

## Index

---

- Abdul-Jabbar, Kareem, 72  
*Abrams v United States*, 148–9  
*Ackerman v Ferry*, 72  
 active audience, 35, 124, 239–41  
 Adorno, Theodor, 14  
 advertising use of celebrities, 94  
 affective transfer, xiv  
   associative appropriation concept,  
     269, 277  
   damage element and, 10, 241, 271, 273  
   misrepresentation and, 243–4  
   right of publicity, 43  
 Alcindor, Lew, 72  
*Ali v Playgirl*, 74  
*Allen v National Video Inc*, 74, 210, 233  
 allocative efficiency, 57–62  
 Alternate Reality Games, 248  
 American Law Institute, 43–4  
 Anglo-Saxon hegemony, 33, 35–6  
 appropriation, definition. *See* commercial  
   appropriation  
 Armstrong, George, 98–9  
 associative appropriation, xiv, 123, 266  
 associative value of identity, 2  
   affective transfer notion, 269, 277  
   audience consumption decisions, 129–33  
   direct and substantial connection  
     standard, 134–42  
   exploitation, 119–23, 122*f*  
   meaning transfer effect, 129  
*Ate My Heart Inc v Mind Candy Ltd*, 212  
 audience  
   active audience, 35, 124, 239–41  
   consumption decisions, 129–33  
   definition, 4  
   identification of celebrities, 97–9  
   participation, 34  
 Bakhtin, Mikhail, 251  
*Band Hero* video game, 260–1  
 Barron, Lee, 23, 275  
 Barthes, Roland, 28, 29, 180, 251, 276  
 Bartholomew, Mark, 41  
 Baudrillard, Jean, 31  
 Bauman, Zygmunt, 275, 276  
 Beatty, Sharon, 131  
 Beckham, David, 26, 29, 36, 57, 94, 96, 268  
 Bennett, Michael, 185  
 Birmingham Centre for Contemporary  
   Cultural Studies, 15–16  
 Birmingham School, 15  
 Boorstin, Daniel, 22, 89  
 Booth, Paul, 248, 251, 276  
 Bosland, Jason, 20  
 Boyle, Susan, 216  
 Breyer, Stephen, 152  
 British cultural studies, 6  
*Brown v Entertainment Merchants  
 Association*, 153, 156  
 Bruns, Alex, 248  
 California Supreme Court, 167–76, 170*f*,  
   172*f*, 175*f*  
*Cambell v Acuff-Rose*, 274  
*Cartoons LC v Major League Baseball  
 Players Association*, 112, 165–7  
*Carson v Here's Johnny Portable Toilets Inc*,  
   83, 102, 141, 210  
 Carty, Hazel, 203, 209, 244  
 Cashmore, Ellis, 213, 276  
 celebritisation, 49, 50  
*Celebrity* (Rojek), 31  
*Celebrity and Power* (Marshall), 7  
 celebrity/celebrities  
   advertising use of, 94  
   brand idea of, 28–9  
   cultural studies perspective, 89–97  
   definition, 4, 89  
   democratic celebrity, 24–5  
   distinctive characteristics, 26  
   economics of, 1–5  
   endorsements by, 129–30  
   goodwill and well-knownness, 206–17  
   identification of, 209–12

