

Artículo de investigación**Separate aspects of image rights using in holograms: world experience and problems of Ukrainian legal regulation**ОКРЕМІ АСПЕКТИ ВИКОРИСТАННЯ ІМІДЖЕВОГО ПРАВА В ГОЛОГРАМАХ:
СВІТОВИЙ ДОСВІД ТА ПРОБЛЕМИ ЗАКОНОДАВЧОГО РЕГУЛЮВАННЯ УКРАЇНИAspectos separados de los derechos de imagen que utilizan en hologramas: experiencia mundial
y problemas de la regulación legal Ucrania

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The goals of the study are due to the need to analyze the shortcomings of the Ukrainian legislation on image rights and to consolidate this not only at the national doctrinal level, but also in the normative acts as a basis for celebrities to conclude contracts and protect their rights in commercial relations.

Today, there is a tendency to form relationships about the use of celebrity image, but there is no legal mechanism in place to settle disputes to protect their image rights, or to profit from their legitimate use. Analyzing the experience of lawmaking in the countries of the Anglo-American legal family, it should be noted that the success of protecting their image rights is to create a stable contractual mechanism and the ability to challenge the use of another's image. An important aspect is the use of celebrity image in holograms.

Given the needs of technocratic society and the development of information technology, it is appropriate to develop scientific provisions and study the concept of image rights, as a basis for the formation of a new legislation that can regulate the relationship of use of the image of the individual.

Methods used in this work: historical, comparative, classification, generalization and abstraction. Each of these logical and philosophical methods has been used in the study to understand and qualitatively explain to the general public the concept of "image rights".

Анотація

Цілі дослідження обумовлені нагальною потребою у аналізі прогалин українського законодавства щодо регулювання іміджевого права та закріплення цього поняття не лише на національному доктринальному рівні, а й у нормативних актах, як базису для знаменитостей щодо укладення договорів та захисту своїх прав у комерційних правовідносинах.

На сьогоднішній день, існує тенденція до утворення відносин щодо використання образу знаменитостей, однак немає діючого правового механізму щодо врегулювання різноманітних спорів для захисту своїх іміджевих прав, або можливості отримання прибутку внаслідок їх правомірного використання. Враховуючи досвід законотворчості у країнах англо-американської правової сім'ї, необхідно зауважити, що успішність захисту своїх іміджевих прав полягає в утворенні стійкого договірної механізму та можливості оспорування використання чужого образу. Важливим є аспект використання образу знаменитостей у голограмах.

З урахуванням потреб технократичного суспільства та розвитку інформаційних технологій, вбачається доречним розробка наукових положень та дослідження поняття іміджевого права, як фундаменту для утворення якісно нового законодавства, яке

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This article reveals the concept of "image rights" and its components. The study revealed the most popular area of use of image rights - the hologram. Possibilities for elaboration of legislative regulation of legal deficiencies on protection and restoration of image rights have been opened and analyzed. Responses are given to the specifics of the possibility of inheriting and transferring image rights to third parties.

Keywords: Hologram, image rights, right of publicity, image, media image.

може врегулювати відносини використання образу особи.

Методи, що використовувалися у даній роботі: історичний, порівняльно-правовий, класифікації, узагальнення та абстрагування. Кожен з цих логіко-філософських методів застосовувався у дослідженні для усвідомлення та якісного пояснення широкій аудиторії поняття «іміджеве право».

Дана стаття розкриває поняття «іміджеве право» і його складові. Дослідженням розкрито найбільш популярну сферу використання іміджевих прав – голограму. Розкрито та проаналізовано можливості розробки законодавчого врегулювання юридичних прогалин щодо захисту та відновлення іміджевого права. Дано відповіді щодо специфіки можливості успадкування та передачі іміджевих прав третім особам.

Ключові слова: голограма, іміджеві права, право на публічність, імідж, медійний образ.

Resumen

Los objetivos del estudio se deben a la necesidad de analizar las deficiencias de la legislación ucraniana sobre derechos de imagen y consolidar esto no solo a nivel doctrinal nacional, sino también en los actos normativos como base para que las celebridades celebren contratos y protejan sus derechos en las relaciones comerciales.

