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Federal Lawsuit Targets NIL in Connection with Artificial Intelligence

In late December The New York Times Company filed a complaint against Microsoft Corporation and OpenAI in connection with the defendants' generative artificial intelligence (AI) technology. The lawsuit has received massive coverage in the media, but Microsoft and OpenAI are not the only companies being sued for its development or use of generative AI. In January 2024, the estate of deceased comedian George Carlin filed suit against Dudesy LLC and a group of individual content creators alleging that the defendants violated both copyright law and the right of publicity under both California statute and common law.

Who are the parties?

George Carlin was a renowned comedian whose penchant for irreverence earned a massive audience. He died in 2008, but nearly a decade later, he still was ranked by *Rolling Stone* as the second all-time greatest comedian, attesting to the legacy he left behind. He appeared in a total of 14 comedy specials on HBO, published six books, and released nearly two dozen albums during his life, often commenting on politics, the English language, psychology, and religion.

The lawsuit was brought by the executor of the Carlin Estate, Jerrold Hamza, and his company Main Sequence, Ltd. Hamza was also Carlin's long-time manager.

Dudesy LLC operates a website and produces a podcast hosted by the website. The two principal named defendants include an actor/comedian and a writer who together host a podcast premised on the notion that the podcast is controlled by an artificial intelligence called Dudesy AI.

What is the lawsuit about?

In 2024, the co-defendants released a podcast episode entitled “George Carlin Resurrected,” followed by an hour-long video called “George Carlin: I’m Glad I’m Dead (2024) – Full Special.” The video special was posted on YouTube, where it remains as of today. Viewers of the comedy special were told that the Dudesy AI was given 50 years of Carlin’s standup routines and was then prompted to generate new material, which then appeared in the video special.

Carlin’s estate sued shortly thereafter, alleging those routines were protected by copyright and belonged to the Carlin Estate. The complaint alleged violations of federal copyright law and publicity rights under California statute and common law.

What is going on in the case now?

After the lawsuit made national headlines, a spokesperson for the defendants claimed in an interview with the *New York Times* that the “Dudesy AI” is not actually artificial intelligence and that one of the human co-defendants instead wrote the “I’m Glad I’m Dead” special in its entirety. It remains to be seen whether those statements will make their way into court filings. As of the publishing of this article, the defendants have not filed an answer in this case.

Even if true, the fact that a co-defendant wrote the special himself will not likely defeat this complaint in its entirety. Plaintiff also presents a claim not at issue in the previous AI lawsuits (such as the aforementioned *New York Times* lawsuit against OpenAI): the generation of a Carlin sound-alike voice. Although defendant’s spokesperson claimed AI did not write the material, there was no comment as to whether the Carlin sound-alike voice was AI-generated. In the podcast episode, the co-defendants discussed back and forth how similar the voice is to the late George Carlin, calling it “passable,” “exactly like,” and “very close.” Even so, the mere sound of a person’s voice cannot be the subject of a copyright or trademark. The complaint therefore includes name, image, and likeness (NIL) claims in the form of deprivation of right of publicity under California Civil Code § 3344.1 and violation of rights of publicity under California common law.

In the seminal case *Bette Midler v. Ford Motor Co.*, the Ninth Circuit held “when a distinctive voice of a professional singer is widely known and is deliberately imitated in order to sell a product, the sellers have appropriated what is not theirs and have committed a tort in California.” 849 F.2d 460. Here, Carlin’s estate has alleged the defendants used his NIL to gain traffic to their Dudesy podcast.

The complaint asks the court not only to force the defendants to take down the video and refrain from using the plaintiff’s copyrighted works to generate future content, but also to give the plaintiff all the profits the defendants obtained from the podcast and video in addition to statutory damages under copyright law, special damages arising from reputational harm, exemplary and punitive damages, and the plaintiff’s attorneys’ fees.

With this complaint being filed only just a few weeks ago, the lawsuit is still in the early stages. While there is existing law to pull from, the body of law surrounding artificial intelligence is in its infancy and the court will be forced to grapple with how to apply NIL and copyright laws to new technology.