- internet celebrities, 25–6
- local goodwill, 206–9
- merchandising potential of, 237
- popular infotainment media, 95
- reality TV, 23
- semiotic sign of the celebrity, 124–9, 213
- sign as political speech, 184–7
- traditional coverage of, 93–4
- unauthorised use of celebrity names, 59–60
- use of likeness, 74–5, 100, 173–4
- widespread public identification, 22–6
- Chambers, Iain, 34
- characterisation or role, 78–82
- China, celebrity status, 32
- Clay, Steven, 21
- Coase, Ronald, 58
- Comedy III Productions v Gary Saderup*, 167–76, 170f, 172f, 175f, 194
- commercial advantage *vs.* associative value, 119–23, 122f
- commercial appropriation, 1–5, 87, 106–8, 136–9, 143–4, 265–74, 275–7. *See also* associative value of commercial identity; cultural studies of contemporary fame
- appropriation, definition, 111–14
- associative value, 123
- commercial value, 108–10, 111, 114
- incidental use doctrine, 116–19
- introduction, 106
- scope of, 5–11
- semiotic sign of the celebrity, 124–9
- commercial value, 108–10, 253–7, 256f
- commodity fetishism, 18
- common law passing off claim, 52–3, 199–200, 241–5
  - active audience-consumer, 239–41
  - damage requirement, 235–9
  - extended passing off action, 201–6
  - free speech defence, 223–31
  - goodwill and well-knownness, 206–17
  - identification of celebrity, 209–12
  - identity appropriation, 75–6
  - proving misrepresentation, 217–22
  - transfer of affective meaning, 231–5
  - value of well-knownness, 212–17
- contested meanings in identity politics, 180–4
- Coombe, Rosemary, 8, 35
- copyright preemption, 138
- counterpublics, 35, 181
- critical cultural legal studies, 19
- Crocodile Dundee* case, 221–2, 225, 233, 240
- Cruise, Tom, 57
- cultural producers, 4, 276–7
- cultural studies of contemporary fame, 3–4, 12–18, 27–30, 37–8, 242, 243–4
  - active audience-consumer, 239–41
  - existing legal literature, 18–21
  - meaning in identity politics, 33–7
  - meaning-transfer model, 30–3
  - relevant insights, 21–2
  - transfer of affective meaning, 231–5
  - value of well-knownness, 212–17
  - widespread public identification, 22–6
- Dallas, Cameron, 253
- Davis, Jennifer, 222, 236, 244
- Davis v Electronic Arts*, 174, 263
- DeClemente v Columbia Pictures Industries*, 91
- deliberative democracy, 148
- democracy, 24–5, 148, 151–3
- demotic turn, 96
- Demsetz, Harold, 58
- digital fandom, 246–7
  - commercial value on social media, 253–7, 256f
  - digital fandom, 247–53
  - fantasy video games, 257–64
  - GIFs, 249
  - overview, 11, 247–53
- direct and substantial connection standard, 134–42
- direct balancing approach, 165–7, 190–1
- diversion of trade, 236
- Do-It-Yourself (DIY) internet celebrities, 25
- doctrinal muscularity, 3
- Doe v TCI Cablevision*, 59, 71, 176–9
- Dogan, Stacey, 41
- Douglas, Michael, 238–9
- Duane Reade drug store, 255–7
- Dun & Bradstreet v Greenmoss Builders*, 154
- Dyer, Richard, 6–7, 30, 31, 33–4, 49, 180–1
- Eastwood, Clint, 50
- Eastwood v Superior Court for Los Angeles County*, 113
- economic incentive rationale, 56
- Electronic Arts (EA). *See Hart v Electronic Arts*
- Elvis Presley Enterprises v Capece*, 137–8
- Encoding/Decoding* essay (Hall), 28–9
- endorsements by celebrities, 129–30
- English Court of Appeal, 201, 204, 234, 237, 238
- Estate of Elvis Presley v Russen*, 165–7

