

Legal Rights of Privacy and Publicity

**Managing the records of the
famous, infamous, and completely unknown**

**Heather Briston
Special Collections and University Archives
University of Oregon
SAA New Orleans, August 2005**

Dear Miss Redgrave,

I was very sorry to hear that you
~~was~~ weren't interested in playing Olive Chancellor
in our adaptation of James' "The Bostonian".

I myself think that you would do the
part wonderfully well, and the reason I
think that is because I see Olive as
a ~~happy~~ ~~heroic~~ true heroine, with ^{of} strong
willpower and the most compelling of personalities.

That is why the struggle between her and
Basil is so dramatic, ~~working on the two~~
~~levels of the personal~~ for me, and the fact she

Spent from the above, I've always
wanted to work with you, and God bless

lover don't in any way diminish her. I think James felt that way, too.

Right of Privacy

State Law

1960 Prosser article, 1977 Second Restatement of Torts

Four Different Actions

- “intrusion into seclusion”
- “public disclosure of private facts”
- “false light”
- “appropriation”

“highly offensive to a reasonable person”

Archives and Privacy

Defenses available

- Death
- Consent, preferably in writing
- Newsworthy

Presumption of privacy

- Medical or psychiatric records
 - Information obtained during a client relationship
-

not an
Othello
Mrs L. L. Hurd
Apr 24-93
Dear friends,
I did not answer by return because I am very up
mail for I wanted to see how much I can write my
this time. I am sure that you will be
atome all Jan 11 1893

SPECIAL - MISDATED LETTERS
Get for petical calendar
for letter sayin
Flora Chapman
in April

Dr. Chapman
Dear Sir, I have your
recent date at hand. I take pleasure
in complying with your requests
As I note you I have charge of
all Drawing Draughting and Commercial
including Penmanship in this
I can refer you to any of
the teachers, Rev. D. C. Tanner
H. L. Luther, Prof. of Math
etc. Prof. of History





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Right of Publicity

**“In the future everyone will be world-famous for fifteen minutes.”
Andy Warhol**

- # State Law
 - # “Unauthorized commercial use of a person’s name, likeness, or other personal attribute.”
 - # Viewed as a form of property. Infringement is a violation of the commercial tort of unfair competition
-

Archives and Publicity

Defenses available

- Consent, preferably in writing
- Newsworthy
- Unidentifiable non-celebrities

Not a defense

- Death – state dependent
 - Lack of intent to identify – state case law dependent
-



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Privacy & Publicity Resources

- # MacNeil, Heather. *Without Consent: the ethics of disclosing personal information in public archives*. (Chicago, Ill.) : Society of American Archivists, 1992.
- # McCarthy, J. Thomas. *The rights of publicity and privacy*. (St. Paul, Minn.): West Group, 2000-.
- # Lipinski, Thomas A., ed. *Libraries, museums, and archives : legal issues and ethical challenges in the new information era*. (Lanham, MD): Scarecrow Press, 2002.