

*Rebel Without Good Laws:
James Dean and Posthumous Publicity Rights on Social Media*

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Celebrity licensing company CMG Worldwide sued social media site Twitter over a James Dean fan account, invoking Indiana's unusual right-of-publicity laws, which extend post-humous protection for 100 years. The case raises conflict-of-law questions that are familiar from the long-running litigation over Marilyn Monroe's estate, but with a new twist: the personality rights in question are not tied to merchandise or memorabilia, but to a social media account. If CMG is successful, it could lead to a further expansion in the rights of the dead -- at the expense of free expression for the living; specifically, the post-humous publicity rights threaten parody and fan accounts, as well as the widespread use of historical figures for online avatars. The paper will look at the First Amendment and conflict of law issues related to the James Dean case, and also at whether the plaintiffs are using state right of personality laws to obtain de facto trademark rights in dead celebrities.

Biography: I studied law at McGill University in Montreal, where I researched comparative patent regimes. I worked as counsel for Canada's broadcast regulator, and then moved to New York to be a journalist. I write about IP law and policy for the tech site Gigaom.

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