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# GONE BUT NOT FORGOTTEN – CELEBRITY ESTATES AND INTELLECTUAL PROPERTY RIGHTS

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## I. INTRODUCTION

Every year, Forbes.com publishes an assessment of the "Top-Earning Dead Celebrities." The fourth annual list, published at the end of 2004, features 22 celebrities whose estates earned at least $5 million in the preceding year.[1] Topping the list for the fourth straight year is Elvis Presley, whose estate earned $40 million from licensing, merchandising and admissions to Graceland.[2] Coming in second, Charles Schulz's estate earned $35 million from exploitation of rights in the *Peanuts* gang.[3] In third place is J.R.R. Tolkien's estate, which earned $23 million from the *Lord of the Rings* trilogy, and coming in fourth, John Lennon's estate pulled in $21 million mostly from worldwide publishing royalties.[4]

There is no doubt that for many author-celebrities, earning power does not stop at death, and it may even increase. Gene Roddenberry never lived to enjoy the unparalleled, worldwide phenomenon spawned by the *Star Trek* television series. Accordingly, estate planning attorneys are wise to consider the potential for posthumous exploitation of the author-celebrity client's copyrights and right of publicity when drafting an estate plan. In many cases, an estate planner dealing with an author-celebrity learns that the value of the client's intangible property rights will exceed the value of the client's tangible assets, and the estate plan will be designed to take this into account. But even the best laid plans can be thwarted by laws that are unsettled, in conflict, ambiguous or unpredictable.

In cases involving California author-celebrities, principles of community property law will conflict with federal copyright law and state right of publicity statutes. While federal copyright law and California's publicity statutes contain succession provisions mandating that certain rights stay within the family when the author dies, California's community property laws independently dictate a different property ownership scheme, regardless of property type, at one spouse's death. In addition to the conflicts between these bodies of law, the copyright succession provisions have their own ambiguities which, even without the complicating factor of community property, are almost certain to complicate the distribution of the author-celebrity's estate.

This article discusses certain conflicts in the law on the descendibility of copyright, including recent case authority which seeks to resolve certain of those conflicts, and limitations on the freedom of testation of copyrights and the right of publicity. The authors seek to provide guidance to estate planners who may be advising author-celebrity clients about transferring intellectual property rights to their beneficiaries, and to probate litigators analyzing the rights of their clients in the intellectual property of the celebrity estate.

## II. PROBLEMS WITH CURRENT LAWS ON THE DESCENDIBILITY OF INTELLECTUAL PROPERTY RIGHTS

### A. Copyright Law

"Copyright protection subsists … in original works of authorship fixed in any tangible medium of expression … from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device."[5] "Works of authorship include … (1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and audiovisual works; (7) sound recordings; and (8) architectural works."[6] Copyright protects four distinct rights in original works of authorship: (1) the right to reproduce the copyrighted work; (2) the right to prepare derivative works; (3) the right to distribute copies to the public; and (4) the right to perform the works or display the works in public.[7] Generally, these rights are freely transferable by the author inter vivos and upon death. However, Congress has provided for two mechanisms by which an author or certain surviving family members may recover a copyright that has been assigned or licensed to third parties. For works copyrighted before January 1, 1978, renewal rights and termination rights exist; for works copyrighted after that date, only termination rights are available. Even though copyright law provides that copyright ownership "may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession,"[8] renewal rights and termination rights provisions present significant restraints on an author's freedom of testation.

#### 1. *Duration of Copyright*

In order to advise clients concerning the descendibility of copyright, estate planners must first consider the term or duration of copyright. Under the Copyright Act of 1909 (the "1909 Act"), which is the predecessor to the current copyright law, a copyright consisted of two twenty-eight year terms.[9] Upon expiration of the first term, the author could apply to renew the copyright for a second term. The Copyright Act of 1976 (the "1976 Act") retained the two-term system for works copyrighted before January 1, 1978, but extended the second term of preexisting copyrights to 47 years and eliminated the application requirement for renewal.[10]

The second term was extended again to 67 years by the Sonny Bono Copyright Term Extension Act.[11] Thus, works copyrighted before January 1, 1978 may be protected for a total of 95 years: 28 years in the first term, and 67 in the second.

