

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 683 (Cortese)
Version: March 25, 2025
Hearing Date: April 8, 2025
Fiscal: No
Urgency: No
AWM

SUBJECT

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

DIGEST

This bill clarifies that a plaintiff in a right of publicity lawsuit may seek injunctive relief prior to the entry of judgment, and sets forth the timeframe for a defendant to comply with a temporary restraining order entered in such a case.

EXECUTIVE SUMMARY

Current law establishes a right to control one's own name, voice, signature, image, and likeness for commercial purposes. A person whose name, voice, signature, image, or likeness was used in connection with a product or advertisement without their consent can file a civil action against the person who used the image and receive actual or statutory damages, disgorgement of profits from the wrongful use, and potentially punitive damages.

This bill clarifies that a party to a suit for nonconsensual use of one's name, voice, signature, image, or likeness for commercial purposes can also obtain an injunction or temporary restraining order under existing procedures, and provides that, if a temporary restraining order is issued, the subject of the order must comply with the order within two business days unless the order specified a shorter time for compliance. The author has agreed to minor amendments to clarify that the two-day compliance period applies to orders to remove or otherwise stop publishing a plaintiff's protected likeness, and that the subject of the order must complete the required removal or recall of the likeness in question within two days.

This bill is sponsored by the author. The Committee has not received timely opposition to this bill.

PROPOSED CHANGES TO THE LAW

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 purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without that person's prior consent, or in the case of a minor, the prior consent of their parent or guardian, shall be liable for:
 - a) Any damages sustained by the person or persons injured as a result of the unauthorized use or \$750, whichever is greater.
 - b) Any profits from the unauthorized use that are attributable to the use and not taken into account in computing the actual damages; in estimating such profits, the injured party must present proof only of the gross revenue attributable to the use, and the violator must prove their deductible expenses.
 - c) Punitive damages, if awarded under existing punitive damages laws. (Civ. Code, § 3344(a).)
- 2) Provides that the prevailing party in an action under 1) shall be entitled to reasonable attorney's fees and costs. (Civ. Code, § 3344(a).)
- 3) Provides that the remedies in 1) and 2) are cumulative and in addition to any others provided for by law. (Civ. Code, § 3344(g).)
- 4) Provides that a person shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine that the person depicted in the photograph is the same person who is complaining of its unauthorized use; however, persons photographed as part of a definable group – such as in a crowd at a sporting event or in the audience at a theater – who are in the photograph solely as a result of being present at the time the photograph was taken do not have a claim under 1). (Civ. Code, § 3344(b).)
- 5) Provides that, where a photograph or likeness of an employee of the person using the photograph or likeness appearing in the advertisement prepared by or on behalf of the user is only incidental, and not essential, to the purpose of the publication in which it appears, there is a rebuttable presumption affecting the burden of production that the failure to obtain the consent of the employee was not a knowing use of the employee's likeness. (Civ. Code, § 3344(c).)
- 6) Provides that the 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, shall not constitute a use for which consent is required under 1). (Civ. Code, § 3344(d).)

- 7) Provides that the use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under 1) solely because the material containing the use is commercially sponsored or contains paid advertising; rather, the question is whether the use of the person's name, voice, signature, photograph, or likeness is so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under 1). (Civ. Code, § 3344(e).)
- 8) Provides that nothing in 1)-5) applies to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of 1) is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use. (Civ. Code, § 3344(f).)
- 9) Provides that a court may grant a preliminary injunction in a civil action at any time before judgment upon a verified complaint, or upon affidavits, if the complaint or affidavits establish sufficient grounds for the injunction and notice is provided to the opposing party. (Code Civ. Proc., § 527(a).)
- 10) Provides that a court can grant a temporary restraining order (TRO) in a civil action at any time before judgment, without notice to the opposing party, if the following requirements are satisfied:
 - a) It appears from the facts shown by the affidavit or 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 to the court under oath one of the following: (1) that within a reasonable time prior to the application, the applicant informed the opposing party or their attorney at what time and where the application would be made; (2) that the applicant attempted in good faith, but was unable to, inform the opposing party and their attorney, specifying the efforts made to contact them; or (3) for reasons specified, the applicant should not be required to inform the opposing party or their attorney of the pending application. (Code Civ. Proc., § 527(c).)
- 11) Provides that, if a TRO is granted under 9):
 - a) The matter shall be made returnable on an order requiring cause to be shown why a preliminary injunction should not be granted, on the earliest day possible for the court, but not later than 15 days or, with a showing of good cause, 22 days from the date the TRO is issued.
 - b) The party who obtained the TRO shall serve specified documents on the opposing party, within five days from the date the TRO was issued or two days prior to the hearing on the order to show cause, whichever is earlier; the court may, for good cause, shorten the time required for service.

- c) When the matter first comes up for the hearing, if the party who obtained the TRO is not ready to proceed, or if the party has failed to serve the opposing party as required under 11)(b), the court shall dissolve the TRO.
- d) The opposing party is entitled to one continuance of not less than 15 days or any shorter period requested by the opposing party; if the opposing party obtains the continuance, the TRO shall remain in effect until the date of the continued hearing.
- e) If the applicant files an affidavit stating that the opposing party could not be served within the time required, the court may reissue the TRO; the time periods for the hearing on the order to show cause will run from the reissued TRO. (Code Civ. Proc., § 527(d).)