Hoy en día, existe una tendencia a establecer relaciones sobre el uso de la imagen de celebridades, pero no existe un mecanismo legal para resolver disputas para proteger sus derechos de imagen o para beneficiarse de su uso legítimo. Al analizar la experiencia de la legislación en los países de la familia jurídica angloamericana, debe tenerse en cuenta que el éxito de proteger sus derechos de imagen es crear un mecanismo contractual estable y la capacidad de desafiar el uso de la imagen de otra persona. Un aspecto importante es el uso de imágenes de celebridades en hologramas. Dadas las necesidades de la sociedad tecnocrática y el desarrollo de la tecnología de la información, es apropiado desarrollar disposiciones científicas y estudiar el concepto de derechos de imagen, como base para la formación de una nueva legislación que pueda regular la relación de uso de la imagen de la imagen individual.

Métodos utilizados en este trabajo: histórico, comparativo, clasificación, generalización y abstracción. Cada uno de estos métodos lógicos y filosóficos se ha utilizado en el estudio para comprender y explicar cualitativamente al público en general el concepto de "derechos de imagen". Este artículo revela el concepto de "derechos de imagen" y sus componentes. El estudio reveló el área más popular de uso de los derechos de imagen: el holograma. Se han abierto y analizado las posibilidades de elaboración de la regulación legislativa de las deficiencias legales en materia de protección y restauración de los derechos de imagen. Se dan respuestas a los detalles de la posibilidad de heredar y transferir derechos de imagen a terceros.

Palabras clave: Holograma, derechos de imagen, derecho de publicidad, imagen, imagen de medios.

Introduction

Theoretical framework

Everything changes over the years: fashion, trends, technology, celebrity, etc. Some of them appear, while others leave, although, there are a

number of persons which permanently contribute to cultural heritage of mankind. Many of these artists have already passed away, nevertheless, using modern technology, their masterpieces

continue to exist over the years. Holographic technology has become one of the most modern and formidable methods of perpetuating creativity of celebrities.

Even though, holography is not a new method, it requires more detailed legal regulation because of the rapid increase in cases of its use in the entertainment industry. Especially, it concerns the creation of the dead celebrity hologram for commercial purposes. To study in details issues mentioned before, the following questions should be answered.

1. What are holography and hologram and where are they used?
2. What are "image rights" and what do they include?
3. How do image rights compare with individual and publicity rights?
4. Can celebrities register their image as a trademark?
5. How is copyright applied to holograms of dead celebrities?
6. Does a person have image rights after death? In the case of a positive answer to the previous question who owns them and which is the transfer process?
7. How can the rules of law regulate the use of holograms?

This article aims at the theoretical study of a phenomenon of the hologram of a "dead celebrity", its legal protection and the development of proposals aimed at its improvement and systematization.

As a result, these issues generate additional problems for the national courts, acting within the framework of Romano-German legal family, considering the fact that they are not entitled to legislate by precedent, which causes legal collapse and stagnation in the legislative initiative of the countries concerned.

Holography is a special technology of photographing, which generates three-dimensional images(3D) of objects. In practice, these are methods of recording and projecting 3D images (Andreeva, 2008).

A hologram, in turn, is a three-dimensional representation of a particular object. Therefore holography is the process of creating a hologram. The peculiarity of holograms is their potential to reproduce a 100% exact copy of the object and it is not planar in the image, like in photographs, but a volumetric one, from different points of the hologram. Furthermore, when it is rotated, the

object is seen at a different angle, which gives a sense of presence. If the hologram is divided into parts (split), then each part of the whole image will be visible completely. Also, there is no difference in the size of the object you want to record or its reality when creating a hologram (you can just draw an invented object in several angles) (Chen, 2016).