For works copyrighted on or after January 1, 1978, the 1976 Act abandoned the term of years model and established a new measurement based on the life of the author plus 50 years.[12] The Sonny Bono Copyright Term Extension Act extended the term by 20 years, to bring the maximum copyright term to subsist for the life of the author plus 70 years.[13]

2. *Copyright Renewal*

Only works copyrighted under the 1909 Act are subject to the renewal system. The renewal system limits the ability of the author-celebrity to transfer copyright, and vests in heirs certain distinct statutory rights. The renewal right vests in the author only if the author is still alive after the first 28-year term expires.[14] Conversely, if the author dies before expiration of the first term, the author has no right in the renewal of the copyright; instead, if the author is survived by a spouse and/or children, the right of renewal vests in the surviving spouse and/or children.[15]

Practically speaking, this means that an author may not assign a renewal interest, which represents 67 years of copyright protection, to any third party unless he or she survives the expiration of the first term. Any assignment before the renewal interest has vested is voidable, at the surviving family members' option, if the author dies during the first term. Copyright law automatically vests the author's surviving spouse and/or children (the "Protected Class") with the right to renew the copyright for a second term in the event the author is not alive. Accordingly, if an author assigns the renewal interest to anyone outside of the Protected Class or to an entity such as a revocable trust, partnership or corporation, and dies before the renewal term commences, the Protected Class may "bump" the assignment contract and reclaim the copyright.[16] Similarly, a will devising the copyright to anyone outside of the Protected Class will be "bumped" if the author dies before the end of the first term, and the renewal interest will automatically vest in the statutory class.[17]

The rationale behind the renewal system is that intellectual property subject to copyright "is by its very nature incapable of accurate monetary evaluation prior to its exploitation."[18] The 1909 Act's legislative history reveals that Congress created the renewal system to "permit authors, originally in a poor bargaining position, to renegotiate the term of the grant once the value of the work has been tested."[19] Because the author must live for 28 years after the copyright issues in order to exercise the renewal right, it will often be the author's surviving family members who will get to enjoy this right, whether or not the author's testamentary wishes support such a result.

On a positive note, the problems that arise from the renewal scheme will be ameliorated as of December 31, 2005. On that date, all renewal interests will have become vested because renewal rights only apply to copyrights prior to January 1, 1978, and the first term of copyright for these works is 28 years. Until the end of the year, estate planners should be mindful of the fact that an attempt by a testator to transfer renewal rights by will or trust may be voidable by the Protected Class unless the testator survives the first term. Litigators should be mindful that if they represent a member of the Protected Class, they may have rights that trump the testator's estate plan.

3. *Termination Rights*

The 1976 Act brought an end to renewal rights for works copyrighted after January 1, 1978, and replaced it with termination rights. Under the 1976 Act, the author, or the author's surviving spouse or children, may terminate any transfer or assignment of copyright by the author 35 years after the transfer or assignment.[20] The transfer may be terminated at any point during the 5-year period beginning at the 35th year after the assignment.[21] Where the assignment includes the right of publication, the window for effecting termination begins either 35 years from the date of publication under the assignment or 40 years from the date of the assignment's execution, whichever is earlier.[22]

