

LAW 7538: ENTERTAINMENT LAW

STATUTORY SUPPLEMENT

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U.S. Federal Law

U.S. CONST. amend. 1

Congress shall make no law . . . abridging the freedom of speech, or of the press

The Lanham Act, 15 U.S.C. § 1125

(a) Civil action.

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

...

The Copyright Act, 17 U.S.C. § 101

Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

...

"Audiovisual works" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

...

A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

...

"Motion pictures" are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

...

"Phonorecords" are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

...

"Sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

...

A "work made for hire" is—

- (1) a work prepared by an employee within the scope of his or her employment; or

- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. . . .

...

The Copyright Act, 17 U.S.C. § 106

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

The Copyright Act, 17 U.S.C. § 107

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a

- commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

The Copyright Act, 17 U.S.C. § 201

- (a) Initial ownership. Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work.
- (b) Works made for hire. In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

...

- (d) Transfer of ownership.
 - (1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.
 - (2) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.

...

The Copyright Act, 17 U.S.C. § 204

- (a) A transfer of copyright ownership, other than by operation of law, is not valid

unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.

California Statutes

Cal. Bus. & Prof. Code § 16600

Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.

Cal. Civ. Code § 1708.8

- (a) A person is liable for physical invasion of privacy when the defendant knowingly enters onto the land of another without permission or otherwise committed a trespass, in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity and the physical invasion occurs in a manner that is offensive to a reasonable person.
- (b) A person is liable for constructive invasion of privacy when the defendant attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the visual or auditory enhancing device was used.
- ...
- (e) Sale, transmission, publication, broadcast, or use of any image or recording of the type, or under the circumstances, described in this section shall not itself constitute a violation of this section, nor shall this section be construed to limit all other rights or remedies of plaintiff in law or equity, including, but not limited to, the publication of private facts.
- ...
- (j) For the purposes of this section, "for a commercial purpose" means any act done with the expectation of a sale, financial gain, or other consideration. A visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been captured for a commercial purpose unless it is intended to be, or was in fact, sold, published, or transmitted.
- (k) For the purposes of this section, "personal and familial activity" includes, but is not limited to, intimate details of the plaintiff's personal life, interactions with the

plaintiff's family or significant others, or other aspects of plaintiff's private affairs or concerns. . . .

. . .

Cal. Civ. Code § 3344

(a) 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 such person's prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof. . . .

. . .

(d) For purposes of this section, a 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 subdivision (a).

. . .

Cal. Civ. Code § 3423

An injunction may not be granted:

. . .

(e) To prevent the breach of a contract the performance of which would not be specifically enforced , other than a contract in writing for the rendition of personal services from one to another where the promised service is of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and where the compensation for the personal services is as follows:

(1) As to contracts entered into on or before December 31, 1993, the minimum compensation provided in the contract for the personal services shall be at the rate of six thousand dollars (\$ 6,000) per annum.

(2) As to contracts entered into on or after January 1, 1994, the criteria of subparagraph (A) or (B), as follows, are satisfied:

(A) The compensation is as follows:

- (i) The minimum compensation provided in the contract shall be at the rate of nine thousand dollars (\$ 9,000) per annum for the first year of the contract, twelve thousand dollars (\$ 12,000) per annum for the second year of the contract, and fifteen thousand dollars (\$ 15,000) per annum for the third to seventh years, inclusive, of the contract.
 - (ii) In addition, after the third year of the contract, there shall actually have been paid for the services through and including the contract year during which the injunctive relief is sought, over and above the minimum contractual compensation specified in clause (i), the amount of fifteen thousand dollars (\$ 15,000) per annum during the fourth and fifth years of the contract, and thirty thousand dollars (\$ 30,000) per annum during the sixth and seventh years of the contract. As a condition to petitioning for an injunction, amounts payable under this clause may be paid at any time prior to seeking injunctive relief.
- (B) The aggregate compensation actually received for the services provided under a contract that does not meet the criteria of subparagraph (A), is at least 10 times the applicable aggregate minimum amount specified in clauses (i) and (ii) of subparagraph (A) through and including the contract year during which the injunctive relief is sought. As a condition to petitioning for an injunction, amounts payable under this subparagraph may be paid at any time prior to seeking injunctive relief.
- (3) Compensation paid in any contract year in excess of the minimums specified in subparagraphs (A) and (B) of paragraph (2) shall apply to reduce the compensation otherwise required to be paid under those provisions in any subsequent contract years.