This set of features makes the hologram more advanced compared to photo / video images and their analogs. With such features, it is not surprising that the hologram is used in various fields of human activity. Most often they can be seen in advertising, education, communication, modeling, presentations of new products. All these applications of holograms are very effective in attracting attention and concentrating it, as viewers love to contemplate something unusual and phantasmagoric.

Nowadays, the most ambiguous way to use it is in show business, namely, for concerts or tours of deceased celebrities.

In 2012, the first concert was held using a celebrity hologram at the festival Coachella-2012. It was the first primitive analogue of a hologram created from the image of Tupac Shakur. That hologram developers reached it through using special light effects and one hidden room that calls a Pepper's Ghost method, it cannot be called a modern hologram. However, the Digital Domain company that created the image of the singer won a special award from the Cannes Lions Festival for its spectacular performance (Charli, 2005).

Currently, there are many examples of celebrity holograms being used: Elvis Presley's hologram sang with Celine Dion on American Idol in 2009; Frank Sinatra's hologram performed with Alicia Keys at the 2008 Grammy Awards; in 2012 there was a show of Victor Tsoy in St. Petersburg etc. There are also at least three holographic celebrity tours scheduled in 2019: Amy Winehouse, Roy Orbison and Frank Zappa. Such a rapid increase in the number of such concerts is due to the interest of big companies in financing them. Low cost and extraordinary profit are explained by the fact that once paid for creating a hologram, the owner no longer has to spend money to promote the artist, his salary, hits, etc. In turn, the audience remains delighted with the concert. Not surprisingly, in 2014, there was a "war" between the two largest hologram companies: Hologram USA and Pulse Evolution.

Hologram USA is owned by Greek billionaire Alka David. The company owns the exclusive rights to "revive" Patsy Kline, Buddy Holly, Billy Holiday and Jackie Wilson. The company also manages the tour of rapper Chiff Keefe - he is alive, but due to legal issues he cannot perform in London. But the prohibition does not apply to his hologram. In turn, Pulse Evolution consists of the "remnants" of Digital Domain. The company owns the rights to the "digital ghosts" of Elvis Presley, Marilyn Monroe and Selena.

The confrontation between the two companies began with Michael Jackson's hologram performance at the Billboard Music Awards. The Slave to the Rhythm song became one of the most memorable performances of the ceremony. This was preceded by a lengthy litigation between Hologram USA and Pulse Evolution over the patent infringement of Michael Jackson's hologram. As a result, the court allowed Pulse Evolution's "creation" to perform an unpublished song at the Billboard Music Awards (Gardner, 2016).

Unfortunately, the number of such court precedents is increasing every year. The absence of regulations that would explain all the nuances in this field contributes to the creation of conflicts and collision in legal relationships. (for example, between image owners (heirs) and copyright holders (photographer)).

Analysis

For the first time, rights to images appeared abroad, and today in English-speaking countries they are called "image rights." The concept of image rights appear when popular people began to suffer from the use of their image by other persons, institutions, organizations without proper grounds. In the USA, this term has been incorporated into the meaning of the term "right of publicity", which protects against the unauthorized commercial use of name and image. Outside the USA, rights similar to public rights sometimes are recognized as "personality rights" and "rights of persona".

The right of publicity applies to various personal characteristics such as name, nickname, voice, signature, photograph and more. There is no precise list of characteristics that may be included in the concept of image right. One of the reasons for such inaccuracy can be considered ambiguous understanding of the word "image".

According to Cambridge Dictionary image is an idea, a mental image, an image of someone, or

something. Some scientists claim that the image is invariably linked to the visual perception. But the association that produces the image can be triggered by voice or even smell (this explains the understanding of images by blind people; or the appearance of an image of people we have never seen, but only heard). For us, image rights is a broad term that includes image, recognition features and behavior of a known person. An image can be acquired or created by a celebrity for consumer awareness.

The concept of "image rights" in the Ukrainian domestic legislative is not fixed. But there is two terms in Ukrainian legislative which are related to image right - "goodwill" and "company's business reputation". In Art. 14 of Tax Code of Ukraine prescribes the definition of goodwill. It means that goodwill is intangible asset whose value is defined as the difference between the market price and the book value of the assets of the enterprise as a complete property complex resulting from the use of better management qualities, dominant position in the market of goods, services, new technologies, etc.