## 306 Index

- ETW Corp v Jireh Publishing*, 187,  
 195–6, 266  
 freedom of speech, 235  
 misappropriation of identity, 112  
 overview, 188–90, 189*f*, 191–2, 194  
 European Convention on Human Rights  
 (ECHR), 223, 226, 227–8, 272  
 European Court of Human Rights, 227,  
 228–9  
 evocation/evocative use and identification  
 audience identification, 97–9  
 cases, 139–42  
 conclusions, 104–5, 266  
 cultural studies perspective, 89–97  
 introduction, xiv  
 name use, 99–100  
 overview, 89, 100–4  
 use of likeness, 100  
 extended passing off action, 201–6  
 extra-cinematic identificatory practices, 26
- Facebook, 24, 49, 57, 70–1, 95, 246, 248,  
 253. *See also* *Fraley v Facebook*  
 fair use doctrine in copyright law, 167  
 fan work, definition, 248  
 fandom, 213, 228. *See also* digital fandom  
 fanfic, 250  
 fantasy video games, 257–64  
 Faulkner, Harris, 72–3, 73*f*  
 Federer, Roger, 50  
 Felcher, Peter, 97  
*Fenty v Arcadia Group Brands Ltd*, 205,  
 219–21, 234, 238  
 Fifth Amendment rights, 158  
 First Amendment rights, 3, 35, 37. *See also*  
 judicial approaches to First  
 Amendment rights  
 defence of, 37, 51, 107, 265  
 direct and substantial connection  
 standard, 135  
 direct balancing approach, 165–7, 190–1  
 free speech defence, 223–31  
 freedom of speech, 154–9  
 goals and theories of, 147–53  
 government distrust, 151–3  
 identity politics and celebrity, 180–96  
 incidental use doctrine, 116–19  
 individual autonomy, 150–1  
 interim conclusions, 179  
 introduction, 145–6  
 judicial approaches, 163–5  
 limited guidance from Supreme Court,  
 160–3  
 marketplace of ideas, 148–50  
 overview, 146–7, 154–9, 163–5, 187–96  
 parody, 81–2, 156, 166, 169–70, 187  
 participatory democracy, 151–3  
 predominant purpose test, 176–9  
 proprietary right of publicity *vs.*, 66  
 protection of newsworthy  
 information, 137  
 right of publicity, 107, 159–60, 270–1,  
 273–4  
 self-fulfillment function, 150–1  
 summary and conclusions, 196–8  
 transformative use test, 167–76, 170*f*,  
 172*f*, 175*f*, 192–3  
 truth-seeking function, 148–50  
*First Victoria National Bank v United  
 States*, 48  
 Fiske, John, 34  
*Forbes* China Celebrity List, 32  
 Fourteenth Amendment, 158  
*Fraley v Facebook*, 62–3, 110, 254–5  
 Frankfurt School, 6, 14–15, 16, 276  
 Fraser, Nancy, 35  
 Free Press Clause, 163  
 free speech, 3, 223–31  
 freedom of expression, 227–8  
 freedom of political communication, 229
- Gaines, Jane, 34  
 Garçon, Pierre, 263–4  
 Garland, Judy, 180  
 Gay Pride Parade, 193  
 German civil law doctrine, 48  
*Gertz v Robert Welch*, 161  
 Gervais, Daniel, 76–7, 167  
 Ghosh, Shubha, 183  
 GIF (graphics interchange format), 249  
 goodwill and well-knownness, 206–17, 236,  
 241–2  
 Grady, Mark, 58–9  
 Gray, Jonathan, 132  
 Greene, Kevin, 39  
 Grossberg, Lawrence, 13  
 Gutmann, Joseph, 258
- Haelan Laboratories Inc v Topps Chewing  
 Gum Inc*  
 appropriation of commercial value of  
 identity, 111, 116  
 identifiability, 69  
 predominant purpose test, 177–8  
 right of publicity, 108  
 right to privacy, 46, 47–8, 52  
 Hall, Stuart, 7, 28–9, 126, 180  
 Halpern, Sheldon, 41–2, 47  
*Hart v Electronic Arts*, 166, 174, 178, 257–9,  
 261–3

