



Tupac Shakur Hologram at Coachella: Live Performances by Dead Superstars and the Intersection Between Law, Ethics and Marketing

*By William Genereux**

When the newspaper reporter called for my thoughts on the ethics of having Tupac Shakur appear onstage as a hologram at the Coachella Music Festival on April 15, 2012, in the California desert outside Los Angeles, I was surprised. First of all, it had been over 15 years since Tupac Shakur, the rapper, actor, record producer, poet, self-styled thug and activist, had died after being hit four times in a drive-by shooting in Las Vegas at age 25. And from a legal point of view I thought, this was simple: you get clearance from the Pac estate and the other rights holders, and it's a done deal. But the reporter pressed on. There was something bigger going on here. It was more than simply knowing whom to contact to clear the various rights. Tupac was a cultural icon. Potentially messing with his image and memory now that he was a dead cultural icon and a continuing hero to millions of music fans – that was a big deal.

My friend and client, Michelle McCulloch, better known as Michie Mee – a Canadian hip hop pioneer – had a different reaction: she was a bit creeped-out. Had Tupac lived on, likely he would have matured in his artistry, but we had frozen him in time. Sure enough, it was like he was standing right there on stage, giving a big shout-out to everyone at Coachella and stealing the show, yet, the Coachella Valley Music and Arts Festival, the three-day outdoor music event held every year by Anschutz Entertainment Group, a global presenter of live music and entertainment, did not even exist when Tupac died. I wanted to get to the bottom of this, to know more about the intersection between law, ethics and marketing.

One of the interesting threshold questions is “what constitutes a live performance?” After all, we live in an age where, for larger concerts anyway, most of the fans watch the show as it unfolds, on giant video screens. The performers are tiny specks on a stage too far away to be seen very well. A lot of pre-recorded backing tracks are used in the live performances, for beats, instruments and even vocals. This used to be a big deal where performers were criticized for faking it, but a new generation of fans doesn't seem to mind. They have grown up watching music videos and listening to music that is pitch-adjusted with software like Auto-Tune. More and more, it seems like the performance is the entire holistic experience of attending the show.

That being the case, it seems like a logical next step for Tupac and other dead performers to get back out on tour and start making money for big companies that produce live entertainment, as well as booking agents, merchandisers and venues. After all, live shows are a big part of the music industry these days.

The technology is not too complicated. To call the Tupac image a “hologram” is a bit of a misnomer. It was created by Hollywood special effects company, Digital Domain Media Group, using computer-generated imagery (CGI) based on old footage of the performer. The CGI imagery was then projected onto a large glass screen onstage. Glass is both transparent and reflective. Seen from straight ahead, the glass is not noticeable, but when the CGI image is projected onto it from the correct angle, magic is produced. In fact, the technique is called “Pepper’s Ghost,” based on an old illusionist’s trick. But hey, calling it a “hologram” is more fun.

For clearing the rights, of course, authorization is required from everyone who owns or controls them.

- There are copyrights in each of the original photographs or films that are used to make the new hologram. Using “machinima” computer graphic rendering engine techniques, the hologram is a new, derivative work, aggregating all of those rights with the new source codes written by the programmers. The owners of those pre-existing rights typically are the photographer, filmmaker, or the studio that hired them.
- There are separate copyrights in each of the songs that are being performed in the hologram. Synchronization licenses are required for the songs to be used in full or sampled. Perhaps, there would be new, updated songs that were arrangements of the original songs or entirely new songs composed that were derivative works. Those rights would be owned by the various composers’ music publishers.
- There are separate copyrights in each of the original sound recordings used in full or sampled, as well. Plus there would be separate copyrights in any new sound recordings, where the songs were re-instrumentalized, with the original vocals laid over top either in whole or as samples. Those rights would be owned by the various music production companies or record companies who made the sound recordings or had acquired the rights subsequently.
- As well, there are trademark rights for the performer's name and logos, and personality rights that live on after the death of the performer, that allow control over the commercial use of the performer's name, image, likeness, voice, and reputation. The trademarks likely would be owned by a holding company but they would overlap with the personality rights that likely would remain controlled by the performer's estate. These are all property rights that can be assigned or licensed under contract, and can be passed on to heirs on death, so they are still very much alive. Personality rights tend to vary from jurisdiction to jurisdiction, so a savvy hologram producer would make sure to get approval directly from the estate, as well as from all the other rights holders.

