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The confluence of AI, intellectual property and estate planning: Preventing calamity

By **Daniel Nelson and Emma Chapple**

Law360 Canada (May 4, 2026, 2:19 PM EDT) -- If part one of this three-part series (see below for link) was the *amuse-bouche*, this second article is the main course — served with a side of existential dread and a garnish of legal ambiguity. Welcome to the confluence of artificial intelligence, digital replicas and personality rights, where estate planning gets delightfully thorny and occasionally surreal.

Daniel Nelson

Let’s start with the obvious: your client may die, but their face, voice and vibe might stubbornly persist — licensed, replicated and monetized in ways that would make even the most imaginative testator blink twice.

Digital replicas: The afterlife, now in high definition

The unions — think SAG-AFTRA and ACTRA — have not been idle while technology hurtles forward like a caffeinated greyhound. An entertainment lawyer will tell you that their position on digital replicas is, in a word, pragmatic.

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Emma Chapple

Consent given during a performer’s lifetime? It survives death, unless explicitly curtailed. No consent given? Then the estate representative steps into the breach, wielding authority over the deceased performer’s digital doppelgänger. No representative to be found? The union may step in and — brace yourself — likely grant permission anyway, complete with minimum compensation.

In other words, if your client doesn’t choreograph their posthumous digital existence, someone else will improvise it.

Which raises two deceptively simple questions for an estate lawyer:

- What instructions will your client give their representatives?

- And how, precisely, will you ensure those representatives can be located when needed?

Because nothing says "avoidable litigation" quite like a missing estate trustee and a production studio eager to resurrect a celebrity via pixels and code.

Personality rights: Your client's nose knows

Now we wade into the slightly more philosophical swamp of personality rights. These rights protect the commercial use of a person's distinctive characteristics — those ineffable qualities that make them recognizably them.

Canadian law has flirted with this concept in cases like *Krouse v. Chrysler Canada Ltd. et al.*, [1973] O.J. No. 2157 and *Athans v. Canadian Adventure Camps Ltd. et al.,* [1977] O.J. No. 2417. South of the border, *White v. Samsung Elecs. Am., Inc.*, 1992 U.S. App. LEXIS 17205 gave us a robot in a blond wig, and across the Atlantic, *Robyn Rihanna Fenty and Others v. Arcadia Group Brands Limited*, [2015] EWCA Civ 3 reminded retailers that celebrity cachet is not a free-for-all.

What counts as a "distinctive characteristic"? The list is delightfully idiosyncratic:

• A mole à la Cindy Crawford
• A voice as sonorous as James Earl Jones
• A silhouette as iconic as Marilyn Monroe standing over a New York City subway grate, with pleated skirt fluttering.

Use one of these without consent for commercial gain, and congratulations — you may have just wandered into the tort of misappropriation of personality. Not the sort of tort one wants to explain to a judge with a raised eyebrow.

Drafting like a time traveller

So, how do you protect personality rights in a world where technology evolves faster than case law can keep up?

1. First, pre-death licensing is your friend. If a client is comfortable with certain uses of their image or voice, document it — clearly, comprehensively and with enough foresight to make a futurist proud.
2. Second, give estate trustees explicit instructions. Vague sentiments like "use my likeness tastefully" are catnip for disputes. Be specific. Be prescriptive. Be, if necessary, slightly paranoid.
3. And then there's the classic catch-all phrase: "all media now known or hereafter devised." It sounds like boilerplate (because it is), but it's also your best hedge against whatever technological chimera emerges next.

If you doubt the stakes, consider *Lee v. Walt Disney Co.*, 1992 Cal. LEXIS 6172, where the battle over voice use in new media resulted in a tidy $2.3-million damages award. Not bad for a cautionary tale.

Ownership: The great unravelling

Here's where things get particularly knotty for an entertainment lawyer and an IP lawyer. Who actually owns the work?

- The studio?
- The recording company?
- The publisher?

And, more importantly, what rights did your client retain while alive?

This is not mere academic hair-splitting. Ownership dictates control, and control dictates who gets to say “yes” (and, crucially, “no”) after death.

Some clients care deeply about ownership — think Taylor Swift, who has waged a very public crusade for control over her masters. Others, like Justin Bieber, may be more sanguine, focusing on immediate returns rather than long-term dominion. Neither approach is inherently right or wrong. But it is your job as an estate lawyer, with input from an IP lawyer and an entertainment lawyer, to ensure the client understands the consequences of each.

And remember, today’s streaming rights are tomorrow’s AI training data. The uses of IP are expanding, not contracting. If your drafting horizon stops at Spotify, you’re already behind.

So, now what? A modest proposal for sanity

At this point, one might be tempted to pour a stiff drink and retreat to simpler legal terrain — conveyances, perhaps, or the comforting predictability of secured transactions. Resist the urge.

Instead, ask the hard questions:

- Are the assets held personally or through a corporation?
- Does the intellectual property have long-term value, or is it more ephemeral?
- What does the client actually want?

Because here’s the rub: creatives tend to focus on creation, not succession. Estate planning is often an afterthought — until it isn’t. And when it isn’t, the complications can be operatic:

- Transfers versus outright sales
- Bequests to heirs versus business partners
- Family dynamics that make Shakespearean drama look subdued
- Power struggles, competing interests and the occasional existential debate about “legacy.”

Ah yes, legacy — that most nebulous of concepts. Clients may want their image preserved in a particular light, while estate trustees are bound by fiduciary duties that may prioritize financial return over artistic purity. Cue dramatic music soundtrack.

The punchline (because there is one)

Preventing calamity in this confluence of IP, AI and personality rights is not about achieving perfect foresight — that way lies madness. It’s about reducing ambiguity, allocating authority and documenting intent with ruthless clarity.

Because if you don’t, the future will cheerfully make those decisions for you. And the future is full of unintended consequences.

This is part two of a three-part series. Read the first article: The confluence of AI, intellectual property and estate planning: What could go wrong?

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