

# Grammarly Suit Flags Right Of Publicity As Key AI Issue

By **Nicholas Schneider** (March 27, 2026)

Artificial intelligence companies have grown skilled at managing copyright risk around training data. But the next wave of risk reaches beyond AI companies.

It hits every business that uses AI in its marketing, customer service or operations. *Angwin v. Superhuman Platform Inc.*, the class action filed this month in the U.S. District Court for the Southern District of New York against Grammarly Inc.'s parent company, flags an overlooked risk: the right of publicity.



Nicholas Schneider

Copyright asks whether a company copied someone's creative work. Right-of-publicity law asks a different question. Did the company use someone's identity — e.g., name, likeness, voice or professional reputation — for commercial purposes without consent?

AI products and AI-powered business tools frequently touch both categories now. And the legal frameworks that govern each run on different rules.

## The Grammarly Case

In August 2025, Grammarly launched a feature it called Expert Review. For \$12 a month, users uploaded their writing and received AI-generated feedback.

That feedback appeared under the names of real people. The roster included Stephen King, Neil deGrasse Tyson, and dozens of working journalists at The Verge, Bloomberg and The New York Times. None had agreed to take part.

On March 11, Julia Angwin sued Superhuman in the Southern District of New York. Her complaint asserts claims under New York Civil Rights Law Sections 50 and 51, and seeks damages exceeding \$5 million.[1] Grammarly disabled the feature the same day.

The case poses a clean question for product counsel: When does referencing a real person's expertise in an AI feature cross from permissible informational use into unauthorized commercial use?

## Right of Publicity: A Quick Primer

Right-of-publicity law shields a person's name, likeness, voice and identity from unauthorized commercial use. It started as a common-law doctrine. It now exists in statutory form in over 30 states.

New York's statute typifies the approach. Sections 50 and 51 bar using a person's "name, portrait, picture, likeness, or voice" for "advertising purposes or for the purposes of trade" without written consent.[2] Knowing violations can trigger exemplary damages.

But the doctrine has important limits. New York's statute reaches only uses "for advertising purposes or for the purposes of trade." References to real people in news, commentary, satire and creative works generally fall outside that scope.

California takes a different approach. Its courts apply a "transformative use" balancing test, borrowed from copyright's fair use framework. That test protects uses adding "significant creative elements" beyond raw use of a person's identity.

The California Supreme Court set that standard in 2001 in *Comedy III Productions Inc. v. Gary Saderup Inc.*, in which an artist sold lithographs and T-shirts bearing charcoal drawings of The Three Stooges without consent from the rights holder.[3]

The court held that because the drawings were "literal, conventional depictions," with the artist's skill "manifestly subordinated" to exploiting the celebrities' fame, the right of publicity prevailed.[4]

These defenses matter. Not every reference to a real person in an AI product creates liability. The analysis turns on how the name gets used and what commercial purpose it serves.

### **Why This Differs From Copyright**

AI companies that have built robust copyright programs may assume those programs cover this risk too. They generally do not, for three reasons.

First, the rights protect different things. Copyright guards creative expression. Right of publicity guards personal identity. A company can get a license for every work in its training data. But it can still face claims if its product uses real people's names to drive commercial value.

Second, the defenses differ. Copyright's fair use defense gives AI companies a well-developed framework. Right-of-publicity defenses vary state by state and may run more narrowly.

Some states — like California — offer a transformative-use balancing test. New York draws a harder line. If a use qualifies as advertising or trade, the question is binary: written consent or liability. There is no middle ground.

Third, the triggering conduct can differ. Copyright risk often arises at the training-data stage — i.e., what goes into the model.

Right-of-publicity risk often arises at the product design stage — i.e., how outputs get presented to users. That places the risk with product, marketing and user experience teams, not just data licensing.

### **A Fast-Moving State Law Landscape**

The state law landscape has shifted fast.

In October 2025, California Gov. Gavin Newsom signed S.B. 683. It amends Section 3344 of the California Civil Code, adding injunctive relief and extending the statute to digital replicas.[5] "Voice" and "likeness" now cover AI-generated reproductions.

Tennessee's 2024 ELVIS Act was the first state law to protect individuals against AI-generated voice clones.[6] And in December 2025, New York expanded its own statute. The amendment covers digital replicas of deceased performers and adds a disclosure rule for

synthetic performers in advertising.[7]

At the federal level, two bills have been proposed. The No AI FRAUD Act, introduced in the 118th Congress, would create a federal cause of action. It would carry statutory damages of up to \$5,000 per violation for individuals and \$25,000 for entities.[8]

The NO FAKES Act, also introduced during the 118th Congress, would target digital replicas, and include a notice-and-takedown mechanism.[9] Neither bill passed. But both signal the direction of federal attention.

The choice-of-law question compounds the difficulty, though. Most courts apply the law of the state where the person whose identity was used resides, not where the company operates.