This legal terrain of synchronization licensing is already well-tracked within the realm of video games. However, adding a personality, whether live, dead or imagined, is the twist. More and more celebrities are “starring” in video games, but it is to be expected that their reputations are well-controlled. Wholly-imagined personalities are interesting because they are more likely to push boundaries. Hatsune Miku is a Japanese anime performer created entirely in CGI, using a singer-in-a-box software called Vocaloid. As a virtual idol, she has been performing at “live”

shows in Japan and abroad since about 2009, and of course, she also has had cameo roles in video games. However, for actual human beings, now deceased, it seems the consensus among fans is that special care is needed.

There was talk after the show about bringing Tupac on the road for a tour. Some people think it would be great to see Michael Jackson again in a live show; or Kurt Cobain, Elvis Presley, or Marilyn Monroe; or maybe the Beatles. Certainly Nat King Cole's estate already has dabbled in that kind of thing with his posthumous duet with his daughter Natalie Cole in the Grammy award winning track, "Unforgettable." But while somewhat tear-jerking, the ick-factor also remains quite high. Whether it is called respect, or savvy marketing where one must always be on the lookout for unintended backlash from fickle and opinionated fans, this brings us to the boundary between law and ethics.

As we know, law and ethics are two different things. The law is what we are required to do. Ethics is something higher. It is what we ought to do, even if we are not required to do it. It strikes me, for example, that there would be a clear ethical issue if whoever controlled the rights for a dead performer was willing to grant them in a manner where control was given up, and the deceased performer was made to do things he or she arguably never would have done; such as endorsing a commercial product or a political cause; dressing up in funny costume; rehearsing in public; speaking in a foreign language that had never been spoken; doing something out of character such as cussing or perhaps, not cussing; being made to look old or infirm when he or she had died young; or maybe being made out as too soft and accessible when he or she had been much more hardcore, or hardcore when he or she had been kind of soft. Ethical issues boil down to: is this true to the memory of the deceased? Is it a re-writing or a dumbing-down of history?

The deal might be completely papered-up and "legal" but would it be ethical? This is not normally something that lawyers get involved with. Clients and in-house counsel want to know they have the necessary grant of rights. Ethics is often left to the marketing department, as in, whether the production or the usage will be favorably- received by the public, or on the other hand opened to criticism, censure and backlash. I see these issues therefore also as marketing questions – potentially expensive ones.

Fans can be pretty cruel, right or wrong. YouTube has been burning-up with comments from fans since the Coachella performance by Tupac. A typical example is posted by TheJayrok127, on YouTube (reader discretion advised):

This is completely disrespectful.. 2pac was in the middle of a lawsuit with Death Row Records when he died. He put it out that Dre and Snoop were some fake ass wangsters. At the end of To Live and Die in L.A. Pac says "California love part mothafuckin 2, without gay ass Dre" y u think Dre didn't perform love with Pac? But they got pac sayin whatsup dre?? The illuminati odd tryinna change history.. Much like they've done before (sic)

Tupac is said to have stolen the show at Coachella in terms of getting a lot of attention in the mainstream media and on Twitter and other sites. It was creepy maybe; but profitable, no doubt, at least in the short run. Time will tell if that holds true for the future, as his brand is adjusted in the public's eye.

Tupac's official website has a prominent link for how to get a hold of his management company for merchandising and other licensing enquiries. There is also a comments section for fans to leave a note with their thoughts on his hologram performance. Oddly, the only button available there to click, is "like." That's too bad. I'm with TheJayrok127 on this one.

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