

TESTIMONY OF
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NEVAS, NEVAS, CAPASSE & GERARD
WESTPORT, CONNECTICUT
ON BEHALF OF
PAUL NEWMAN, JOANN WOODWARD
AND OTHERS
BEFORE THE
JUDICIARY COMMITTEE
CONNECTICUT GENERAL ASSEMBLY
RE: RAISED BILL 5811
MARCH 24, 2006

Chairman MacDonald, Chairman Lawlor and Members of the Committee.

Thank you for the opportunity to testify in support of Raised Bill No. 5811. This Act Concerning a Right of Publicity is built on a doctrine announced by our Supreme Court in 1982. It was then that the Supreme Court, in Goodrich v. Waterbury Republican, 188 Conn. 107, 488 A.2d 559, recognized that the right of privacy was part of our law. Relying on Prosser on Torts (4th Ed. 1971) and the Restatement of Torts (3 Restatement, Second, Torts § 652A), it spelled out four separate torts that spring from the right of privacy:

- “Unreasonable intrusion into the seclusion of another”;
 - “Unreasonable publicity given to another’s private life”;
 - “Publicity that unreasonably places another in a false light before the public”
- and,
- “Appropriation of another’s name and likeness,”

otherwise known as the right of publicity.

Three years later a U.S. District Court in New York acknowledged that Connecticut recognizes a right of publicity. Bi-Rite Enterprises, Inc. v. Bruce Miner Company, Inc., 757 F.2d 440, 444 (1985).

In 1994, another U.S. District Court sitting in New York City presumed that not only does the right of publicity exist in Connecticut but that it anticipates, based on what Connecticut and other states have done, that we would give heirs a right to sue for “posthumous infringement”, thereby identifying the right of publicity as both a property right and one that is descendable. Jim Henson Productions, Inc. v. John T. Brady & Associates, Inc., 867 F.Supp. 175, 189 (1994).

But neither you in the Legislature or our courts have yet spoken on these important points and that has left considerable uncertainty. This is why, in Sections 2 and 4 of Bill 5811, you are asked to find what the 19 states who have enacted a right of publicity law have decided, namely that the right of publicity should give a person a property interest in their name, voice, signature, photograph, image, likeness and that these are rights that will descend to their heirs and designees.

This Bill also establishes procedures and creates remedies tested in other states that provide a fair and clear warning to anyone who might think about appropriating someone’s rights of publicity without their consent. These provisions sharply reduce the need for expensive litigation to protect one’s name and property rights.

This Bill is also crafted to respond to a risk that grows each day. Increasingly inexpensive computer technology now makes it possible for anyone with access to film, video tape or digital recording of someone’s face, voice and mannerisms to create a new performance, a new movie that the actors, the writers and producers never intended and

have not agreed to. The technology makes it possible for the unscrupulous to put words in the mouths of persons who would never utter them, to put people in places and situations where they would not agree to be and to, in effect, steal the performances of actors and others without paying them, thereby diminishing the value of their actual performances.

The motion picture studios' trade group may nonetheless try to tell you that Connecticut doesn't need a right of publicity law. We believe we have demonstrated the need. We must also ask, why are they go on to suggest an amendment to this Bill that would exclude every form of entertainment, as entertainment, in every medium imaginable from the protections of the right of publicity and deny every actor and performer the right to claim them. Their attempt to change this Bill in this way intensifies my clients' worst fears and suspicions about what the future may hold without this legislation.

This is a measure that will protect the citizens of Connecticut, those whose names we know well and those whose identities, voices and likenesses are yet to gain prominence. For all of these reasons, we respectfully request that you recommend enactment of Bill 5811.