In enacting termination rights, Congress sought to continue to provide a mechanism for recovery of copyright by the author or the author's heirs, but eliminate the "clumsy and difficult" procedure of the renewal system.[23] Termination rights apply to all copyrighted works and encompass "all grants, other than grants by will, made on or after January 1, 1978."[24] Furthermore, "[f]or a grant to be terminable under § 203 it must meet three conditions: the grant must have been executed; the execution of the grant must have been by the work's author; and the work cannot have been made for hire."[25] Termination rights allow a copyright owner to terminate a transfer of copyright 35 years after the assignment.[26] Section 304(c) governs transfers that were executed other than by will and before January 1, 1978, where the copyright was subsisting in its first or renewal term on January 1, 1978 and was not a work for hire.[27] For termination of transfers under § 304(c), "the five-year period during which termination can be effected begins to run fifty-six years after copyright in the work was originally secured."[28]

As with the provisions for renewal of copyright, only the author, if alive, and otherwise the author's surviving spouse and/or children (i.e., the Protected Class) may exercise the right of termination.[29] Pursuant to this rule, an author, if still alive, or the Protected Class if not, may nullify existing contracts between the author and third parties. Thus the advent of termination rights continued the potential for contract "bumping" that existed under the renewal system.[30] Furthermore, as with renewal rights, an author may not devise termination rights by will to anyone outside of the Protected Class; any will purporting to devise termination rights is also subject to "bumping."[31]

While the renewal and termination provisions are designed to

ensure that an author's work remains in the author's family, they inevitably limit the author's freedom of testation. They also introduce ambiguities with respect to the allocation of ownership interests among the members of the Protected Class upon the author's death.

4. *Apportionment of Rights Under Section 304(a)*

As discussed above, both the renewal and termination provisions mandate the automatic vesting of rights in the surviving author's spouse and/or children under certain circumstances. However, an ambiguity exists as to how renewal rights are apportioned among the spouse and children of the author-celebrity who does not survive into the renewal term. Section 304(c) of the 1976 Act (governing termination rights) provides that the spouse and children receive "disproportionate shares" of the termination rights: the spouse receives 50 percent of the rights and the remaining 50 percent is divided on a *per stirpes* basis among the children and grandchildren. However, § 304(a) (governing renewal rights) is silent; it has no express language concerning allocation of the renewal rights among the spouse and children. Two interpretations are possible: either renewal rights are subject to the "disproportionate shares" interpretation (as expressly provided by § 304(c) for termination rights), or Congress intended a different result by its silence, i.e., the renewal rights are subject to an "equal shares" interpretation whereby the spouse and children share equally on a *per capita* basis.

This ambiguity pits the interests of surviving spouses against that of the decedent's children, and often it will also drag an assignee, such as a music publisher or studio, into the dispute. Until 2001, no federal court had passed upon the issue. The District Court for the Middle District of Tennessee considered this question of first impression in *Broadcast Music, Inc. v. Roger Miller Music, Inc.,*[32] and held that the author's surviving spouse and children should share equally in the work's renewal copyright when that copyright is renewed after the author's death. The decision was appealed, and on January 29, 2005, the Sixth Circuit reversed the district court and adopted the alternate "disproportionate shares" interpretation.[33]

The case involved interests in the renewal copyrights of the music catalog owned by the late country music legend Roger Miller. He died testate in 1992, leaving all of his intellectual property rights to his wife.[34] Due to the "will-bumping" effect of the renewal provisions, Miller's will was trumped such that his wife would have to share the renewal interest in the catalog with their seven children. Miller's spouse and six children assigned their interests to Roger Miller Music, Inc. ("RMMI"), which in turn licensed its rights to Broadcast Music, Inc. ("BMI"), a performing rights organization. BMI filed an interpleader action against RMMI and Shannon Miller Turner ("Turner"), the daughter who did not assign her rights to RMMI, to determine what portion of license royalties it was required to pay to Turner.