Company business reputation took from the Resolution of the Plenum of the Supreme Court of Ukraine dated 02.27.2009 №1. The Supreme Court noted that company business reputation of a legal entity means the evaluation of its entrepreneurial, social, professional or other activities carried out by such a person as a participant in public relations.

Therefore, business law and image rights cannot be identified in Ukrainian law, since the first concept applies only to a legal entity, and the second applies to natural persons whose image is part of their earnings. If a person is adversely affected and his or her rights are violated through the unfair use of his or her image, the right to a name may be considered not only as a subjective right, but as part of the image right of the person whose income depends on the use of his or her name.

The Civil Code of Ukraine (2003) provides for a list of personal immaterial rights. The right to one's name is regulated in Art. 294–296 of the Civil Code of Ukraine. Due to Art. 294 of the Civil Code of Ukraine a natural person shall have the right to his/her name. In accordance with Art. 296 a natural person shall be entitled to use his/her name in all spheres of activity. After analyzing the legal framework regulating the right to one's name, one may conclude that these norms regulate the right to the name of all persons whether celebrities or not. Besides the

right to one's name is a non-proprietary right and thus its transfer is not prescribed by the Civil Code of Ukraine.

The absence of the possibility to transfer the right to use one's name has caused celebrities to register their name as a trademark. If a celebrity has entered into a producer contract, the rights to such trademark are transferred to the producer of such celebrity. Research of Ukrainian case law shows that a conflict between the right to a name and to a trademark may arise (Moskalenko, 2016).

Because of the imperfection of the Ukrainian legislation, it is impossible to register name of somebody's hologram as a trademark because it doesn't comply with the requirements of the 4th Part of Art. 6 of Law of Ukraine "On Protection of Rights to Trademarks for Goods and Services".

Marking symbols couldn't be registered if they reproduce:

- Industrial designs, the rights of which belong in Ukraine to others;
- Persons; names of works of science, literature and art known in Ukraine or quotes and characters from them, works of art and fragments of them without the consent of the copyright holders or their successors;
- Surnames, names, aliases and derivatives thereof, portraits and facsimile of known persons in Ukraine without their consent.

So, we are faced with the fact that the inability of registration of holograms in the Ukrainian technology market leads to a deadlock and forces the law to pay attention to the problems of recognition of image right and to register holograms through its mechanism.

Some aspect of the right of publicity can be found in the Law of Ukraine On Protection of Rights to Trademarks for Goods and Services (1993), pursuant to Art. 6 of which a trademark cannot be registered if it reproduces surnames, names, pseudonyms and their derivatives, or portraits and facsimiles of famous persons in Ukraine without their consent.

An example of registering a name as a trademark may be the case after the death of Michael Jackson. Since Jackson's death in 2009, the estate has generated more than a whopping \$1 billion in revenue by licensing his name, likeness

and music. Two months after Mr. Jackson passed away, his estate filed a number of applications for federal trademark registrations for the name of the singer (Strand, 2016).

According to Art. 300 of the Civil Code of Ukraine, every person has the right to individuality. "Personality" (individuality) is a set of mental properties, traits and experiences of each person that distinguish it from other people. The structure of individuality includes a number of characteristics of person related to his national, cultural, religious, linguistic and other identity. The combination of all these elements can create a certain holistic perception of the individual as a certain individual, and be covered by the general concept of image (Moskalenko, 2016).

The right to individuality lies in the inherent ability of a person to own, but not to be able to transfer it and enter into contracts. The image of a celebrity is usually formed with the help of many specialists and generates big profits. That is why it carries commercial value. The importance of protecting an image lies not only in protecting it as a subjective civil right, but as a right that has a commercial basis. Its legitimate use should be a dogma not only in relationships related to the hologram, but also in other relationships where the use of the visual image of the person.