This bill:

- 1) Clarifies that in an action for the knowing use of another's name, voice, signature, photograph, or likeness for commercial use without consent, a party may seek a preliminary injunction or TRO pursuant to section 527 of the Code of Civil Procedure.
- 2) Specifies that, if a party obtains a TRO pursuant to 1), the respondent shall comply with the order within two business days from the day the order is served, unless the order requires a shorter timeline for compliance.

COMMENTS

1. Author's comment

According to the author:

We are living in an era 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. California's right of publicity statute

Civil Code section 3344 (section 3344) establishes a right to control one's own name, voice, signature, image, and likeness (collectively, "likeness") for commercial purposes.¹ The right of publicity set forth in section 3344 "protects an individual's right to profit from the commercial value of [their] identity."² "The rationale for protecting the right of publicity is the straightforward 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."³ Section 3344 applies both to actual photographic likenesses of an individual as well as artificially generated ones.⁴

Section 3344 is a fairly narrow statute. It does not prohibit any use of another's likeness without consent; rather, it applies only to the nonconsensual commercial use of one's likeness, such as in advertisements and on products.⁵ Additionally, because section 3344 restricts speech, there is "a tension between the right of publicity and the First Amendment."⁶ Once a person places themselves in the public eye, "the First Amendment dictates that the right to comment on, parody, lampoon, and make other expressive uses of the celebrity image must be given broad scope."⁷

To determine whether a nonconsensual commercial use of another's likeness is protected, the court conducts an analysis similar, but not identical, to the fair use analysis under copyright law, examining whether the use of the likeness is sufficiently "transformative" and whether "the marketability and economic value of the challenged work derive[s] primarily from the fame of the celebrity depicted."⁸ Commercial products or advertisements that straightforwardly portray the likeness of the plaintiff in a context connected to their celebrity – such as using the image of a college football player in a college football video game – are generally not found to be so transformative as to entitle the defendant to a First Amendment defense to a section 3344 action.⁹

¹ Civ. Code, § 3344.

² *Ross v. Roberts* (2013) 222 Cal.App.4th 677, 685.

³ *Zacchini v. Scripps-Howard Broadcasting Co.* (1977) 433 U.S. 562, 576 (cleaned up).

⁴ E.g., *No Doubt v. Activision Publishing, Inc.* (2011) 192 Cal.App.4th 1018, 1033 (applying section 3344 to images of the members of No Doubt in a video game); *In re NCAA Student-Athlete Name & Likeness Licensing Litigation* (9th Cir. 2013) 724 F.3d 1268, 1279 (applying section 3344 to images of student athletes in a video game).

⁵ Civ. Code, § 3344(a).

⁶ *Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387, 396.

⁷ *Id.* at p. 403.

⁸ *Id.* at p. 407.

⁹ E.g., *In re NCAA Student-Athlete Name & Likeness Licensing Litigation, supra*, 724 F.3d at p. 1276.

3. This bill clarifies the availability of injunctive relief, and sets a timeline for complying with a TRO issued, in a case under section 3344

This bill is intended to ensure that individuals whose likenesses have been used without their consent for commercial purposes – including likenesses generated by artificial intelligence or other artificial means – have an expeditious means to halt the use of those nonconsensual images.

SB 683 first clarifies that a party in a section 3344 case can seek a preliminary injunction or TRO under Code of Civil Procedure section 527. Second, SB 683 provides that, if a court grants a TRO in a section 3344 case, the respondent must comply with the TRO within two business days of the service of the order, unless the order specifies a faster time for compliance. The author has agreed to amend this second provision in order to clarify the need for compliance, as follows:¹⁰

“If the court grants the applicant an order under subdivision (c) of Section 527 of the Code of Civil Procedure **that requires the respondent to remove, recall, or otherwise cease the publication or distribution of the petitioner’s name, voice, signature, photograph, or likeness**, the respondent shall **complete the removal, recall, publication, or distribution** within two business days from the day the order is served, unless the order requires faster compliance.”

These changes make clear that the respondent’s requirement to comply with a court order takes effect immediately, and that, if a respondent has been ordered to take down or stop using the petitioner’s likeness, the respondent cannot drag their feet.

SUPPORT

None received

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation: SB 11 (Ashby, 2025) among other things, modifies section 3344 to remove the rebuttable presumption that, when an employer’s use of an employee’s image or likeness is incidental to the purpose of the publication, the employer’s failure to obtain consent from the employee was not a knowing use of the employee’s image or likeness. SB 11 is pending before the Senate Public Safety Committee.

¹⁰ This language is subject to any nonsubstantive changes the Office of Legislative Counsel may make.

Prior legislation:

SB 970 (Ashby, 2024) among other things, would have specified that, for purposes of section 3344, a voice or photograph that is synthetic content, as would have been defined in the bill, is deemed to be the voice or photograph of the person depicted, if a reasonable person would believe that the synthetic content is the genuine voice or photograph of that person. SB 970 died in Senate Appropriations Committee.

AB 2602 (Kalra, Ch. 259, Stats. 2024) provided that a provision in an agreement between an individual and any other person for the performance of personal or professional services is unenforceable only as it relates to a new performance, fixed on or after January 1, 2025, by a digital replica, as defined, of the individual if the provision meets specified conditions relating to the use of a digital replica of the voice or likeness of an individual in lieu of the work of the individual.

AB 1836 (Bauer-Kahan, Ch. 258, Stats. 2024) prohibited the production or distribution of a digital replica of a deceased person's voice or likeness, as specified, without specified prior consent, and awards actual damages or \$10,000, whichever is greater, to the person controlling the rights to the deceased person's likeness, except as provided.