Turner argued for an "equal shares" interpretation of § 304(c) and BMI argued for "disproportionate shares." The District Court granted summary judgment to Turner, finding that in the absence of any statutory language or evidence of Congressional intent to the contrary, "it follows logically" that § 304(a) class members take in equal shares.[35] The Sixth Circuit disagreed, holding that the "disproportionate share" interpretation was most consistent with the Copyright Act in its entirety.[36] Specifically, the Court sought to harmonize the apportionment provision for renewal with the apportionment provision for termination: "Congress has clearly indicated that, whenever grants of renewal interests are terminated, such interests will vest in disproportionate shares between a deceased author's surviving spouse and children…A deduction, absent contrary statutory authority, that such interests should vest any differently upon creation would be unfounded and illogical."[37]

While the Sixth Circuit's opinion will be instructive to other courts presented with the issue, it is certainly possible that other Circuits will come out the other way. The Second Circuit (which encompasses the Southern District of New York, where much of the music industry and the book publishing industry is based), and the Ninth Circuit (which encompasses the Central District of California, where much of the music and motion picture industry is based) are not bound by the decision of the Sixth Circuit (which encompasses the Middle District of Tennessee, home to the country music industry). Until the Supreme Court endorses either the "equal shares" or "disproportionate shares" interpretation, or Congress responds with clarifying legislation, the apportionment of renewal copyrights could be subject to either interpretation. Thus, attorneys representing members of the Protected Class should consider the ambiguity in the apportionment of renewal rights in evaluating the rights of their clients to assets of the deceased author-celebrity.

5. *Conflicts Between Copyright And Community Property Law*

To further complicate matters, federal copyright law and state community property law may conflict when it comes to ownership of a copyright created during marriage. While under copyright law, copyright vests solely in the author, under California's community property principles, the author and the author's spouse share equal undivided interests in the copyright of a work created during marriage.[39] The question becomes one of federal preemption. Any state law which conflicts with a federal law is preempted under the Supremacy Clause.[40] The preemption of community property laws by copyright law is governed by the test articulated by the Supreme Court in *Hisquierdo v. Hisquierdo.*[41] Under the *Hisquierdo* test, a state law is preempted where (1) it conflicts with the express terms of the federal law; and (2) it does "major damage" to "clear and substantial" federal interests.[42]

The *Hisquierdo* test was applied by the California Court of Appeal in 1987 in *Marriage of Worth,*[43] which was the first court

to rule on whether the copyright in a work created by an author during marriage is community property. The court answered the question in the affirmative, and found that California's community property laws were not preempted by federal copyright law. In *Worth,* the husband sued the producers of the board game "Trivial Pursuit" for copyright infringement, alleging that the game plagiarized material from his books on trivia. The books were written and published while the husband and wife were married, and the wife, under an interlocutory divorce decree, claimed entitlement to half of any proceeds of the lawsuit. The copyrights remained undistributed under the terms of the interlocutory judgment, and the court determined that title was held by the parties as tenants in common. As such, the wife was entitled to share in all of the proceeds from exploitation of the copyrights.

In analyzing the first prong of the *Hisquierdo* test on express conflict, the *Worth* court honed in on the language in § 201 of the Copyright Act, which provides only that the copyright "vests *initially* in the author." The court's emphasis on the word "initially" and its use of the modifier "only" is understood to imply that because § 201 later allows for transfers by operation of law, nothing in the Act precluded the husband's "initial" ownership in the copyrights from being transferred to the marital community by operation of the California law of community property.[44] Unlike in *Hisquierdo,* which arose in a context for which Congress had expressly negated co-ownership, here Congress had not expressly precluded co-ownership.[45] Because there was no conflict, the court ended its inquiry without analyzing the second prong of the *Hisquierdo* test. As a consequence, the wife was entitled to half the profits or damages that might be recovered in the lawsuit. Because of the general principle of community property that profits maintain the same character as the property from which they derive, royalties earned from the exploitation of a copyright held by a husband and wife as community property would also be treated as community property.[46]

