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February 11, 2011

Washington State Publicity Law Doesn't Law Doesn't Extend to Celebrities Who Die Elsewhere

Because Jimi Hendrix died intestate in New York State, his rights of publicity died with him and the Washington Personality Rights Act, which purported to create a national right of publicity was unconstitutional, according to the federal district court for the Western District of Washington in a decision issued February 8. Most courts which rule on rights of publicity apply the law of the state in which the deceased person resided to determine whether the right exists and whether it descends. Judge Thomas Zilly wrote that Washington state's attempt to create a nationwide standard disregarded the laws of the other states which may have explicitly ruled that such a right does not exist, and therefore was unconstitutional under the due process, full faith and credit and commerce clauses.

The case arose when Experience Hendrix LLC, a company which holds certain Hendrix copyrights and trademarks, filed a trademark suit seeking to enjoin the sale of posters and novelty items by HendrixLicensing.com Ltd. The lawsuit as filed did not include a claim under Washington's right of publicity law, but the judge determined that it should nonetheless rule on its constitutionality.

Tip: Because many states do recognize descendible rights of publicity, national advertisers must continue to be cognizant of those rights when developing advertising around deceased celebrities.