...

Cal. Code Civ. Proc. § 526

...

- (b) An injunction cannot be granted in the following cases:

...

- (5) To prevent the breach of a contract the performance of which would not be specifically enforced, other than a contract in writing for the rendition of personal services from one to another where the promised service is of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value, the loss of which cannot be reasonably or adequately

compensated in damages in an action at law, and where the compensation for the personal services is as follows:

(A) As to contracts entered into on or before December 31, 1993, the minimum compensation provided in the contract for the personal services shall be at the rate of six thousand dollars (\$ 6,000) per annum.

(B) As to contracts entered into on or after January 1, 1994, the criteria of clause (i) or (ii), as follows, are satisfied:

(i) The compensation is as follows:

(I) The minimum compensation provided in the contract shall be at the rate of nine thousand dollars (\$ 9,000) per annum for the first year of the contract, twelve thousand dollars (\$ 12,000) per annum for the second year of the contract, and fifteen thousand dollars (\$ 15,000) per annum for the third to seventh years, inclusive, of the contract.

(II) In addition, after the third year of the contract, there shall actually have been paid for the services through and including the contract year during which the injunctive relief is sought, over and above the minimum contractual compensation specified in subclause (I), the amount of fifteen thousand dollars (\$ 15,000) per annum during the fourth and fifth years of the contract, and thirty thousand dollars (\$ 30,000) per annum during the sixth and seventh years of the contract. As a condition to petitioning for an injunction, amounts payable under this clause may be paid at any time prior to seeking injunctive relief.

(ii) The aggregate compensation actually received for the services provided under a contract that does not meet the criteria of subparagraph (A), is at least 10 times the applicable aggregate minimum amount specified in subclauses (I) and (II) of clause (i) through and including the contract year during which the injunctive relief is sought. As a condition to petitioning for an injunction, amounts payable under this subparagraph may be paid at any time prior to seeking injunctive relief.

(C) Compensation paid in any contract year in excess of the minimums specified in clauses (i) and (ii) of subparagraph (B) shall apply to reduce the compensation otherwise required to be paid under those provisions in any subsequent contract years. However, an injunction may be granted to prevent the breach of a contract entered into between any nonprofit cooperative corporation or association and a member or stockholder thereof, in respect to any provision regarding the sale or delivery to the

corporation or association of the products produced or acquired by the member or stockholder.

...

Cal. Lab. Code § 2855

(a) Except as otherwise provided in subdivision (b), a contract to render personal service . . . may not be enforced against the employee beyond seven years from the commencement of service under it. Any contract, otherwise valid, to perform or render service of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value and the loss of which can not be reasonably or adequately compensated in damages in an action at law, may nevertheless be enforced against the person contracting to render the service, for a term not to exceed seven years from the commencement of service under it. If the employee voluntarily continues to serve under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

(b) Notwithstanding subdivision (a):

- (1) Any employee who is a party to a contract to render personal service in the production of phonorecords in which sounds are first fixed, as defined in Section 101 of Title 17 of the United States Code, may not invoke the provisions of subdivision (a) without first giving written notice to the employer in accordance with Section 1020 of the Code of Civil Procedure, specifying that the employee from and after a future date certain specified in the notice will no longer render service under the contract by reason of subdivision (a).
- (2) Any party to such a contract shall have the right to recover damages for a breach of the contract occurring during its term in an action commenced during or after its term, but within the applicable period prescribed by law.
- (3) In the event a party to such a contract is, or could contractually be, required to render personal service in the production of a specified quantity of the phonorecords and fails to render all of the required service prior to the date specified in the notice provided in paragraph (1), the party damaged by the failure shall have the right to recover damages for each phonorecord as to which that party has failed to render service in an action which, notwithstanding paragraph (2), shall be commenced within 45 days after the date specified in the notice.