*Worth* did not address whether community property reaches renewal terms in copyright, and no published case has done so. In fact, the only authority on the subject seems to be David Nimmer, who has addressed it in an article (which subsequently appeared in his treatise on copyright law).[47] He begins the analysis by noting that copyright law prohibits the testamentary disposition of renewal terms where the renewal term has not yet vested.[48] As discussed above, the Copyright Act provides that if an author dies before expiration of the first term of copyright, the renewal right vests in the author's surviving spouse and/or children. Any will purporting to devise renewal rights that have not vested will be "bumped." Before a renewal right vests, it is a mere "expectancy" interest.[49] Nimmer then cites to the California Supreme Court's holding in *Marriage of Brown*[50] that a contingent interest in property may be the subject of community property while a mere expectancy may not, to postulate that prior to vesting, renewal rights are not community property.[51] However, Nimmer goes on to note, the Brown court also held that "the fact that a contractual right is contingent upon future events does not degrade that right to an expectancy."[52] Rather, "the law has long recognized that a contingent future interest is property…no matter how improbable the contingency,"[53] whereas "an expectancy, on the other hand, is not deemed an interest of any kind." Based on this distinction, Nimmer states that the "nonvested renewal right would seem to qualify as a contingent property right, and hence as community property."[54]

However, Nimmer later goes on to challenge that conclusion. He notes that because the Copyright Act itself addresses the rights of surviving spouses with respect to both renewal and termination rights, "[b]y negative implication, one can argue, Congress declined to provide further protection to authors' spouses. Accepting that interpretation, the congressional goal would be subverted by the community property scheme to the extent that it accords rights to spouses in the renewal and termination-of-transfer contexts even during the authors' lifetimes, contrary to federal law."[55] He then suggests that, under *Worth,* a California court would not apply community property to renewal and termination rights because *Worth's* rationale depends on distinguishing *Hisquierdo,* where Congress had expressly negated co-ownership with respect to the rights at issue. In *Worth,* Congress had not expressly prohibited co-ownership with respect to the rights at issue and therefore California's community property laws were not preempted. According to Nimmer, "given the deference paid to the federal scheme, California apparently would not even purport to extend its community property law to copyright renewals and terminations of transfer."

Putting aside Nimmer's challenges, if copyright renewal interests are held to qualify as community property, yet another issue arises: how is apportionment of the renewal interest under § 304(a) of the Copyright Act affected? As discussed above, § 304(a) vests the author's surviving spouse and/or children with renewal rights in the event the author dies before the first term of copyright expires (in either equal or disproportionate shares). But if the renewal right is community property, the result is different. California law provides that upon the death of a spouse, the decedent's half of the community property is subject to testamentary disposition.[56] In the event the decedent dies intestate, the surviving spouse takes the entirety of the community property.[57] In other words, a conflict between federal copyright law and state community property law exists.

In order to resolve the conflict, the question turns on preemption and the *Hisquierdo* test applies. But this time, it would appear that the apportionment rules preempt community property laws. The first prong of the Hisquierdo test asks whether the state law conflicts with the express terms of the federal law. The conflict seems clear. Since § 304(a) expressly mandates that the renewal interest vest in the "widow, widower, or children of the author" if the author is deceased, California's community property law allowing for the testamentary disposition of the decedent author's half interest is in direct conflict.[58] While community property law would allow the decedent author to transfer her or

his renewal interest to a third party at death, copyright law prohibits this disposition. Similarly, while California laws of intestate succession would deem the entirety of a renewal right as the surviving spouse's property in the event the decedent author died intestate, copyright law expressly reserves shares in the renewal right for the children as well as the spouse. Thus it seems that California's community property law would be preempted with respect to renewal interests in copyrights.

