

2019

## The History and Evolution of the Market for 'Delebs' (Dead Celebrities)

Denver D'Rozario  
loyola1977@hotmail.com

GUANG YANG  
University of Lynchburg, yang\_g@lynchburg.edu

Follow this and additional works at: <https://digitalcommons.kennesaw.edu/amj>



Part of the Advertising and Promotion Management Commons, Arts Management Commons, Business and Corporate Communications Commons, Communication Commons, E-Commerce Commons, Fashion Business Commons, Marketing Commons, Operations and Supply Chain Management Commons, Other Business Commons, and the Sales and Merchandising Commons

---

### Recommended Citation

D'Rozario, Denver and YANG, GUANG (2019) "The History and Evolution of the Market for 'Delebs' (Dead Celebrities)," *Atlantic Marketing Journal*: Vol. 8 : No. 1 , Article 8.

Available at: <https://digitalcommons.kennesaw.edu/amj/vol8/iss1/8>

This Article is brought to you for free and open access by DigitalCommons@Kennesaw State University. It has been accepted for inclusion in Atlantic Marketing Journal by an authorized editor of DigitalCommons@Kennesaw State University. For more information, please contact [digitalcommons@kennesaw.edu](mailto:digitalcommons@kennesaw.edu).

---

## The History and Evolution of the Market for 'Delebs' (Dead Celebrities)

Cover Page Footnote

REVISE and Resubmit

# The History and Evolution of the Market for ‘Delebs’ (Dead Celebrities)

Denver D’Rozario, Howard University  
ddrozario@howard.edu

Guang Yang, University of Lynchburg  
yang\_g@lynchburg.edu

**Abstract** - In this paper, we survey the history behind the growing market for dead celebrities (‘Delebs’) in their role of creating secondary brand associations. According to some estimates, this market is now worth \$2.25 billion in annual licensing and royalty revenues (CBC, 2013). We begin, by defining key terms that are used in this market. Next, we do a survey and analysis of the major events that have given rise (intentionally or unintentionally) to this market. For ease of discussion, we discuss these historical events grouped by era. We follow this with a summary of the major events and trends that have shaped and are still shaping this burgeoning market. Finally, we conclude with a synopsis of some of the major implications (for marketers and other Deleb stake-holders) that we have picked up from our survey of this market and suggest some future directions that this market might take.

**Key Words** – Dead Celebrities, Delebs, Evolution, History, Market, Time-line.

## Overview

Dead celebrities (‘Delebs’) are a large and growing market. According to some estimates, it generates \$2,250,000,000 annually in licensing and royalty revenues (CBC, 2013; Kirsta, 2012). This market is growing, due to the efforts of the heirs/estates of Delebs, assisted by creative and aggressive licensing agents (Ware, 2007), driven by the lure of significant licensing and royalty revenues (Cook, 2005). Delebs are put to many uses, including as product endorsers in advertising (Davidson, 2013), as entertainers in live shows (AP, 2014) and as actors in movies (Brott, Craig and Friedman, 2004). One indication of the earning-power of Delebs is Forbes’ annual ranking of the “top-earning dead celebrities”, started in 2001. In 2014-2015 for example, the top earning Deleb was Michael Jackson, with revenues of \$115 million (Greenburg, 2015).

To understand this market, we do the following in this paper. First, we define key terms used in this market. Next, we do a survey of the major events, in chronological order, that have given rise to this market. These events include legal rulings, technological innovations and developments in the Advertising,

Entertainment, Marketing and Rights Representation industries (RRI). For ease of discussion, we discuss these historical events grouped by era. We follow this with a summary of the major trends that have shaped and are still shaping this burgeoning market. Finally, we conclude with a synopsis of some of the major implications that we have picked up from our survey of this market and suggest some future directions that this market might take.

## **Introduction**

### ***Definitions***

We use the term *celebrity*, as defined by McCracken (1989, p. 310), to refer to “any individual who enjoys public recognition”. We use the term ‘Celeb’ to refer to any celebrity, who is biologically alive, but who may or may not be actively receiving “public recognition”. We use the term ‘Deleb’ to refer to a ***dead celebrity***. S/he is biologically dead, but his/her distinctive appearance, gestures, image, likeness, mannerisms, name, photograph, signature, voice and works can continue to be used posthumously for various purposes.

