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## Protecting the Future of Marilyn's Past Bill Limiting Use of Images Would Affect Publicity Rights

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SACRAMENTO - The California Legislature wants to treat Marilyn Monroe like a piece of property.

More specifically, the Assembly and Senate have unanimously passed a bill that would define Monroe's name, voice, signature, image and likeness as property under the law so that her designated heirs would have the exclusive right to control and profit from them.

The governor was expected to either sign or reject the bill over the weekend.

### Postmortem Publicity

Under California law, celebrities can transfer their "postmortem publicity rights" by will, contract or trust to an heir of their choosing. However, federal courts in California and New York determined earlier this year that the law only applies to celebrities who died on or after Jan. 1, 1985, the date the law took effect.

Monroe died in 1962.

Monroe's heirs said the court decisions opened a gaping loophole that will allow anyone who wants to make a quick buck to plunder the legacies of Monroe and other entertainment icons to sell their shoddy products or services. In the months following the decisions, unauthorized sex oil and panties sporting the Monroe named have been reported.

Legislators want that to stop.

### 'Very Upset'

"All of a sudden, you saw all of these commercial things for sale with Marilyn Monroe's picture on it - and some of the things she would be very upset to have her picture on," said state Sen. Sheila Kuehl, a former child actress and author of legislation to reverse the courts' decisions.

"It is really important for people to have control of their own image, the thing they built up in their own lifetime, the thing that was theirs," said Kuehl, D-Santa Monica.

The bill, SB 771, would extend the law retroactively to the year 1915. It passed both the Assembly and Senate last month. Gov. Arnold Schwarzenegger - no stranger to celebrity himself - has until Sunday to decide whether to sign the bill. His office declined on Friday to say which way he was leaning.

"I imagine he would be sympathetic because he will be such a celebrity himself," said Kuehl, who starred in the 1960s television series "The Many Loves of Dobie Gillis."

Surjit Soni, a Pasadena attorney who represented the families of Milton H. Greene and Tom Kelly in the California case, said Schwarzenegger would do well to use his veto pen. As written, he said the bill would trigger a litany of lawsuits from families whose rights will be turned upside down by its poorly drafted provisions.

"For celebrities who die leaving a will, their families cannot receive the rights of publicity. That goes automatically to the residuary beneficiary," Soni said. "And if they don't leave a will, then it goes to the family."

This means Schwarzenegger would be prevented from using a will to transfer his publicity rights to family members, according to Soni.

Other bill opponents, including OneWest Publishing and the American Society of Media Photographers, have called the bill unconstitutionally restrictive and argue it will "open the door to hundreds of lawsuits against every photographer, gallery or publisher who has ever

worked within today's law."

The bill comes in response to two lawsuits, *The Milton H. Greene Archives Inc. v. CMG Worldwide, Inc.* and *Shaw Family Archives Ltd. v. CMG Worldwide Inc.* In both cases, Monroe's heirs sued to stop the licensing of products using pictures taken by three well-known photographers. The pictures included such images as Monroe standing over a subway grate in "The Seven Year Itch" and a shot of Monroe in the nude that was published in the first edition of *Playboy*.

The families of the late photographers said the images were copyrights and they had every right to license them. Monroe's heirs tried to block them, arguing California law gave them exclusive rights to license the late starlet's image. In the end, both courts decided the publicity rights did not exist at the time Monroe wrote her will and therefore could not be transferred through a will.

"The right of publicity in California as a property right was freshly created in 1985," Soni said. "Prior to that, the right of publicity was recognized as one of the elements of the right to privacy," which expires at the time of death.

In her will, Monroe asked acting coach and director Lee Strasberg to dispose of her estate. When he died, he left that responsibility to his widow, Anna Strasberg. She formed Marilyn Monroe LLC, which contracted with Indiana-based CMG Worldwide to license Monroe's image. Last year, Monroe earned the company \$8 million.

David Lee Strasberg, Anna Strasberg's son, said his mother has gone to great lengths over the years to manage Monroe's image in a careful and caring manner. Because Monroe has no living blood relatives, her image risks falling into the public domain without the legal protections afforded by SB 771, he said.

"We went in and got the Marilyn condoms off the market. We didn't feel that was appropriate for Marilyn's image," he recounted. "Even someone as luminous as she is will end up being useless if she is not protected."

In the wake of the rulings, Marilyn Monroe LLC hired two lobbyists, Wada Williams Law Group and Loeb & Loeb, to push a bill to close the loophole. The company has also tried to get legislation passed in New York, but so far without success.

Anthony Williams of Wada Williams said the Kuehl bill simply clarifies that it was the Legislature's original intent in 1985 to make publicity rights transferable for people who had died since 1915.

"The idea is that through their will they should be able to control what happens to their image," he said.

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