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0521800145 - The Commercial Appropriation of Personality
Huw Beverley-Smith
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Commercial exploitation of attributes of an individual's personality, such as name, voice and likeness, forms a mainstay of modern advertising and marketing. Such indicia also represent an important aspect of an individual's dignity which is often offended by unauthorised commercial appropriation.

This volume provides a framework for analysing the disparate aspects of the problem of commercial appropriation of personality and traces, in detail, the discrete patterns of development in the major common law systems. It also considers whether a coherent justification for a new remedy may be identified from a range of competing theories. The considerable variation in substantive legal protection reflects more fundamental differences in the law's responsiveness to new commercial practices and different attitudes towards the proper scope and limits of intangible property rights.

Including detailed critical analyses of leading cases in English, Canadian and Australian law, with detailed comparative references to the United States, this volume will be essential reading for academics and practitioners specialising in intellectual property law.

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Diolch, o galon, am bopeth
dros y blynyddoedd

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Preface

Commercial appropriation of personality is not a new phenomenon, although debate concerning its status and mode of legal regulation is becoming increasingly topical. The practice of using celebrities and ordinary individuals with no obvious public profile to help sell a vast range of goods and services flourishes. Yet relatively little attention has been devoted to the legal basis on which some of these often lucrative arrangements are based. The roots of this study lie in English law which has been reluctant to provide substantive legal protection for the attributes of an individual's identity. The other major common law jurisdictions have, to varying degrees, been less reluctant to do so. The different patterns in several jurisdictions call for a detailed analysis of the leading cases and central concepts which illustrate quite different dynamics of legal development in the multifarious jurisdictions. Readers accustomed to dealing with intellectual property rights might be somewhat wary of digressions into the theories which lie behind the protection of personal dignity and human rights. However, commercial appropriation of personality is a curiously hybrid problem which demands that several lines of enquiry be pursued.

Inevitably, a compromise has had to be struck between breadth and depth of coverage. The main sources of comparison are the major common law jurisdictions. The Australian courts have been rather more progressive in adapting the traditional English causes of action, while the Canadian courts have gone further and in a distinctly different way. Coverage of the substantial United States jurisprudence concerning commercial appropriation of personality has had to be more selective. To American lawyers, the whole project may have a vaguely nineteenth-century feel, as the English courts continue to debate whether to recognise interests that the US courts have recognised and protected in various forms for over a century. While the American courts concern themselves with defining the scope and limits of intellectual property rights in personality which have developed largely through a mass of state case law, latterly supplemented by state statutes and codes, the English courts have

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yet to address the question of whether intellectual property rights may be recognised in attributes of personality and what form any protection should take.

The Human Rights Act 1998 has a particular significance for the developing English law of privacy and this book is not unique in being written against an uncertain background. The full extent to which the values of the European Convention on Human Rights may influence the development of the English common law are not likely to become apparent for some time.

While some account of the approaches taken in civil law jurisdictions is given from time to time, readers should not expect a comprehensive treatment. The patterns of development in the major civil law jurisdictions and the complex issues which have been raised are sufficiently distinct to warrant a far more thorough treatment based on a substantially different comparative structure from that offered here. A subsequent volume, *Privacy, Property and Personality* (Cambridge University Press), written with two expert German and French scholars, Ansgar Ohly and Agnes Lucas-Schloetter, is planned to appear in 2003.

This book is based on my University of Wales doctoral thesis, although it has been substantially revised and updated. A particular debt of gratitude is owed to my doctoral supervisor, Allison Coleman, for her constant support and encouragement, and to Professor W. R. Cornish and Professor R. A. W. Kidner who examined the thesis. I would like to thank my former colleagues and students in the Department of Law at Aberystwyth, and the staff of the National Library of Wales and the Institute of Advanced Legal Studies. I am especially grateful to the Max-Planck Institute for Foreign and International Patent, Copyright and Competition Law, Munich, for providing the financial resources for me to be able to be there for most of 2000, when the bulk of the work for this book was completed.

I am indebted to several people for taking the time to read and comment on various chapters of the book and would like to take this opportunity to thank Robert Burrell, Bill Cornish, Ansgar Ohly, Richard Ireland and John Linarelli. Their comments and suggestions were extremely valuable, although, of course, I am entirely responsible for any errors. As Series Editor, Bill Cornish has been unfailingly helpful and supportive at every stage of this project, for which I am extremely grateful. Finally, I would like to thank Finola O'Sullivan, Jennie Rubio and all the staff at Cambridge University Press for their courtesy and efficiency at every stage in the production of this work which includes all materials available to me at the end of August 2001. Subsequent developments are outlined at <http://www.commercialpersonality.com>.

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