### ***Data Sources and Methodology***

The primary sources we drew upon for this paper include, but are not restricted to the following: the academic literature (e.g., peer-reviewed journals, conference papers and monographs), the popular press (e.g., newspapers, magazines, books), the trade literature (e.g., trade magazines, trade newsletters and trade bulletins), the legal literature and archival sources, among others.

### ***Background***

For the reader interested in other topics pertaining to Delebs, we recommend the following: (a) for theory pertaining to Delebs, see D’Rozario (2016b), (b) for similarities and differences between Celebs and Delebs, see D’Rozario (2013) and D’Rozario and Bryant (2013), (c) for an analysis of key factors that make some Delebs succeed and others to fail, see D’Rozario (2017), (d) for an analysis of the many uses that Delebs are put to, see D’Rozario (2016a), (e) for an analysis of ethical issues pertaining to Deleb use, see D’Rozario and Bryant (2013, 2011) and D’Rozario, Petty, Taylor and Bryant (2007), (f) for an elaborate treatment of the legal issues pertaining to Deleb use, see Petty and D’Rozario (2009, 2007). Finally, we do not review the literature on endorsements and testimonials, because that is not the focus of this paper. Excellent reviews of the same exist elsewhere (Erdogan, 1999). In this paper, our focus is on the history behind the growing market for ‘Delebs’, in their role of creating secondary brand associations.

## Historical Developments Leading to Deleb Rights

In this section, we discuss events grouped loosely into several eras/time-periods, delineated from each other by one or more distinct, major event(s). Within each era, we first discuss the major event(s) that launched that era and then we discuss other related events.

### *The Dark Ages (The ‘Antebellum’ Era) - prior to 1885.*

We begin, by going back to some of the earliest recorded evidence of endorsements and testimonials used in Advertising, because they gave rise first to the demand for the use of Celebs and later for the use of Delebs. This practice of endorsing products and offering testimonials in advertisements actually began with common people. It then expanded to Celebrities and eventually brought in their dead counterparts much later, as our review will show. Much of this dates from the period before the Civil War, hence we named this period the ‘Antebellum’ era.

Segrave (2005) reports that as early as 1666, a charlatan named ‘Valentine Greatrakes’ was offering his readers testimonials from “several Eminent and Worthy Persons”, of Greatrakes’ ability to cure people just by laying his hands on them (see figure 1). This was an age of rampant gullibility on the part of the consuming public, when they did not have the widespread access to education, the mass-media and the internet that we have today and medical science was just in its infancy.

For much of the next two centuries, this gullibility of the consuming public and their exploitation by unscrupulous marketers continued. By the mid-1700s, the earliest product endorsements began to appear. Certain “Elixirs”, that claimed to cure everything, were sold in small bottles, that carried the “crest of the King”, because they had been granted “a patent of royal favor” by the English crown. Hence was born the term, “patent medicine”. It did not mean that there was a registered patent on the ingredients or formula being sold (Goodrum and Dalrymple 1990). One must also remember, that at this point in time, the English crown still ruled the colony. On the other side of the Atlantic, an equal degree of gullibility ruled the day. For example in 1770, the London *Chronicle* published an Ad containing an endorsement by ‘Mary Graham’, who testified to the healing power of ‘Dr. Rysseeg’s Balsamic Tincture’ (Segrave, 2005).

In this same period, technological changes were also taking place that would make it easier for the images of celebrities to be used in commerce. Braudy (1986) reports that in the 1760s, the engraving and printing trades expanded their (technical and production) capabilities greatly, with a major part of their output being the reproduction of portraits (using ‘appropriated’ images) of famous people, for use in medallions and other types of ceramic-ware and housewares. The

production of Josiah Wedgwood in this period is a case in point.

Circa 1826, Nicéphore Niépce took a photograph and created the world's first known permanent photograph (Hirsch, 2000), setting the stage for later developments that would make it easy for anyone to take a photograph. Photographs would go a long way towards making celebrity worship possible. As we all know from that famous saying, "Seeing is believing".

By the mid-1800's, the trend towards using famous faces in commerce had only expanded, with images and endorsements by members of the U.S. Senate now being used alongside those of European royalty. A prime example was the 'patent medicine' sold by P.T. Barnum, a showman and huckster like none other in his day, employing the names and images of these famous people. (Goodrum and Dalrymple, 1990).