## Index

307

- Heavenly Bodies* (Dyer), 30, 33–4, 180–1  
*Henderson v Radio Corporation Pty Ltd*, 204, 208–9, 237  
heteronormativity, 185  
Hetherington, Lee, 116  
Hilton, Paris, 23  
Hoffman, Steven, 41  
Hogan, Paul, 204, 211, 225  
Holmes, Martin, 76–7, 167  
Holmes, Oliver Wendell, 148–9  
Horkheimer, Max, 14  
Hovland, Carl, 129  
human dignity, 6  
*Hurley v Irish-American Gay, Lesbian and Bisexual Group of Boston*, 156, 157  
*Hutchence v South Sea Bubble Co*, 235
- identity/identifiability. *See also*  
misappropriation of identity  
commercial advantage, 269  
definition, 65–6  
evocative aspect of identity cases, 139–42  
of fictional character, 78–80  
First Amendment and, 269  
methods of proving, 9, 21, 65–8  
misappropriation of, 40–1, 42, 68, 132  
misrepresentation and, 234–5  
name and likeness, 69–71, 75, 76  
politics of, 33–7  
relevant inquiry of, 99  
right of publicity, 9, 21, 71–2, 82–7, 89, 90–1, 217
- identity in right of publicity  
broader conception of, 69–71  
character or role, 78–82  
conclusions, 87–8  
cultural studies perspective, 89–97  
evocative aspects of, 75–7  
evocative use and identification, 89  
introduction, 64  
other elements, 82–7, 84f  
use of identity, 64–9  
use of likeness, 74–5  
use of name, 71–4  
use of voice, 77–8
- identity politics  
celebrity sign as political speech, 184–7  
current judicial approaches, 187–96  
interpretive practice and contested meanings, 180–4  
introduction, 180  
overview, 180–96
- Illinois Right of Publicity Act, 86, 88  
impressionistic association concept, 272  
incentive creation considerations, 55–7  
incidental use doctrine, 116–19  
individual autonomy, 6, 150–1  
injurious association, 236  
Instagram, 24, 95, 248, 253  
intellectual property rights (IPRs), 246  
internet celebrities, 25–6  
interpretive practice in identity politics, 180–4  
invasion of privacy, 40  
*IRC v Muller & Co's Margarine Ltd*, 215  
Irvine, Eddie, 204, 205, 233–4, 240
- Jauss, Hans Robert, 128  
Jenkins, Henry, 247, 249  
Jet Li, 32  
Jiejie, Furong, 25–6  
Jordan, Michael, 121–2, 122f, 125, 133  
*Jordan v Jewel Food Stores*, 121–2, 122f, 136
- Kardashian, Kim, 2  
*Keller v Electronic Arts*, 174, 263  
Kellner, Douglas, 254  
King, Barry, 126  
*Kirby v Sega of America*, 171, 225–6  
*Knight v Beyond Properties Pty Ltd*, 240  
*Koala Dundee* case, 235, 240  
Kurtz, Leslie, 78
- Lady Gaga (pop star), 26, 86–7, 212  
*Lange v Australian Broadcasting Corporation*, 230  
Lanham Act, 224, 225, 233, 235  
Laurie, Alison, 245  
Leadbeater, Charles, 4  
Leaffer, Marshall, 242  
Legal Lambda, 195, 196  
legal recognition of impressionistic association, 5  
Lemley, Mark, 41, 246  
Leung Wing-Fai, 4, 275  
Lewis, Leona, 243  
*Lloyd Corp v Tanner*, 165–6  
local goodwill, 206–9  
Locke, John, 46–7  
Lockean labor considerations, 46–53  
Lombardo, Guy, 83, 103  
Lugosi, Bela, 79–81, 102
- Madonna (pop star), 26  
Madow, Michael, 8, 58, 59  
marketplace of ideas, 148–50  
Marshall, David, 6–7, 24, 31, 90, 128, 231, 254  
*Martin v Living Essentials*, 86, 122–3  
*The Masters of Augusta*, 188–90, 189f, 195

