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IMAGE-USE LAWS COULD BENEFIT WILLIAMS FAMILY

DEAD CELEBRITIES' IMAGES LIVE

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The feathery grace and twinkling charm are unmistakably those of Fred Astaire, but his dancing partner is a surprise - a Dirt Devil vacuum cleaner. So is the realization that this prance across the living room floor occurred a decade after the legendary hooper's death.

Commercials featuring Astaire, John Wayne, and other dead legends are a recent phenomenon, fueled by technology and a growing body of law still bubbling in the state courts: the protection of celebrity images after their deaths. Florida, where Red Sox legend Ted Williams died, gives the heirs of celebrities up to 40 years of legal protection for stars' images. A few other states go further. Most, including Massachusetts and New York, have no special protections, but legal specialists say they are probably obliged to respect the rights granted in other states. Neither John-Henry Williams nor Claudia Williams, children of the baseball hall-of-famer by his third wife, has said Ted Williams's image will be available for advertising or souvenirs.

But if the prospect of Williams selling hot dogs seems distasteful to some, for his heirs it could translate to a substantial windfall. Specialists estimate that Williams's designated beneficiaries could rake in between \$500,000 and \$1 million per year from licensing fees, in addition to the sales of existing memorabilia already controlled by John-Henry Williams.

Although living celebrities have been paid for their endorsements for many years, the idea that the families of dead celebrities deserved compensation did not take hold until about 20 years ago. Licensing specialist **Mark Roesler** was among those who lobbied intensely for laws protecting celebrity images. "It's a property right that personalities and their designees have, and it's a valuable property right," said Roesler, whose clients include the estates of Elvis Presley, Babe Ruth, and Lou Gehrig.

Today, those estates, along with hundreds of others, ranging from Marilyn Monroe to James Dean, take in tens of millions of dollars every year from licensing. In this world, Elvis Presley is still the king: His image accounts for \$35 million in advertising and memorabilia per year, according to Forbes magazine.

Advances in technology are partly responsible for the industry surrounding dead celebrities. Thanks to relatively new morphing techniques, it's now possible to use all sorts of old footage in previously unimagined ways. Thus, Astaire can twirl a vacuum around the room. Last year, footage of Martin Luther King Jr. and Lou Gehrig was digitized and used in ads for a telecom company.

Proponents of laws protecting celebrity images argue that if anyone is going to profit financially from the celebrities' names, it should be the heirs. "If you build a brick-and-mortar business, a store of some type, no one thinks twice about you being able to pass that on to your kids," said Scott Whiteleather, a California-based intellectual property lawyer.

In addition to the economic factors, specialists said, celebrities' family members might have emotional reasons for wanting control over images. For example, someone might not want to see a deceased spouse or parent in a cigarette ad. "It's not just about commercial concerns," said Jonathan Faber, a colleague of Roesler's. "It's about the control that the heirs have."

Of course, not everyone is happy with the way celebrities are used in death. King's family, for one, came under attack after allowing his "I Have A Dream" speech to be used in a campaign for the telecom Alcatel. In California, Joe DiMaggio's brother initially fought with lawyer Morris Engelberg - trustee of DiMaggio's estate - about whether to allow San Francisco to name a park after the baseball legend.

Florida, where Williams resided, is a national leader in granting 40 years for stars' heirs to control their images. Indiana, where Roesler is headquartered, protects people's images for up to 100 years after their death. Other states, however, have gone in the opposite direction, holding that a person's ability to control his public image is a personal right, not a property right, and cannot be passed down. But even in those states, federal trademark law can prevent merchandisers from using celebrities' names without permission. As a practical matter, many merchandisers who plan to do any wide-scale business will end up negotiating a licensing agreement regardless of where the celebrity lived. "That there are many states where these laws can be enforced can put a damper on . . . anybody who wants to do anything nationwide," said New York intellectual property lawyer Vincent Palladino.

Added Whiteleather, "Most reputable manufacturers would prefer to have the endorsement of the estate."

In Williams's case, his estate could take in at least a half-million dollars each year in souvenirs, estimated Roesler. In addition, his heirs might get a half-million more each year in product endorsements - although this is less certain. "Who is Ted Williams as a myth relevant for?" said marketing consultant Michael Markowitz, who is based in New Mexico.

"He stopped playing an awfully long time ago," said Markowitz, referring to his 1960 retirement as a player and that Williams's mystique is more of a New England phenomenon than a national one.

Still, a half-million a year for memorabilia is not exactly small change for Williams's two younger children, John-Henry and Claudia. All money will apparently go to them since his oldest daughter, Bobby-Jo Williams Ferrell, was disinherited and does not plan to fight the will, according to her attorney John Heer. "I'm sure she knows there's a pot out there," said Heer. "But that's not what she's interested in at all."