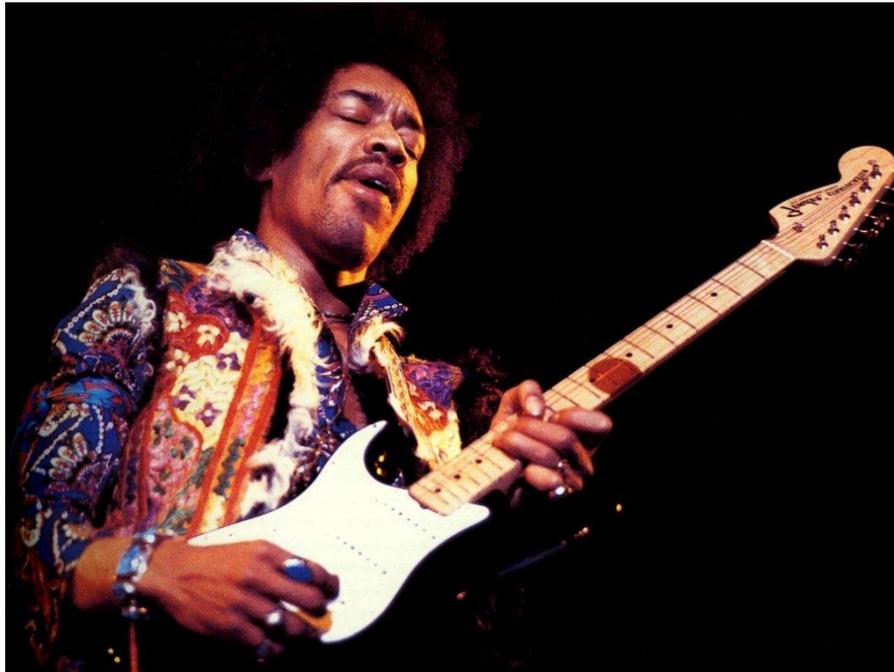


*A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.*

## [Reaching from the Grave, Should Publicity Rights End Upon Death?](#)

Posted on February 25, 2011 by [Joy S. Newborg](#)

Over the years, several businesses have tried to gain a competitive edge by associating their products with famous celebrities... but without obtaining licenses. There has been the [“Bogart” collection of furniture](#) sold by Ashley Furniture (presumably relying on Humphrey Bogart’s name to sell a common looking line of couches and recliner) and the [“B Davis Dress”](#) sold by Stop Sharing! Designs (presumably relying on Betty Davis’ name to sell a vintage dress). More recently, the company HendrixLicensing.com sold various items, including apparel, posters and novelty items, using Jimi Hendrix’s name and image. Such business were sued, with claims that rights of publicity were violated. What makes this cluster of lawsuits more interesting, though, is that all the celebrities are dead.



So should the right of publicity extend beyond the grave? One side of the argument is that the celebrity through his or her personal efforts became famous, and their families should be able to continue to benefit from such efforts even when the celebrity passes on. And is it really fair that another party benefits from capitalizing on the celebrity's fame by falsely implying an association simply because the celebrity is now dead? The other side of the argument is that if such rights of publicity are extended to a deceased person, it would stifle creativity, restrict rights of others to sell legally obtained items, interfere with copyright law and violate First Amendment rights to free speech.

Recently, the federal judge in the [Hendrix case](#) found that the Washington's statute which extended rights of publicity to deceased celebrities (the statute that Hendrix's heirs were relying on) was unconstitutional. There are certain details which led to this decision that you would know about. First, Washington did not even have a right of publicity statute until 1998, long after Hendrix died. Second, the revised WA statute extended the right of publicity to deceased individuals or personalities retroactively, meaning to those who died before the right of publicity even existing in WA. Third, the revised WA statute provided that right of publicity applies even when the celebrity did not live or die in the State of Washington. The statute appears to try and override the laws of other states which do not provide the same generous rights granted under WA's statute, with its history showing it was specifically drafted to assist the Hendrix's heirs in their claims. By finding the WA statute unconstitutional, Hendrix' heirs are relegated to the rights granted under NY law, where Hendrix lived and died, which does not grant the heirs continuing rights of publicity.

Even if the Hendrix case goes to the Supreme Court, there will probably be a lot more heated discussion on this subject. What are your views? Should rights of publicity extend beyond the grave? Should WA (or any other state) be able to extend rights of publicity to those who have no connections with the State?