### B. Right of Publicity

Whereas copyright rewards authors with a monopoly on their original works, the right of publicity gives individuals a monopoly on their names, likenesses, and personal attributes – collectively, the "persona."[59] The right of publicity protects the individual's right to control the commercial use of his or her persona, and while such protection is available to anyone, it is particularly significant – and valuable – to celebrities. The value inherent in a celebrity's identity is what drives the business of celebrity licensing.[60] Thus the celebrity suffers economic harm when her or his persona is misappropriated.[61] According to some, a celebrity's persona is her or his most valuable asset.[62]

For those who favor legal recognition of the right of publicity, California's publicity rights are regarded as the "preeminent models" for right of publicity laws across the country.[63] California's first publicity statute was enacted in 1972 and is still codified at California Civil Code § 3344, which holds liable "[a]ny person who knowingly uses another name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising, selling, or soliciting purchases of, products, merchandise, goods or services, without such person's consent."[64] In addition to these statutory provisions, California's common law also supports the protection of publicity rights.

Like copyright, the right of publicity is regarded as an intangible property right and therefore it is transferable. In 1985, California codified the descendibility of the right of publicity. Civil Code § 3344.1 provides that publicity rights "are property rights, freely transferable, in whole or in part, by contract or by means of trust or testamentary documents, whether transfer occurs before the death of the deceased personality, by the deceased personality or his or her transferees, or, after the death of the deceased personality, by the person or person in whom the rights vest under this section or the transferees of that person or persons."[66] In the case of intestacy, publicity rights pass to the surviving spouse unless there are surviving children or grandchildren of the deceased personality, in which case one-half of the interest passes to the spouse.[67] The owner of the personality's right of publicity can prevent the unauthorized use of the personality's "name, voice, signature, photograph, or likeness" for the 70 year period following the death of the personality.[68]

To date, there seems to be no case law – California or otherwise – holding that a celebrity's right of publicity is marital or community property. If the right of publicity were found to be community property, California's publicity rights statute, which has its own internal succession provision, would conflict with the intestate succession provisions of Probate Code § 6401. If the celebrity has a surviving spouse and children, Civil Code § 3344.1(d)(1) requires that the spouse receive one-half and the children share equally in the remaining one-half of the right of publicity. However, under Probate Code § 6401, the decedent's one-half share of community property vests in the surviving spouse in the event of intestacy. In other words, 100 percent of the right of publicity of the deceased spouse would belong to the surviving spouse, regardless of whether the decedent had children. If there were a dispute, the surviving spouse would argue that the Probate Code and community property law should trump the publicity statute's succession provision, and the surviving children would argue the opposite. Until this issue is tested in the courts, the community property status of the right of publicity is unknown; hence, it is unclear whether the internal succession provision of Civil Code § 3344.1 conflicts with Probate Code § 6401. For estate planners, the answer is clear: make certain the decedent dies testate. For litigators, this valuable property right may be the subject of disputed ownership if the decedent dies intestate.

Although the idea that a celebrity would die without a will seems hard to imagine, it happens. The late reggae music legend Bob Marley refused to make a will because his Rastafarian faith prohibited a belief in death.[70] Years of legal wrangling followed, including the highly publicized allegation by the estate administrator that Marley's advisors and widow were diverting estate assets and royalties into their own bank accounts through international corporations.[71] Marley's widow was also accused of forging Marley's signature on documents that supposedly transferred some of his interests to her before he died.[72] Marley's catalog alone is valued at about $100 million, and his posthumous earnings have reached $9 million in just one year.[73]

## III. CONCLUSION

This article identified some significant limits on the freedom of testation of copyright. The estate planner may need to advise the testator that she or he may have no ability to transfer the renewal term of a copyright under the 1909 Act – constituting 67 years of copyright protection in her or his work – unless the testator survives the first term. The probate litigator should consider whether the surviving spouse or children have rights under law notwithstanding the terms of the testator's will or trust. The planner and litigator both should be mindful that the law may not be clear as to the relative rights of the surviving spouse and the children in a renewal right that becomes vested in them.

The estate planner would also be wise to advise the client that a will or trust that seeks to devise termination rights to persons other than those in the Protected Class (the surviving spouse and children) will be subject to "bumping." Moreover, the Protected Class will have rights to nullify transfers or assignments by the author-celebrity, for example, to a movie studio or

record company, a particularly important right for the probate litigator to bear in mind in representing the interests of the surviving spouse or children when there is valuable intellectual property in the estate.

