Bill attempts to protect dead stars’ images

A state Senate bill would give control of dead celebrities’ likenesses to the heirs the stars had chosen. Opponents predict legal challenges.

By Patrick McGreevy, Times Staff Writer
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SACRAMENTO — Forty-five years after her death, a dispute over who controls Marilyn Monroe’s image has a former actress enlisting colleagues in the California Legislature to protect the blond bombshell and other dead celebrities from being improperly exploited.

State Sen. Sheila Kuehl (D-Santa Monica), a television star in the 1960s, has won preliminary approval of legislation that would bolster the "postmortem right of publicity" held by the heirs of famous people to control the use of their images, voices, signatures and likenesses for commercial purposes.

The bill would apply such rights to celebrities who died before 1985 and would retroactively allow them to be passed to nonrelatives. Opponents of the legislation say that it could retroactively nullify publicity rights that have been in the public domain or held by relatives of hundreds of dead actors and artists, and trigger a flood of lawsuits.

If it becomes law, "this is going to cause pandemonium in the courts," said Surjit Soni, a Pasadena attorney representing a company founded by the late Milton H. Greene, a Monroe photographer.

Kuehl introduced her bill after a federal judge in California decided in May that the right to control publicity does not apply in cases of celebrities who died before 1985, when California adopted a law recognizing such a right.

The courts have also found that such a right does not extend to anyone except relatives of the celebrity, even if authority was granted in the celebrity’s will.

Since that decision, Monroe’s face and name have begun appearing on unauthorized commercial products, including “Marilyn Monroe hipster panties” sold on the Internet.

“This bill is a recognition of the right to publicize and use an image as a kind of property right that extends beyond death and can be willed as a kind of personal property,” Kuehl said. “The image of a celebrity is not something the public can use generally ... no matter how popular the celebrity is.”

The licensing and use of dead celebrities’ images has been controversial for decades. There was a public debate in the late 1990s when movie images of John Wayne were digitally inserted into a Coors beer commercial after his death. Another commercial featured Fred Astaire dancing with a Dirt Devil vacuum cleaner, years after Astaire died.

Heirs of celebrities — usually family members or charities — typically charge a licensing fee for the use of the celebrity’s image for commercial purposes. Often the images can be used for artistic or news purposes without charge.

Disputes over the use of images of singer Elvis Presley, comedian Groucho Marx and horror-meister Bela Lugosi have led to precedent-setting lawsuits, said Carole Handler, a Los Angeles attorney whose specialties include entertainment and copyright law.

"The rights of publicity involving celebrities after their death are definitely defendable," Handler said.

In the case of Monroe, who died of a drug overdose in Brentwood in 1962, the actress had set up a trust for her half-sister and mother. Monroe’s will asked acting coach Lee Strasberg to dispose of the rest of her possessions.
After Strasberg died, his widow, Anna Strasberg, founded Marilyn Monroe LLC. In partnership with licensing agent CMG Worldwide, the company has authorized the use of Monroe's image for more than two decades.

Anna Strasberg "has been undertaking the judicious licensing of Marilyn Monroe's name and image," said Kuehl, who starred in the 1960s TV show "The Many Loves of Dobie Gillis."

Strasberg's authority over Monroe's image was challenged in federal court by Milton H. Greene Archives, named after the photographer who took some 3,000 photos of the actress and was her business partner.

The photos include the famous "Red Velvet" pictures, taken for Playboy magazine. The archives firm has been approached about using images of Monroe on handbags, plates, calendars and other products, but threats of lawsuits blocked the proposals until the firm's own case was decided in May.

Last year, the Monroe rights generated $8 million in revenue for Marilyn Monroe LLC and CMG Worldwide, so the financial stakes are high, said Soni, the attorney for the Greene company.

He said the Kuehl legislation, SB 771, would deprive the firm of its right to use Greene's celebrity pictures as the firm chooses.

"My clients owned the copyright on the photos," Soni said. "These celebrities voluntarily posed for these photos. They filed model release forms."

Soni argues that Monroe was a resident of New York, and he does not believe the Kuehl bill would affect the Monroe rights. Kuehl and state officials don't agree. Kuehl says her bill, fostered by the Screen Actors Guild, would abrogate the court decisions that affect the Monroe rights.

But Soni asserted that the Kuehl bill could retroactively alter rights to the images of hundreds of other celebrities, including Walt Disney. "It creates potential for litigation and strife," he said.

The bill's opponents also argue that it "effects an unlawful taking of property, violates due process [and] unconstitutionally impairs existing contracts of not only photographers, but also the studios and other business."

Anthony Williams, an attorney hired by Marilyn Monroe LLC to lobby for the legislation, said he agrees with Kuehl that her bill will provide a legislative cure to the court decisions and protect the firm's rights to Monroe's image.

The Senate Judiciary Committee voted 10-0 last month to recommend the bill to the full Senate.

Supporters include the California Labor Federation AFL-CIO, which represents the wishes of the Screen Actors Guild and argued that the issue goes beyond Marilyn Monroe.

"SB 771 is critical to protect celebrities and artists from constant attempts to commercially exploit their images," said federation lobbyist Jeremy Smith. "The honorable legends of these admirable personalities may be corrupted in the event that SB 771 is not enacted, as their images will be used for offensive commercial purposes."

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