

Restatement (2d) Torts § 652C

One who appropriates to his own use or benefit the name or likeness of another is subject to liability to the other for invasion of his privacy.

Comment *a*

The interest protected by the rule . . . is the interest of the individual in the exclusive use of his own identity, in so far as the use may be of benefit to him or to others. . . . [T]he right created by it is in the nature of a property right, for the exercise of which an exclusive license may be given to a third person

Comment *b*

. . . Apart from statute, however, the rule stated is not limited to commercial appropriation. It applies also when the defendant makes use of the plaintiff's name or likeness for his own purposes and benefit, even though the benefit sought to be obtained is not a pecuniary one. Statutes in some states have, however, limited the liability to commercial uses

Comment *c*

[T]he defendant must have appropriated to his own use or benefit the reputation, prestige, social or commercial standing, public interest, or other values of the plaintiff's name or likeness. . . .

Restatement (3d) Unfair Competition § 46

Appropriation of the Commercial Value of a Person's Identity: The Right of Publicity. One who appropriates the commercial value of a person's identity by using without consent the person's name, likeness, or other indicia of identity for purposes of trade is subject to liability for [monetary and injunctive] relief.



Paris's First Day
as a Waitress.

EXHIBIT A

The Really, Really,
Really, Really, Simple Life.



Hope your birthday
is really, really,
really, really, happy.

A. The Fourth Amendment—Basics

B. The Fourth Amendment—The Cases

-----[pre-Cyberspace]-----

1. Smith v. Maryland
 - a. S/S of non-content info
 - b. Pen register information

-----[post-Cyberspace]-----

2. U.S. v. Zeigler
 - a. S/S of content info
 - b. Pornography downloaded from the Internet
3. Pennsylvania v. Proetto
 - a. S/S of content info
 - b. Public/private chat rooms and e-mails
4. Ohio v. Turner
 - a. S/S of content info
 - b. Instant messaging
5. U.S. v. Long
 - a. S/S of content info
 - b. E-mails
6. U.S. v. Hambrick
 - a. S/S of non-content info
 - b. ISP information
7. Warshak v. U.S. (Bivens)
 - a. S/S of content info
 - b. E-mails from an ISP

The Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment applies when there is:

1. Government action; and a
2. Search or seizure
 - a. Subjective expectation of privacy; and
 - b. Objectively reasonable expectation of privacy

If it applies, then the search or seizure must be reasonable. It is reasonable when:

1. Authorized by a search warrant supported by probable cause and a particularized description of the property to be searched and the items to be seized; or
2. One of the judicially-crafted exceptions to the warrant requirement applies, such as—
 - a. Search incident to a lawful arrest
 - b. Consent obtained
 - c. Exigent circumstances