

TUESDAY, MAY 15, 2012

LITIGATION

Tupac's 'performance' and copyright

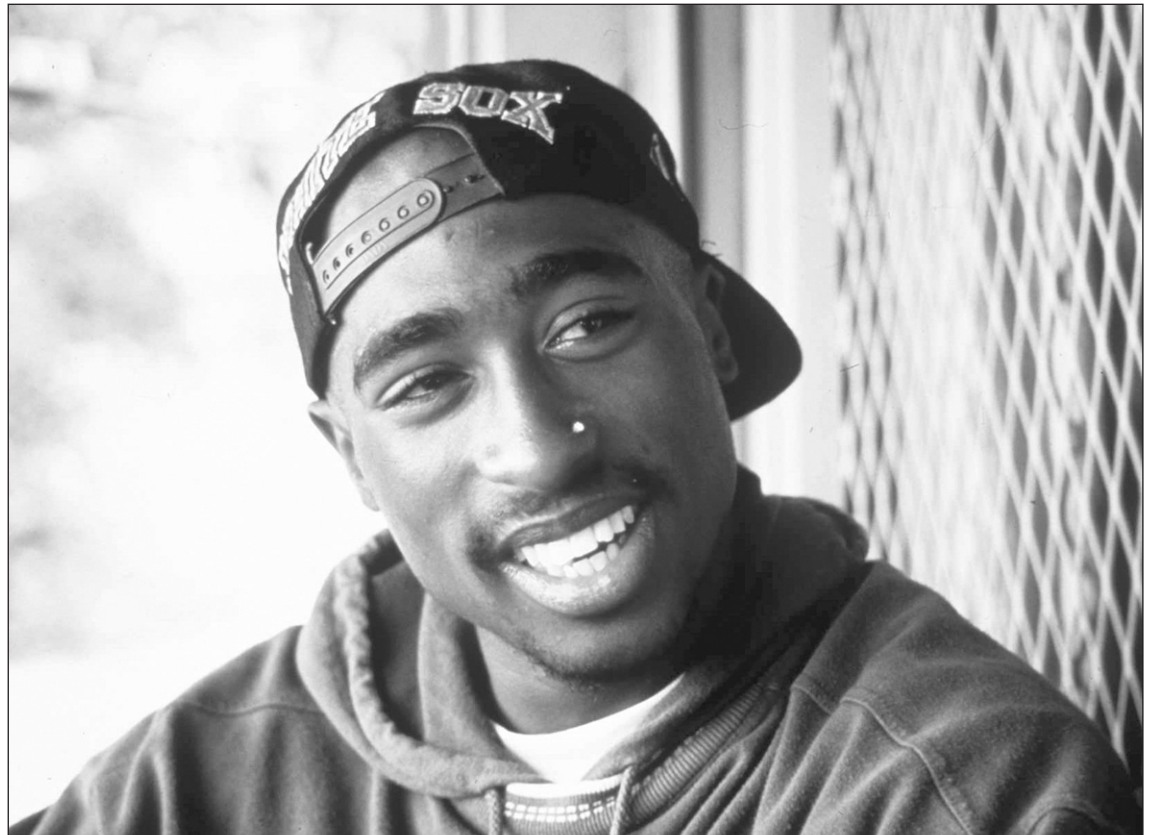
By Zia Modabber

When Tupac Shakur took the stage at Coachella last month, the ovations from the fans at the show were quickly followed by a spike in his catalog sales. The new use of hologram (sort of) audio-video technology in the live show was a huge hit, and is sure to be repeated at future live events. Not surprisingly, and certainly in the music business, with new technology we often see legal issues arise as intellectual property rights get exploited in new ways. Because this may be true in the aftermath of Tupac's appearance, a refresher at the intellectual property rights in play is warranted.

Just like a photographer who creates the lighting, scene, exposure and artistic elements of his or her shot, the "holographer" here created the way Tupac was digitally projected onto the stage.

On the Right of Publicity issue, a deceased celebrity's right to control the commercial exploitation of his or her name, voice, signature, photograph or likeness is protected pursuant to Civil Code Section 3344.1. Tupac's Estate reportedly granted a license permitting his "appearance" at the shows in exchange for a fee.

On the copyright side, with one exception the rights involved would appear to be virtually identical to those at issue if historical Tupac videos were displayed during the show. Master use licenses (assuming any master recordings were used) and synch licenses (permission to "synch" the underlying musical compositions to a visual image if DVDs of the show were sold) would be obtained for any use of recordings



Associated Press

Tupac Shakur shown in this 1993 file photo. Shakur died on Sept. 13, 1996, the victim of a drive-by shooting.

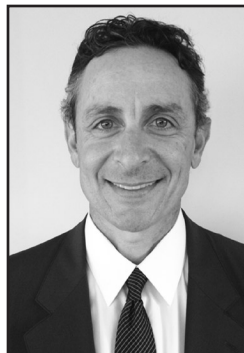
and musical compositions, with the proper copyright owners being paid per their agreements. ASCAP and BMI would handle payment of any "public performance" royalties due.

But what about a copyright for the creator of the holographic image itself? Just like a photographer who creates the lighting, scene, exposure and artistic elements of his or her shot, the "holographer" here created the way Tupac was digitally projected onto the stage. Using Copyright Act nomenclature, the holographer would be the "author" of that "work," entitled to control the exclusive rights enumerated under the Copyright Act. If the hologram was created under a "work for hire" agreement whereby the holographer is "employed" to create the work (a likely scenario), the employer would own the copyright. Whomever the owner, rights to this copyright would also have to be licensed to avoid a claim of infringement. Going back to our photographer, regardless of

any rights Tupac's Estate may have in the use of his name, voice and likeness in the hologram, a license from copyright owner of the hologram would also be required.

Transactional copyright and intellectual property practitioners will not likely find anything remarkable in putting together deals that include the holographic appearances of deceased celebrities. The component rights of the whole must still be identified and acquired. The instant appeal and

success of Tupac's Coachella appearance means that we are likely to see more of our performing artist icons cast into live performances. This will include those who have left us, as well as performing artists who for one reason or another no longer perform. As a result, there is a new group of "artists" and the copyrightable works these holographers create to be protected and accounted to — and given the reaction to their work in creating "Tupac," worthy of protection they are.



Zia Modabber is a partner at Katten Muchin Rosenman LLP and is Chair of Los Angeles Litigation. He can be reached at (310) 788-4627 or zia.modabber@kattenlaw.com.