

Laughing in the Face of Copyright: The Unsettling Case of AI-Generated Comedy and Digital Immortality

February 7, 2024
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George Carlin had quite the career. His seven dirty words routine was the centerpiece of litigation about the government's power to censor indecent material on the airwaves that went up to the Supreme Court. He won awards for his comedy specials and albums (full disclosure: *Jammin' in New York* is a personal favorite). He appeared in movies like *The Prince of Tides*, *Bill & Ted's Excellent Adventure*, *Cars* (where he voiced Fillmore), and was the conductor on *Shining Time Station*. Carlin passed away in 2008, and he is now at the center of a new lawsuit raising questions about whether AI should be used to "resurrect" deceased artists, who controls the legacy of deceased artists, and who can profit from their "resurrection."

On January 9, 2024, Dudesy LLC ("Dudesy") released an hour-long video entitled "George Carlin: I'm Glad I'm Dead (2024)". The introductory voiceover explained that Dudesy, using some type of AI, fed George Carlin's standup routines into the training database for the AI; the AI was then used to create the video. The introductory voice further stated, "I listened to all of George Carlin's material and did my best to imitate his voice, cadence, and attitude, as well as the subject matter I think would have interested him today."

The video quickly made the rounds on social media. By January 25, Carlin's estate, which had nothing to do with the video, filed suit against Dudesy and the individuals associated with the making of the video. The lawsuit, filed in federal district court in Los Angeles, asserts three claims: violation of the common law right of publicity, violation of the statutory right of publicity, and copyright infringement. The first two claims are based on the unauthorized use of Carlin's name, voice, and likeness in the video. The third claim is based on the copying allegedly occurring when Carlin's standup routines were fed into the AI to create the video.

The lawsuit claims that Dudesy saw the video as a profit center, not just a way to make people laugh. Dudesy promoted the video with social media posts providing links to its online store and Patreon page from which subscribers can purchase monthly subscriptions. And a YouTube channel associated with Dudesy that posted videos relating to the hour-long special with the same hyperlinks and advertisements. Further, in anticipation of a likely claim that the video was a "fair use," the lawsuit alleges that the video "has no comedic or creative value absent its self-proclaimed connection with George Carlin. It does not, for example, satirize Carlin as a performer or offer an independent critique of society."

In the wake of the filing of the lawsuit, Dudesy now claims that the video was not written by AI but instead by Chad Kultgen. Mr. Kultgen, together with Will Sasso, hosts the Dudesy podcast—a podcast that was used to promote the video. If it is true that a human wrote the script for the video, that might negate the copyright infringement claim insofar as it relates to the use of AI, but it still leaves Dudesy facing the California right of publicity claims for their efforts to "resurrect" George Carlin. The question of who, if anyone, has the right to "resurrect" a performer or personality depends on state law; slightly less than half of the states recognize a post-mortem right of publicity.

The case neatly crystallizes the issues surrounding AI as it impacts the legacies of performers and other celebrities and touches on similar issues that were at the core of last year's Hollywood strikes.

Thirty years after it came out, the movie *Jurassic Park* remains prescient. And Dr. Malcom's indictment of John Hammond and InGen applies with equal force to the burgeoning use of AI: "your scientists were so preoccupied with whether or not they could that they didn't stop to think if they should."

If you need to talk with someone about whether or not you should, contact me or one of my intellectual property colleagues at Offit Kurman.