Principles of community property law apply equally to copyright as they do to tangible property. Thus, works of authorship created during marriage are community property. On the other hand, it is unclear whether renewal and termination rights, which do not vest unless and until the author is alive at the time those rights spring into being, are subject to community property laws. The courts have not yet answered the question, but David Nimmer concludes that California community property law would not extend to unvested renewal and termination rights. If renewal or termination rights are community property under California law, there would be a conflict between the apportionment of those rights among the surviving spouse and children (assuming they did not vest in the decedent), on the one hand, and California's laws of intestate succession, on the other. While there is no case law on point, it would seem that the state law scheme would be preempted, and that copyright law would govern.

When the testator is a celebrity, the right of publicity may be extremely valuable, and she or he may not appreciate that it is a right which may be transferred during life or by testamentary disposition. This is one area where dying intestate could spawn significant litigation. It is unclear whether the right of publicity is a community property right. If so, the internal succession provisions of Civil Code § 3344.1 would be in conflict with the intestate succession provisions of Probate Code § 6401.

Obviously, the best advice we can give to our author-celebrity clients is to make a will or a trust. While even our more mercurial celebrity clients will follow that basic advice, this area of the law is one where even the most careful estate plan cannot resolve conflicts which exist in the law, ambiguities in their provisions, or limits on the freedom of testation. We can only hope to explain those problems and limitations to our clients as best we can, and to recognize that our clients may have rights by law or by ambiguity which may not appear within the four corners of the estate plan.

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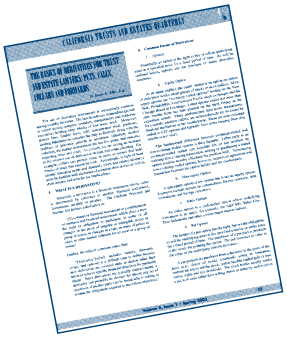
**ENDNOTES**

1. Lisa DiCarlo, Dead Celebrities: *Reaping Millions After Death,* FORBES.COM, Oct. 26, 2004, at www.forbes.com/ 2004/10/25/cx_ld1025 deadcelebsintro.html.
2. *Id.*
3. *Id.*
4. For the curious reader, the list continues as follows: Theodor "Dr. Seuss" Geisel ($18M), Marilyn Monroe ($8M), George Harrison ($7M), Irving Berlin ($7M), Bob Marley ($7M), Richard Rodgers ($6.5), George and Ira Gershwin ($6M), Jimi Hendrix ($6M), Alan Lerner and Frederick Loewe ($6M), Cole Porter ($6M), James Dean ($5M), Dale Earnhardt Sr. ($5M), Jerry Garcia ($5M), Freddie Mercury ($5M), Tupac Shakur ($5M) and Frank Sinatra ($5M). *Id.*
5. 17 U.S.C. § 102(a).
6. 17 U.S.C. § 102(a)(1)-(8).
7. 17 U.S.C. § 106(1)-(5).
8. 17 U.S.C. § 201(d).
9. Melville B. Nimmer & David Nimmer, NIMMER ON COPYRIGHT, 9.08, at 9-129.
10. *Id.*
11. *Id.*
12. *Id.* at 9.10[A][1], at 9-135.
13. *Id.*
14. 17 U.S.C. § 304(a)(2)(B).
15. *Id.*
16. Michael Rosenblum, *Give Me Liberty and Give Me Death: the Conflict Between Copyright Law and Estates Law,* 4 J. INTELL PROP. L. 163, 185 (1997).
17. *Id.*
18. Nimmer, *supra* note 9 at 9.02, at 9-8 (2004).
19. H.R. Rep. No. 2222, at 14 (909).
20. 17 U.S.C. § 203(a).
21. 17 U.S.C. § 203(a)(3).
22. *Id.*
23. Nimmer, *supra* note 9 at 11.01[A], at 11-3.
24. 17 U.S.C. § 203(a).
25. 1 Paul Goldstein, Copyright, § 4.10.1, at 4:191-192 (2005). Section 101 of the 1976 Act defines a work "made for hire" as "(1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a sound recording, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire."
26. 17 U.S.C. § 203(a)(3).
27. 17 U.S.C. § 304(c).
28. *Id.* at § 4.11, at 4:213.
29. *Id.*
30. Rosenblum, *supra* note 11 at 174.
31. CALIFORNIA ESTATE PLANNING, *Estate Planning for Special Assets* § 8.16 at 355.
32. No. 01-00453 (M.D. Tenn. 2001).
33. *Broadcast Music, Inc. v. Roger Miller Music, Inc.* (6th Cir. 2005) 396 F.3d 762.
34. Heather Hubbard, *Family Feud in the Entertainment Industry: Section 304(A) of the Copyright Act and Its Impact on Estate Distribution,* 21 CARDOZO ARTS & ENT. L. J. 407, 409 (2003).
35. *Brief of Amici Curiae Melanie Smith-Howard and Mirriam Johnson Jennings in Support of Defendant-Appellant, Roger Miller Music, Inc. at 4, Broadcast Music, Inc.,* No. 02-5766 (6th Cir. Filed Aug. 2002).
36. 2005 U.S. App. LEXIS 1403 at *59.
37. *Id.*