Since we cannot find a full-fledged analogue of image right in national law, we may be able to protect celebrity rights by combining certain rules of law. We can divide the hologram into what we perceive by hearing and vision. Let's start with the image (picture).

The right to an image (picture) is characterized by the fact that it contains the power of use (permission to use), the prohibition of unlawful actions on the image (picture) of the person, as well as the power to protect it. To obtain the right to use another's image (picture), you must inform the owner exactly and specifically for what purpose the image (picture) will be used.

In domestic legislation the basic law that regulates this relations is the Civil Code of Ukraine. According to the art. 308 a photo or other products of fine art on which a natural person is portrayed can be publicly demonstrated, reproduced, or distributed only by the consent of this person, and in the case of his/her death, by the consent of authorized persons. The consent granted by the natural person portrayed on the photograph or other

product of fine art may be withdrawn after his/her death by authorized persons. Losses incurred by the person who conducted public demonstration, reproduction, or distribution of the photo or another product of fine art shall be reimbursed by these persons.

If a natural person posed for the artist for a fee, the photograph or other product of fine art may be publicly demonstrated, reproduced, or distributed without his/her consent. A natural person who posed for the artist of a photograph or other product of fine art for a fee, and after his/her death his/her children and widow (widower), parents, or siblings can demand a termination of the public demonstration, reproduction, or distribution of the photo or other product of fine art provided the artist or another person is reimbursed for the losses incurred in connection therewith. A photo can be distributed without consent of a natural person portrayed on it, provided it is stipulated by the necessity to protect his/her interests or the interests of other persons.

The mentioned articles regulate only non-patrimonial interests of a natural person and do not provide for any special regime for a celebrity's image and name, including the possibility to license or transfer the right to use his/her image. The descendibility of the rights is also not stipulated by Ukrainian Civil legislation. The right to image is a prime example of subjective civil law, which includes the disclosure of the concept of permissive conduct. Such behavior is revealed through a person's authority over his or her own actions, the actions of others, and the ability to protect their rights. Thus, the right to image is an element of personal non-property rights, the purpose of which is to protect the individuality of a person (Posikalyuk, 2011).

For clearer understanding of the issue, we have investigated the case law of using image rights. The most illustrative example of law enforcement is the United States as a country where judicial precedent is a source of law. In the case of *Robyn Rihanna Fenty Vs. A Topshop 2015* court found the sale of a T-shirt retailer with her photo a violation of her image rights, although there is no such thing in English law.

Enlightening and learning experience had been demonstrated in case law in suit to alcohol manufacturer, who used Jymmie Hendrix's name and image in vodka advertisement. Thus, Jimmy Hendrix's photos and captions were used to create the electric vodka, which mislead

consumers. The owners of Hendrix's creative inheritance rights convinced the court that the producer had illegally used the musician's name to produce vodka (Yudakhina, 2008).

Unfortunately Ukraine can't be a serious competitor for USA and Great Britain in a big range of case law in protecting right to image. However, there is one domestic case where Verka Serdutchka (a well-known Ukrainian comedian and musician) collected almost 1.5 million hryvnias of compensation for using her image (photo) on a soft drink bottle label. (copyright infringement)

It is still popular to study foreign jurisprudence relating to the misuse of a celebrity image, nevertheless, in the early 1990s, there were cases where a character resembled a certain celebrity in advertising and, as a consequence, celebrity tried to prove inappropriate exploitation of his image. For example *Vanna White v. Samsung Electronics America 1992*. Every known person has a certain so-called media image specified in Ali's decision against *Playgirl, Inc. 1978*, where the boxer is depicted on the border between his true appearance and caricature. That is, the image contained the appearance of the boxer, which can easily be recognized.

Thus in the two previous cases with Rihanna and Jimmy Hendricks it was clear that there was cases about protecting image right, but when we talk about Verka Serdutchka's case, we understand that copyright had been infringed. In our opinion the right to the image could also be applied according to last case. Also, mentioning the case of Ali's caricature, it should be noted that the misuse of one's caricature should not be protected by the right image (photo) because only some distinctive features of the boxer are used.