## 308 Index

- Matthews v Wozencraft*, 135  
 McCall, Catherine, 92  
 McCarthy, J. Thomas, 39, 119, 168, 267  
 McCracken, Grant, 7, 32, 98, 129–33, 231, 272  
*McCutcheon v. Federal Election Commission*, 151  
 McDonald, Paul, 31–2  
 McFarland, George, 79, 80, 81  
 McGuire, William, 129  
 meaning-transfer model, 30–3, 129  
 Midler, Bette, 50, 54, 141  
*Midler v Ford Motor Company*, 77  
 misappropriation of identity  
   dilution of profit potential, 240  
   of goodwill, 242  
   overview, 40–1, 42, 68, 132  
 Misra, Shekhar, 131  
 misrepresentation  
   cultural studies of, 243–4  
   damage, 242–3  
   identity and, 234–5  
   proof of, 217–22  
 Monroe, Marilyn, 36, 187  
*Moore v Regents of the University of California*, 54  
*Motschenbacher v Rf Reynolds Tobacco Co.*, 82–3, 85–6, 109, 210  
 Mullins, Michael, 57, 60, 186  
*Mythologies* (Barthes), 29
- name and likeness cases, 136–9  
 National Association for the Advancement of Colored People (NAACP), 185, 195, 196  
 National Collegiate Athletic Association (NCAA), 257  
 National Football League (NFL), 257  
*NCAA Football* video games, 261–3  
*New York Civil Rights Law*, 44, 67, 210, 255  
 New York Supreme Court, 76, 82  
*New York Times v Sullivan*, 161  
*Newcombe v Adolf Coors Co.*, 74  
*Newton-John v Scholl-Plough*, 211  
*No Doubt v Activision Publishing Inc.*, 169, 260–1  
 non-media defendants, 164  
 Nozick, Robert, 49–51
- Ohio Supreme Court, 51  
 Onassis, Jacqueline Kennedy, 126–7, 133, 136, 215  
*Onassis v Christian Dior-New York, Inc.*, 54, 74–5, 111, 136, 210  
 overexposure, dissipation of value, 60
- Pacific Dunlop v Hogan*, 211  
 Page, Ellen, 259  
 para-social familiarity, 27  
 Pareto equilibrium, 58  
 Parker, Sarah Jessica, 184  
 Parks, Rosa, 126, 127  
 parody  
   audience reaction to, 144  
   celebrity use of, 86, 184, 190  
   commercial use of, 142  
   First Amendment rights, 81–2, 156, 166, 169–70, 187  
   freedom of expression with, 228  
   misleading conduct, 274  
   as transformative use, 171  
 participatory democracy, 151–3  
 passing off cases, 272  
 Perkins, Kieren, 204, 221–2  
 persona, definition, 70  
*Pesina v Midway Manufacturing Co.*, 91  
 Phelps, Michael, 50  
 Phillipson, Gavin, 226  
 political recoding. *See* recoding  
 popular infotainment media, 95  
 positive halo effect, 31, 273  
 Posner, Richard, 57–8  
 Post, Robert, 36–7  
 predominant purpose test  
   *ETW Corp v Fjreh Publishing*, 195–6  
   First Amendment defence and, 159  
   overview, 176–9, 194–5  
   *White v Samsung*, 195  
 promotional goodwill, 241–2
- Ratzenberger, John, 79  
*Raymen v United Senior Association Inc.*, 184, 187–8, 195  
 real person fiction (RPF), 251, 252  
 real person slash (RPS), 251, 252  
 reality TV, 23  
*Reckitt & Colman Products Ltd v Borden Inc.*, 202  
 recoding  
   argument for, 19–20  
   celebrity identity and, 190–1, 193, 197, 227, 229, 230  
   challenges by minority groups, 36  
   commercial use, 182  
   conclusion, 266  
   democratic process, 242  
   introduction, xiv, 10  
   online process, 249  
   right of publicity, 38, 43  
   of semiotic signs, 180

## Index

309

- social identity and, 37
  - of subaltern groups, 184–7
- recognition value, 43, 120
- Redmond, Sean, 275
- Reeve, Christopher, 61
- Restatement (Second) of Torts*, 106, 108
- Restatement (Third) of Unfair Competition*, 39–42, 106, 108, 111, 114, 265
- right of publicity, 62–3. *See also* identity in
  - right of publicity
    - affective transfer notion, 43
    - allocative efficiency considerations, 57–62
    - claim outline, 42–5
    - commercial appropriation and, 106–8
    - conclusion, 272
    - copyright preemption, 138
    - definition, 44–5
    - First Amendment and, 107, 159–60, 270–1, 273–4
    - goodwill and, 216
    - goodwill threshold, 206
    - identity/identifiability, 9, 21, 71–2, 82–7, 89, 90–1, 217
    - incentive creation considerations, 55–7
    - introduction, 39–42
    - Lockean labor considerations, 46–53
      - as proprietary, 214
    - theoretical justifications for, 45
    - unjust enrichment considerations, 54–5, 62
  - right to privacy, 46, 47–8, 52
  - Rihanna (pop star), 204, 205, 219–21, 234
  - Robinson v HSBC Bank USA*, 85
  - Rogers v Grimaldi*, 223
  - Rojek, Chris, 31, 128
  - Ross v Roberts*, 175
  - Rubin, Edward, 97
  - Rush, Rick, 188–90, 189*f*, 225
  