The *Quarterly* welcomes the submission of articles addressing topics of current interest to trust and estate law practitioners.

If you are interested in submitting a manuscript or article outline, please contact the Executive Editor.



38. 17 U.S.C. § 201(a).
39. Cal. Fam. Code § 760.
40. U.S. Const. art. VI, cl. 2.
41. 439 U.S. 572 (1979).
42. *Id.* at 581.
43. 195 Cal.App.3d 768 (1987).
44. David Nimmer, *Copyright Ownership by the Marital Community: Evaluating Worth,* 36 U.C.L.A. L. Rev. 383, 401 (1988) (citing to *Marriage of Worth,* 195 Cal.App.3d at 777).
45. *Id.* at 405.
46. *Id.* at 390.
47. *See generally,* Nimmer, *supra* note 46 and Nimmer, *supra* note 9 at 6A.03[C][3].
48. Nimmer, *supra* note 31 at 391.
49. *Id.*
50. 15 Cal.3d 838 (1976).
51. *Id.*
52. *Id.* at fn. 8.
53. *Id.*
54. Nimmer, *supra* note 46 at 392.
55. Nimmer, *supra* note 46 at 404.
56. Cal. Prob. Code §§ 100, 147 & 6401.
57. *Id.*
58. 17 U.S.C. § 304(a).
59. Fred M. Weiler, *Copyright in the Twenty-First Century: The Right of Publicity Gone Wrong: A Case for Privileged Appropriation of Identity,* 13 Cardozo Arts & Ent. L.J. 223, 245 (1994).
60. Mark A. Roesler, § 7.03 *Celebrity Licensing* in The Licensing Deskbook (Battersby & Grimes eds., 1999).
61. *Id.*
62. *Id.*
63. *Id.*
64. Cal. Civ. Code § 3344.
65. Roesler, *supra* note 62.
66. Cal. Civ. Code § 3344.1(b).
67. Cal. Civ. Code § 3344.1(d)(1).
68. Cal. Civ. Code § 3344.1(g).
69. Jonathan L. Kranz, *Sharing the Spotlight: Equitable Distribution of the Right of Publicity,* 13 Cardozo Arts & Ent. L. J. 917 (1995).
70. *I Don't Wanna Wait in Vain for my Inheritance: The Administration of the Bob Marley Estate,* Legalzoom, at http://www.legalzoom.com/articles/article_content/printerarticle10749.html
71. *Id.*
72. *Id.*
73. *Id.*