So a single product feature can trigger New York law for one person, Tennessee law for another and California law for a third. A feature that clears California's transformative-use test might still violate New York's stricter consent-or-liability rules.

### **Product Design Considerations**

The Grammarly case shows the kinds of design choices that can create unintended risk. Three patterns deserve attention.

The first involves attributing AI-generated outputs to named real people without consent. Grammarly did exactly this.

The second involves replicating a recognizable person's voice, writing style or editorial perspective, even without using their name. Courts have reached uses creating an implied but unequivocal association with a specific individual.

The third involves using real people's identities in marketing or promotional materials for AI products.

But these risks can be managed. Companies need a framework for spotting when a reference crosses from protected informational use into unauthorized commercial use.

### **Why the Risk Extends Beyond AI Companies**

This analysis reaches any company that uses AI, not just companies that build AI products.[10] AI-generated content can depict or evoke identifiable individuals without anyone at the company intending it.

Three scenarios show how:

- **AI-generated marketing:** A brand uses an AI image generator for ad visuals. The output produces a face that resembles a recognizable celebrity. Under New York and California law, the brand — not just the AI vendor — faces exposure.
- **AI chatbots with real-person personas:** A financial services firm builds a chatbot trained to respond "as" a known market analyst without consent. Even with a disclaimer, courts look at the overall commercial impression. A buried disclaimer did not save Grammarly from suit.

- Internal training materials: A company builds an AI training module with a digital avatar that resembles a former employee. If that avatar mimics the person's likeness enough to be identifiable, the company faces a claim. Several states define "trade" purposes broadly enough to reach internal uses.

The common thread: The company did not set out to exploit anyone's identity, but the AI tool produced content that did. And under most state statutes, intent does not matter.

## **Practical Steps**

Five steps can help companies get ahead of this risk.

First, build right-of-publicity review into product development. A parallel review at the product-design stage should become standard too.

The question: Does any feature reference or mimic a real person? The earlier legal teams engage, the easier design shifts become.

Second, vet your AI vendors. Companies licensing third-party AI tools should ask pointed questions. How were the models trained? Did the underlying speakers or subjects consent in writing? What indemnity does the vendor offer?

The answers belong in the vendor agreement. In *Lehrman v. Lovo Inc.*, the Southern District of New York ruled last year that right-of-publicity claims could proceed against an AI company that built voice clones from actors' recordings without consent.<sup>[11]</sup> The downstream buyers of those clones face exposure too.

Third, map the applicable state law. The governing law follows the domicile of each person whose identity the product references, not the company's headquarters. In-house teams should start by identifying where the referenced individuals live.

Fourth, develop a consent framework. Where a product or campaign deliberately references real people, build a consent process before launch, not after. Written consent clears the straightest path under New York and California law.

Fifth, track the federal bills. The No AI FRAUD Act and NO FAKES Act would create uniform standards. Companies that build consent frameworks now will have an easier path to federal compliance when either bill passes.

## **Looking Forward**

The AI copyright cases of 2024 and 2025 forced a reckoning with how AI companies acquire training data. The Grammarly case may force a similar reckoning, not just for AI companies, but for every business that deploys AI in public-facing contexts.

Unlike the copyright space — where fair use provides a genuine defense — right-of-publicity law in many states demands consent as a threshold rule.

That does not create an impossible burden. The same discipline applied to training-data licensing needs to extend to product design, vendor selection and marketing review.

Companies that build that discipline into their pipelines will not just cut legal risk. They will

build stronger ties with the creators and public figures whose names carry the value that AI tools seek to use.

---

*Nicholas J. Schneider is a member at Eckert Seamans Cherin & Mellott LLP.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

[1] *Angwin v. Superhuman Platform Inc.*, No. 26 Civ. 02005-JGK (S.D.N.Y. filed March 11, 2026).

[2] N.Y. Civ. Rights Law §§ 50–51.

[3] *Comedy III Prods. Inc. v. Gary Saderup Inc.*, 25 Cal. 4th 387, 388 (2001).

[4] *Id.*

[5] Cal. Civ. Code § 3344, as amended by S.B. 683 (eff. Jan. 1, 2026).

[6] Tenn. Code Ann. § 47-25-1101 et seq. (ELVIS Act, eff. March 21, 2024).

[7] N.Y. Civ. Rights Law § 50-f (amended Dec. 2025).

[8] No AI FRAUD Act, H.R. 3106, 118th Cong. (2024).

[9] NO FAKES Act, S. 4875, 118th Cong. (2024).

[10] Debevoise & Plimpton LLP, *Practical Considerations for Managing IP Risk in AI-Generated Marketing Content* (March 3, 2026).

[11] *Lehrman v. Lovo Inc.*, No. 23-cv-10861 (S.D.N.Y. 2025).