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Governor Signs Kuehl Publicity Rights Legislation

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Senate Bill 771, authored by State Senator Sheila James Kuehl (D-Santa Monica) was signed into law by the Governor today. The bill reaffirms California's protection of post-mortem publicity rights for deceased California celebrities and artists by clarifying that these rights may pass to beneficiaries under a deceased celebrity's will, even if that celebrity died before January 1, 1985.

The interpretation of the publicity rights statute had been thrown into question by a recent federal court decision interpreting the law. "With the Governor's signature on SB 771, we now have clarity that individuals who died before Jan. 1, 1985 have the same rights as those who died after that date so that those who inherited the rights can continue to protect the images of great American icons like John Wayne, Alfred Hitchcock, Mae West, Bela Lugosi, and Marilyn Monroe," said Senator Sheila Kuehl.

It is important to note that the court, in one of the decisions, had actually expressed reluctance about its ruling, and invited the Legislature to clarify whether the law regarding the right of publicity applies equally to all celebrities, whether or not their death preceded the effective date of the law. SB 771 follows the court's invitation and clarifies that a deceased celebrity's right of publicity applies to all individuals who died within 70 years before January 1, 1985.

The right of publicity makes it unlawful to use another's identity (name, likeness, signature, photograph or voice) for commercial advantage without permission. The right of publicity is a property right under California law, and the right may be transferred by contract, trust or will. In the absence of such a transfer, the right is descendible to the person's statutory heirs and their successors after that person's death. California provides that the right of publicity is enforceable for a period of 70 years after death.

On May 14, 2007, in the case of *CMG Worldwide, Inc. v. Milton H. Greene Archives LLC*, which involves a dispute over the ownership of Marilyn Monroe's right of publicity, a federal judge in Los Angeles ruled that under Section 3344.1, beneficiaries of a person who died before 1985 had no right in the deceased celebrity's name, image and likeness; only the heirs identified by the statute could enjoy such rights. [Earlier that month, a similar conclusion was reached by a federal judge in New York.] The federal court in the California case held that Section 3344.1

allows persons who died after January 1, 1985, to transfer their publicity rights only to their own designated beneficiaries. There is nothing in the statute, however, that indicates the Legislature intended to treat people differently depending on whether they died before or after 1985. Moreover, California law has always strongly held that the courts should do whatever possible to avoid “intestacy” – that is a situation where the law defines who a person’s assets should pass to at death because the decedent failed to do so by will or trust.

Given that celebrities like Marilyn Monroe died with very clear testamentary documents about who should benefit from their estates, it is even more important that the statute be clarified so that the law does not alter what those who died had decided for themselves.

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