 914, 922, 920 and 932) secondary liability applies within the context of principal-agent relationships, rendering the principal liable insofar as the agent's actions relate to its legal relationship to the principal.

**22** What defences exist to an infringement claim?

The main defences to infringement are based on the Greek Constitution:

- freedom of expression (article 14 paragraphs 1 and 2);
- freedom of press (article 15); and
- freedom of art (article 16).

It is accepted that a person must tolerate public exposure of aspects of his or her personality through the media provided that there is a legitimate interest of the public to receive information. The fact that publication of aspects of personality has at the same time commercial character does not necessarily rule out the recognition of the possibility that there is such legitimate reason. Besides, public figures must tolerate interventions justified by the interests of public opinion. The same does not apply necessarily to non-public figures. In any case, however, the interest of the public to receive information does not operate as a legitimising factor to intervene to a person's privacy. Similarly, the freedom of expression does not legitimise the use of aspects of personality for advertising purposes. As far as freedom of art is concerned, the possibility of this defence is judged on an ad hoc basis being not suitable for a priori schematisations.

Finally, it should be taken into consideration that the right of publicity infringement claims are subject to the same defences as generally apply in Greek civil litigation such as delay, waiver or acquiescence.

### Remedies

**23** What remedies are available to an owner of the right of publicity against an infringer? Are monetary damages available?

The owner of the right of publicity may file a lawsuit against the infringer or file a petition for injunction requesting the termination of the infringement and the omission of the infringement in the future. Monetary damages are available according to the provisions of the Civil Code relating to wrongdoings (articles 57 and 914 et seq), and damages can be claimed according to the provisions of the Civil Code for moral damages (articles 59, 932 and 931). Special provisions apply for infringement of the right through the media.

Moreover, a claimant may ask for the return of profits gained by the non-consensual use of aspects of his or her personality for advertising purposes by virtue of article 739 of the Civil Code (non-genuine negotiorum gestio) as well as for damages for unjust enrichment.

Finally, publication of the judgment in the press or the internet is possible.

**24** Is there a time limit for seeking remedies?

As a general principle, a claim during main proceedings for infringement of the right of publicity must be brought before a court within the statute of limitations period, in other words, 20 years from the time that the harmful event took place.

As far as preliminary injunctions are concerned, and given that a preliminary injunction is granted when an urgent situation or the need to avoid an imminent danger exist, the applicant should file the petition as soon as possible following knowledge of the infringement. Otherwise, the necessary conditions of the existence of an urgent situation or imminent danger shall not be met.

**25** Are attorneys' fees and costs available? In what circumstances?

Attorney fees and court costs are allocated after the trial, following the defeat principle. According to the main rule, each defeated party is charged with its own court costs, as well as with the costs of its opponent. This rule may also apply when each party is only partially successful. The court can then divide the costs in accordance with the degree of the parties' defeat.

**26** Are punitive damages available? If so, under what conditions?

The Greek courts do not award punitive damages as opposed to other jurisdictions, such as in the United States. However, in the Greek jurisdiction it is common practice for claimants to claim (and, in successful claims, for the courts to award) moral damages.

**27** What significant judgments have recently been awarded for infringement of the right?

- The No. 34/2010 judgment of the Supreme Court provides that a publication that makes reference to known characteristics of a certain individual from which his or her identity can be ascertained constitutes a violation of the right to personality even though the name of individual was not made reference to.
- The No. 7303/2011 judgment of the Multi-Member Court of Athens found that the publication regarding false information relating to a certain individual constitutes a violation of the right of personality, awarding €30,000 in favour of the individual for the moral damage incurred. In determining the amount of the damage to be awarded the Court took into consideration the severity of the violation of the right of personality, the consequences, and the financial and social status of the parties involved.

### Litigation

**28** In what forum are right of publicity infringement proceedings held?

As a general rule civil courts have jurisdiction to adjudicate upon infringement of the right of publicity. Jurisdiction is ascertained either according to the residence of the defendant or according to the place where the harmful event took place, or both. Notice that special provisions apply to cases of infringement carried out through the press.

**29** Are disputed issues decided by a judge or a jury?

Disputed issues are decided by judges in civil proceedings.

**30** To what extent are courts willing to consider, or bound by, the opinions of other national or foreign courts that have handed down decisions in similar cases?

Judges are not formally bound by precedent even on issues where en banc decisions were reached by the Areios Pagos (the Supreme Court of Justice). However, most judges comply with the precedent of Areios Pagos in most cases and those of the most influential courts of appeals (especially those of Athens and Thessaloniki (Salonika), whose members are the main candidates for Areios Pagos).

The courts possess a certain degree of flexibility and in appropriate circumstances they are prepared to take account of the reasoning given by foreign courts that have handed down decisions in similar cases.

**31** Is preliminary relief available? If so, what preliminary measures are available and under what conditions?

Preliminary relief is available. A preliminary injunction may be granted in order to secure or preserve a substantive right, which has already become, or is expected to eventually become the object of litigation in normal proceedings through an ordinary action. A preliminary injunction is granted when an urgent situation or the need to avoid an imminent danger exist. Once the preliminary order is granted, it remains in force provided that a main lawsuit is filed within 30 days from the issuance of the decision granting the order.

**32** What avenues of appeal are available in main proceedings or preliminary injunction proceedings? Under what conditions?

The rule is that all final decisions at first instance can be appealed. An appeal may be granted for any reason whatsoever. It is required that a notice of appeals includes specific explanation of at least one error, be it false interpretation of legal norms or an error related to fact-finding.

Decisions on petitions for injunction are not subject to appeal on the merits. However, such decisions may be revoked upon request by

the defendant. The most usual case of revocation is the one provided under article 696 paragraph 3 of the Code of Civil Procedure (change of circumstances). As a general principle, a change of circumstances is found when new events occur following the issuance of the injunction (essentially, after the hearing of the case) from which events the inexistence of the protected right or the inexistence of an imminent danger or a case of emergency can be presumed.

**33** What is the average cost and time frame for a first instance decision, for a preliminary injunction, and for appeal proceedings?

Legal costs in Greece are relatively low. They involve strictly judicial costs, which include several kinds of fees or dues to be deposited in advance, and all the various extrajudicial expenses, such as the remuneration of attorneys, notaries, bailiffs, experts etc.

The length of time it takes to obtain a decision at first instance depends firstly on the jurisdiction and secondly on the court before

which the case is entered. Although there are no official statistics, usually in Athens cases to be heard before the single-member court of first instance are scheduled for hearing approximately 10 to 12 months after filing of the lawsuit, while cases to be heard before the multi-member court of first instance are usually scheduled for hearing 14 to 20 months after the filing of the complaint. It then takes approximately six to nine months from the hearing of the case to obtain a decision at first instance in both courts. However, the length of time it takes to get a decision at first instance in smaller jurisdictions (ie, other than Athens and Thessaloniki) is as a rule shorter.

The process of appeal usually takes 18 to 24 months from the filing of the appeal while the process of preliminary injunction takes usually six to eight months from the filing of the petition for injunction.

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