The next element of the hologram is using audio and somebody's voice. Among the various copyright objects, Article 433 of the Civil Code of Ukraine also distinguishes musical works (with or without text).

According to the Law of Ukraine "On Copyright and Related Rights" of 07.11.2001 performing and arranging are related rights. According to Article 1 of this Law, public performance is the submission, with the consent of the subjects of copyright and (or) related rights, of works, performances, phonograms, broadcasts of broadcasting organizations through recitation, play, singing, dance and other means as directly (in live performance), and by any device or process (except by broadcast or cable) in places

where persons outside the ordinary family or close relatives of the family are present or may be present, whether they are present in one place and at the same time or in different places and at different times. This definition is most suitable for us in regulating the performance of a song by a particular author by a hologram.

Another important aspect of regulating relationships regarding the origin and use of holograms is song play. First case: when the image of the hologram is created by developer and is not the prototype of celebrity, who are trying to "resurrect" through modern technology. At this point the rights will belong to the author of the song and the question of the right to perform such work is governed by a contract between the song author and the person who broadcasts this hologram. It can be both the creator of the hologram and the buyer, who can send it on tour, or it will be the same person.

Second case: when a celebrity is still alive you can sign with her/him a contract to use her/his voice or creation.

Third case: a famous person died, his (her) hologram was created, and there are no performance rights after his (her) death. What to do in this case?

First of all, it is necessary to address the right holders, the persons who are the main "custodians" of the creative inheritance of the person whose image will be on the hologram. It is unlikely that the sale of the rights to the audio works themselves will be a profitable investment, however, the ability to sell the rights to perform the work is the most advantageous way to satisfy both parties of the transaction. This is justified by the fact that when selling the rights to a song by a certain author, the copyright holder risks losing the opportunity to dispose of the creative achievements of a celebrity who has assigned the status of heir to such a person. And the purchase of such a right is usually too expensive for the buyer, since he plans to get his first profits when the hologram "goes on tour" and after the sale of tickets for such concerts.

Particularly interesting are the consequences of misappropriation of celebrity image rights. In particular, consider the exclusive copyright of a work. The risk of acquiring exclusive copyright property of a work from a non-owned person is the following:

The transferor (the author of the work, or the person who acquired the exclusive copyright

property of a work rights under the contract), before concluding the contract of transfer of rights with the acquirer, had already transferred the same amount of rights to the same work to another acquirer;

the transferor assured the contract that he was the sole author of the work, but after a while another person appeared who co-authored it and who did not transfer to the purchaser his rights to the work;

the transferor assured that he was the sole author of the work, but after a while another person appeared who co-authored and did not transfer to the purchaser his rights to the work;

the transferor transfers the rights to the acquirer to the works created in the official mode, but does not meet the clear criteria of official work, and the transfer of rights from employees to the employer is not properly designed;

the alienator ensured that the work was original and did not contain borrowing from other people's works, whereas it appeared that the work was not original enough because it consisted of unacceptably large parts of other people's works, which needed the permission of their rights holders.

In this case, it is necessary to provide for cases where borrowing image rights will also be misconduct and what sanctions can be applied to the offender.

Therefore, we may apply similar sanctions to exclusive copyrights for infringing the transfer of copyright to a work for image rights to use them in the hologram.

Those who decide to create a hologram and broadcast it at concerts should clearly determine on what basis they will use the songs and authorship of the deceased person whose image will form the basis of the hologram.

In the US, image right is used in an interesting way. This country is noteworthy illustration of different ways of applying this right in practice. For example, California has a huge number of celebrities. Thus, under California law, the right of publicity protects a person's name, voice, signature, photograph, or likeness up to seventy years after death. But, at the same time such states as Alaska, Arkansas, Colorado, Delaware, Idaho, Iowa, Kansas, Maine, Maryland, Mississippi, Montana, New York and other seven states don't recognize the right of publicity at all (Anson, 2014).