Cal. Lab. Code § 2924

An employment for a specified term may be terminated at any time by the employer in case of any willful breach of duty by the employee in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.

Cal. Lab. Code § 2925

An employment for a specified term may be terminated by the employee at any time in case of any wilful or permanent breach of the obligations of his employer to him as an employee.

Cal. Lab. Code § 1700.4

- (a) "Talent agency" means a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.
- (b) "Artists" means actors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises.

Cal. Lab. Code § 1700.40

...

- (b) No talent agency may refer an artist to any person, firm, or corporation in which the talent agency has a direct or indirect financial interest for other services to be rendered to the artist, including, but not limited to, photography, audition tapes, demonstration reels or similar materials, business management, personal management, coaching, dramatic school, casting or talent brochures, agency-client directories, or other printing.
- (c) No talent agency may accept any referral fee or similar compensation from any person, association, or corporation providing services of any type expressly set forth in subdivision (b) to an artist under contract with the talent agency.

Cal. Lab. Code § 1700.44

- (a) In cases of controversy arising under this chapter, the parties involved shall refer the matters in dispute to the Labor Commissioner
...
- (b) Notwithstanding any other provision of law to the contrary, failure of any person to obtain a license from the Labor Commissioner pursuant to this chapter shall not be considered a criminal act under any law of this state.
...
- (d) It is not unlawful for a person or corporation which is not licensed pursuant to this chapter to act in conjunction with, and at the request of, a licensed talent agency in the negotiation of an employment contract.

Cal. Penal Code § 653aa criminalizes the unauthorized distribution of sound recordings or audiovisual works without the sender’s valid email address. Section (a) says:

Any person, except a minor, who is located in California, who, knowing that a particular recording or audiovisual work is commercial, knowingly electronically disseminates all or substantially all of that commercial recording or audiovisual work to more than 10 other people without disclosing his or her e-mail address, and the title of the recording or audiovisual work [sic] is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment.

[Many exceptions follow that section.]

Cal. Bar Rules, Prof. Conduct Rule 3-310

...

- (B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:
 - (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or
 - (2) The member knows or reasonably should know that:
 - (a) the member previously had a legal, business, financial,

professional, or personal relationship with a party or witness in the same matter; and

(b) the previous relationship would substantially affect the member's representation; or

(3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or

(4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.

(C) A member shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

...

Restatement (Second) of Torts (1965)

652A. General Principle

- (1) One who invades the right of privacy of another is subject to liability for the resulting harm to the interests of the other.
- (2) The right of privacy is invaded by:
 - (a) unreasonable intrusion upon the seclusion of another, as stated in 652B; or
 - (b) appropriation of the other's name or likeness, as stated in 652C; or
 - (c) unreasonable publicity given to the other's private life, as stated in 652D; or
 - (d) publicity that unreasonably places the other in a false light before the public,as stated in 652E.

652B. Intrusion upon Seclusion

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

652C. Appropriation of Name or Likeness

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.

652D. Publicity Given to Private Life

One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that

- (a) would be highly offensive to a reasonable person, and

(b) is not of legitimate concern to the public.

652E. Publicity Placing Person in False Light

One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if

- (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
- (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Restatement (Second) of Contracts (1981)

R. (2d) § 14

Unless a statute provides otherwise, a natural person has the capacity to incur only voidable contractual duties until the beginning of the day before the person's eighteenth birthday.

R (2d) § 33

...

- (2) The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy.

...

R. (2d) § 241

In determining whether a failure to render or to offer performance is material, the following circumstances are significant:

- (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
- (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
- (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
- (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances;
- (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

R (2d) § 360

In determining whether the remedy in damages would be adequate, the following circumstances are significant:

- (a) the difficulty of proving damages with reasonable certainty,
- (b) the difficulty of procuring a suitable substitute performance by means of money awarded as damages, and
- (c) the likelihood that an award of damages could not be collected.

R (2d) § 367

- (1) A promise to render personal service will not be specifically enforced.
- (2) A promise to render personal service exclusively for one employer will not be enforced by an injunction against serving another if its probable result will be to compel a performance involving personal relations the enforced continuance of which is undesirable or will be to leave the employee without other reasonable means of making a living.