

IP Battles To Ensue Following Michael Jackson's Death

The death of music legend Michael Jackson is almost certain to prompt years of legal wrangling over his intellectual property, experts said, including control of the rights to his own songs and the large back catalog of music he owns by artists including The Beatles, as well as the legal rights to his likeness.

"There are multiple complications, and hoards of lawyers will be trying to straighten this out for a number of years," said Roberta Jacobs-Meadway, a member of Eckert Seamans Cherin & Mellott LLC in its IP group.

While IP issues often arise with the death of any major celebrity, experts said Jackson's case would likely be complicated by the massive debt he left, estimated at \$400 million, and his family structure, including three young children, two ex-wives and a contentious relationship with his other family members.

The first clues as to the future of Jackson's IP will be found in his will, provided he left one. Donna Cole-Paul, a partner in the trusts and estates litigation division at Tully Rinckey PLLC, said that it was likely that Jackson willed the valuable copyrights to his music to a trust with his three children, ages 7 to 12, as beneficiaries, since copyrights can be left to descendants.

Such trusts would be shielded from creditors seeking payment of some of the millions Jackson owed when he died, Cole-Paul said. Based on early media reports, it's unclear if Jackson left a will, and his family members may still file objections to it.

"The key to all the questions tie into the documents, if the documents even exist," Cole-Paul said.

She added that she would find it hard to believe that the singer didn't have an estate planning attorney who took every possible step to keep his most valuable assets from being subject to disputes in probate court.

Far and away Jackson's most valuable assets are the rights to his own vast number of hit songs, along with thousands of other songs that he held an ownership stake in.

No matter what is in the singer's will, Roger Schechter, professor of law at George Washington University Law School, said that Jackson's dire financial condition could likely lead his creditors to make a strong effort to seek the liquidation of his copyright assets, possibly at an auction, to ensure their claims are paid.

"I think there's a significant chance that the empire will be broken up," Schechter said. "Given his debts, a lot of people are going to be coming in and making claims."

Another potential complication created by Jackson's death is the estate tax, Schechter added. For purposes of the tax, administrators of the singer's estate will want to lowball the value of

his copyright assets, but that could make it hinder the price they can fetch should they be sold down the line.

Should Jackson's copyrights get caught up in legal battles with his creditors or family members, it could make enforcement of those copyrights more difficult, by leaving it unclear to anyone who wants to license the copyrights with whom to negotiate, Jacobs-Meadway said.

"It means basically enforcement issues may be delayed while issues of who owns what rights get straightened out," she said.

Jim Gibson, faculty director of the IP Institute at the University of Richmond, noted that if Jackson willed his copyrights to his children, they would also inherit the "termination right" to any copyrights Jackson may have sold during his lifetime.

The right allows an artist or his heirs to regain control of any copyrights he sold once 35 years have passed from the sale date. So if Jackson sold the rights to any of his music, his children or other beneficiaries could conceivably get them back sometime in the future, Gibson said.

The publishing catalog of Jackson's own music is administered by a division of Warner Music Group, and is likely to increase in value due to increased interest in the singer upon his death. Jackson also owned a potentially more valuable share of Sony/ATV Music Publishing, a joint venture between Jackson and Sony that controls 750,000 songs, including nearly all of the works by The Beatles.

The Beatles themselves assigned the rights to their songs to a public company for tax purposes in 1965. The band's business partners sold the company four years later, depriving The Beatles of the rights. In 1984, the catalog was sold, and Jackson outbid Paul McCartney for it, paying nearly \$50 million.

Sony, Jackson's record label, paid him \$95 million for the rights to the catalog in 1995, forming the Sony/ATV 50-50 joint venture. Estimates of the company's current value range from \$600 million to \$2 billion.

While it is not yet clear what will happen to Jackson's stake in Sony/ATV now, a British tabloid cited anonymous sources in January as saying the singer had amended his will to leave The Beatles catalog to McCartney.

The two once collaborated on several songs, but their friendship ended when Jackson bought The Beatles rights, according to media reports.

If Jackson indeed left McCartney The Beatles catalog in his will, it would count as a specific gift, and McCartney could regain possession of the songs without any legal proceedings, Cole-Paul said.

If the fate of Jackson's Sony/ATV stake is not outlined in the will, Sony could conceivably seek to buy out Jackson's stake, Schechter said, though it's not clear the company would be inclined to pony up the huge price tag.

Other IP issues created by Jackson's death include the status of his right of publicity, which concerns the marketing of his image.

Jackson was a resident of California at the time of his death, and his heirs would benefit from that state's strong right of publicity, Jacobs-Meadway said.

The publicity rights to another deceased music legend, Elvis Presley, proved to be a valuable commodity, spawning a cottage industry of merchandise, tours of his Graceland estate and Elvis impersonators, some of whom his estate has control over.

The value of Jackson's right of publicity is less clear, Schechter said, since it doesn't present as many obvious marketing opportunities.

The trademark to Jackson's name is owned by a company he created called Triumph International, adding another wrinkle to the wealth of IP associated with the singer that could be the focus of legal debate.

Jackson had been the subject of numerous IP lawsuits throughout his career. Earlier this year, Jackson was hit with three separate suits over one of his iconic works, the 14-minute "Thriller" music video.

The director of the 1983 video, John Landis, sued Jackson in California state court in January, alleging that the singer had concealed profits from "Thriller" and failed to pay Landis 50 percent of the net profits from the video, as stipulated under the director's contract, for the past four years.

The same week, Landis filed another suit against Jackson and the Nederlander Organization, which had days earlier purchased the rights to make a Broadway musical based on the video and other songs on the "Thriller" album.

Landis' attorney said at the time the suit was filed that he might try to block production of the musical, arguing that Jackson did not have standing to sell the rights to a video directed by Landis.

Then in May, actress Ola Ray, who played Jackson's girlfriend in the video, also sued Jackson, alleging that she had not been paid the requisite royalties for her performance over the past decade. She claimed she received royalties through the Screen Actors Guild until 1998, when the payments began falling short of her contract.

Jacobs-Meadway said that if those suits named a company in addition to Jackson, his death would not impact whether the litigation can proceed. But if only the singer is a defendant, the suits could get tied up in probate.

Landis' suit names as a defendant a company called Optimum Productions, which was set up by Jackson to collect funds related to his works, and of which he was the sole shareholder. However, the suit describes the company as defunct and says it has been suspended by California's secretary of state.

In addition to his vast legacy of music copyrights, valuable trademark rights and right of publicity, the reach of Jackson's celebrity also extends into another facet of IP law. Though it isn't likely to generate any posthumous legal disputes, Jackson's estate holds a single patent, for an apparatus attached to the shoes and used to perform his "anti-gravity lean" dance move.

As seen in the video for the song "Smooth Criminal," the anti-gravity lean involves a dancer leaning forward beyond his center of gravity at a seemingly impossible angle. The effect was created by designing special shoes with ankle supports that fit into a slot on the floor of a stage.

The patent, for which Jackson is one of three named inventors, is U.S. Patent Number 5,255,452, issued in 1993 and titled "Method and means for creating anti-gravity illusion."