Regarding the recognition of image rights in Ukrainian law, it remains questionable. Instead,

there are personal non-proprietary rights that can be used in the hologram. These include images, personality, name, and more. However, personal non-property rights can be owned by every person, but only the person who makes a profit from his / her image owns the image rights. Such individuals earn through their popularity, which is inherent in image.

The evidence that a person can attest to the image rights he or she has used in the hologram is rather limited, so there are guarantees. That is why, in order to enforce the obligation to transfer image rights, it is necessary to develop in the contract all possible terms and penalties to "stimulate" the party to the contract.

But, will it be acceptable to conclude contracts for the transfer of their image rights to others? Such a procedure is appropriate in view of the change in generally accepted trends in commercial cooperation in the use of image.

If we could back in 2010, in the case of Proactive Sports Management Limited vs. Wayne Rooney 2010, the Court assessed the fairness of the contracts for the disposition of the rights that the football player had entered into at the dawn of his sports career. The court found inadmissible the conditions for granting the manager company the right to use the name and image of the football player and profit from such activity. However, he noted that in general, such contracts have become an acceptable form of commercial relations.

Also, the case law of the United States showed us a significant progress. In case "Rihanna Fenty vs. Topshop" (described above) Kitchin LJ advised that "an individual seeking to control the use of his or her image must rely on some other cause of action such a breach of contract, breach of confidence, infringement of copyright or, as Rihanna did, passing off". (Tomarov I. 2018) As was noted earlier, many countries have retained the right to own "image rights" even after death. Unfortunately, there is no unified opinion on the conditions for the transfer of such rights. Therefore, for example, the residence of a celebrity in a country or state in which "image rights" are protected gives his heirs privileges to prohibit the use of the image of the testator. Also important in some countries is: the potential commercial value of the image of the individual; whether image rights were registered by the person before death and even when the image of the deceased was last used.

In 2008, an interesting bill was introduced in the state of California, USA, which proposed a

settlement of the relationship between heirs of celebrities who died before January 1, 1985, and companies that used the image rights of such person without permission. According to this bill, these rules apply to Californians who have ownership of the deceased person's image rights and register the claim with the California Secretary of State. However, the rights-holder cannot recover damages for any use that occurs before registration.

Minnesota, for its part, created a bill called "Personal Rights in Names Can Endure" (or PRINCE) in 2016. According to its rules, image rights are licensed and do not expire after death for at least 50 years and remain until the right is terminated by proof of nonuse. (for a period of two years)

Right now, celebrities who want to protect their image rights after death register them in a will as part of their inheritance. The reverse may also be the case where a person does not want his / her image to be used after death - then he or she may make a warning against licensing in the will. There is also a third option, when the person in the will prescribes the scope of possible use of his image or vice versa prohibition of its use. For example, a celebrity might allow you to use your image in advertising, but not allow you to create a hologram and give tours with it. It is also important to register the rights granted to the heir. An example of effective protection of image rights through a will is singer Whitney Houston. One of the most important and least researched issues is the interaction of copyright and image rights, in particular when creating a hologram of a dead artist. It is better to consider this problematic issue by example. To create Tupac's hologram at Coachella's MF in California, the organizers needed to obtain a license for his music. Most likely AV Concepts obtained the rights from ASCAP for that, nothing too unusual there. However, the person who created this hologram using old videos and computer graphics now owns the copyright to it. The most unusual issue is that Tupac's image rights are protected and owned by his mother, so the organizers needed permission to create a hologram of Tupac's image.

Conclusion

Based on the collected and analyzed material on the topic of our research, we came to the following conclusions:

1. When creating a celebrity hologram, you must have permission to use not

only its image (photo) and audio, but also its image rights.

2. In Ukraine, there is no full-fledged analogue of the category of image rights by which celebrities could protect their interests. There is only partial protection for some of the rights involved: the right to a name, to an image (photo), to an audio playback, or to register name as a trademark.
3. Having considered and analyzed the experience of foreign countries (especially the USA) for Ukraine, it would be advisable to normatively establish the concepts and components of image rights and to allow celebrities to conclude treaties and covenants regarding it.

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