  - Sarat, Austin, 18
  - Sarver v The Hurt Locker LLC*, 169
  - satire, 142, 144, 171, 183, 184
  - Schwarzenegger, Arnold, 182–3
  - self-fulfillment function of First Amendment, 150–1
  - Semeraro, Steven, 39
  - semiotics, 34, 124–9, 213
  - Simon, Jonathan, 18
  - Singapore Court of Appeal, 215
  - social media
    - commercial value on, 253–7, 256*f*
    - Facebook, 24, 49, 57, 70–1, 95, 246, 248, 253
    - Instagram, 24, 95, 248, 253
    - platforms for, 24
    - Twitter, 95, 246, 253
    - YouTube, 24, 49, 57, 246, 248, 253
  - Sponsored Stories on Facebook, 62–3, 70–1
  - Sports Illustrated*, 121
  - Starbucks (HK) Ltd v British Sky Broadcasting Group*, 207
  - Stars* (Dyer), 7, 30, 33–4, 180–1
  - Sternheimer, Karen, 24, 31
  - Stringfellow v McCain Foods (GB) Ltd*, 240
  - subaltern groups, 35, 181
  - subordinated social groups, 35
  - sui generis* property right, 55
  - Supreme Court of the United Kingdom (UKSC), 207
  - symbolic value in cultural economy, 30
  
  - Taittinger SA v Allbev Ltd*, 241
  - Talksport, 204
  - Tan, Andre, 174–5, 175*f*
  - Tan, Corinne, 246
  - terrorism-related propaganda online, 246
  - Texas v Johnson*, 150, 193
  - textual signification, 38
  - Time v Firestone*, 161
  - Time v Hill*, 161
  - Tinker v Des Moines Independent Community School District*, 193
  - Topshop, 204, 205
  - traditional coverage of celebrities, 93–4
  - trans-coding strategies to reverse stereotypes, 182
  - transfer of affective meaning, 231–5
  - transformative use
    - in comedy, 167–76, 170*f*, 172*f*, 175*f*
    - judicial approach with, 192–3
    - overview, 13
    - test, 159
  - truth-seeking function and First Amendment rights, 148–50
  - Turner, Graeme, 1, 6–7, 90, 128
  - Tushnet, Rebecca, 249–50, 259–60, 262
  - Twist, Tony, 177
  - Twitter, 95, 246, 253
  - Two Treaties* (Locke), 46–7
  
  - Uhlaender v Hendrickson*, 46, 49, 52
  - Understanding Celebrity* (Turner), 7
  - United States v. Stevens*, 153
  - unjust enrichment considerations, 54–5, 62
  - US Supreme Court, 54, 56, 62, 160–3. *See also* specific cases
  - use of likeness, 74–5, 100, 173–4
  - use of name, 71–4
  - use of voice, 77–8

## 310 Index

- value of well-knownness, 212–17  
*The Vertigo of Late Modernity* (Young), 276  
*Victoria Park Racing and Recreation Grounds Co Ltd v Taylor*, 48  
 video games. *See* fantasy video games  
*Virag v Sony Computer Entertainment America LLC*, 72  
  
*Waits v Frito-Lay Inc*, 77, 238  
 Warhol, Andy, 168, 174–5, 261  
 Warner, Michael, 35  
 Weiler, Fred, 49  
 well-knownness of celebrities  
   advertisers and, 233  
   commercial value on social media, 253–7, 256*f*  
   cultural studies perspective, 89–97, 212–17  
   goodwill and, 206–17  
 Wendt, George, 79, 103–4, 266  
*Wendt v Host International*, 266, 270  
 White, Vanna, 74–5, 78, 83–5, 103, 126, 140–2, 216  
  
 white heterosexual desirability, 36  
*White v Samsung*  
   actionable indicia of identity, 173  
   commercial appropriation in, 140–2  
   conclusions, 266, 270  
   judicial approach in, 191, 193  
   overview, 83–5, 187–8, 191  
   predominant purpose test, 195  
   right of publicity and, 277  
 widespread public identification, 22–6  
 Wikipedia, 246  
 Winfrey, Oprah, 61  
 Woods, Tiger, 125, 185, 188–90, 189*f*, 191–2, 225  
  
 Young, Jock, 276  
 YouTube, 24, 49, 57, 246, 248, 253  
  
*Zacchini v Scripps-Howard Broadcasting Co.*, 108, 161, 162–3, 177–8, 263  
 Zapparoni, Rosina, 49  
 Zeta-Jones, Catherine, 238–9  
*Zoll v Ruder Finn*, 135