### ***The Darkness Lifts and the Age of Reason and Visual Reorientation Dawn - 1885 to 1900***

As the nineteenth century came to a close, two great period effects took place. First, the era of gullibility and darkness finally receded and the era of logic, reason and the rule of law finally dawned. Second, and simultaneously, a major cultural shift took place in America, as the newly-reconstructing nation went from a "word-based to an image-based society" (Madow, 1993, p. 159). We explain both of these major period effects next.

Up to the turn of the century, most people, including the most prominent, could not be visually recognized by people other than those with whom they commonly associated (e.g., friends, neighbors). On the contrary, most people, including the most prominent were known to others "largely through their words or their deeds, rather than through their images" (Madow, 1993, p. 159). This was especially true of how people were described and characterized in the media. Mostly words were used to describe people, since pictures and images were hard to create and reproduce via the media available at the time, which were mostly print-based. Further, even the available print-based media were hamstrung by many problems, including raw-material shortages and shortcomings in the technology used to print (Goodrum & Dalrymple, 1990). But, by the late 1800s, several technological innovations made image capture and re-production not only possible and easy, but within the reach of the average person. These innovations brought about what Harris (1990) called a "visual reorientation" of society, that may have rivaled the Gutenberg Revolution. We review some of these innovations next.

First, in July 1888, George Eastman introduced his 'Kodak' camera and in so doing, made photography easy and affordable to the mass market. This meant that

everyone, including celebrities, were beginning to come into contact with someone who had a camera. This was bound to create conflict, as we shall soon see.

In the late 1800s, the engraving and printing trades made further advances in technical and production capabilities that had a profound impact on the public's appetite for (living) celebrities (and later Delebs as well). New engraving techniques (especially the "half-tone" process) were developed that enabled "newspapers and magazines for the first time to reproduce instantaneous photographs of people ..." (Madow, 1993, p. 158). New printing techniques were also developed. For example, chromolithography was perfected, making possible for the first time, "a new kind of *visual* (i.e., image-based) advertising" (Madow 1993, p. 157). As a result, a new type of journalistic style emerged, comprised of "genuinely pictorial or illustrated 'personalities'" (Madow, 1993, p. 158). At the same time, advertisers went "on a binge of image appropriation, ransacking..." images of "illustrious persons, both living and dead" (Madow, 1993, p. 157).

Interestingly, in this same period, ('newly-minted') celebrities (as opposed to established celebrities, used earlier) from the world of entertainment (e.g., actors, singers) began to be used for product endorsements (Goodrum & Dalrymple, 1990). Many were made with the permission of these celebrities, but many were also made without their permission, as we see next.

The year 1890 in particular, saw two significant events, that signaled that the 'rule-of-the-jungle' was about to end. The first event was a direct challenge to an unspoken assumption that had been in force from the dawn of civilization, up to that point in time. In the view of some historians (e.g., Neil Harris, 1985), this unspoken assumption was that famous people are "a species of common property whose commodity exploitation required little control".

This significant, first event, transpired when Marion Manola, a comic opera star appearing in a production of *Castles in the Air*, in New York City, refused to allow herself to be photographed in her costume (i.e., tights) for later use in a poster advertising the show. Her production manager however disregarded her wishes and had a photographer take a picture of her during a performance of the show. Manola then sought and obtained an *ex parte* injunction against the use of that image in a poster advertisement (N.Y. Times, 1890). This event signaled three major departures from past practice. First, celebrities were beginning to realize that they and their images were not the automatic property of anyone, other than themselves. Second, these celebrities were beginning to assert and fight for their rights. Third, the courts (e.g., the court that granted Manola her *ex parte* injunction) were beginning to realize and sympathize with this logic.

The second major event that took place in 1890 was the publication of an

influential article in the *Harvard Law Review*. Looking around them at the time, Samuel Dennis Warren and Louis Dembitz Brandeis, two great legal minds of their day, were appalled at the gossiping classes (e.g., a curious public, an intrusive press) and their exploding, lurid interest in the lives of celebrities. They were also worried about the pernicious nature of the unfolding technology, referred to earlier, but especially about the possible intrusiveness of ‘instantaneous’ photography, that was now in the hands of the masses. They were deeply concerned how all of this might inevitably ‘invade’ the life of anyone, with or without their permission. Consequently, they wrote an article for the *Harvard Law Review*, wherein they established the concept of a ‘right to privacy’. Their article was eponymously titled, ‘The Right to Privacy’. This concept held that any individual has the “right to be let alone” and not have the state or any other party invade his/her privacy. This concept was novel at the time, because America was just coming out of the ‘dark ages’, where only a privileged few had rights and no one had the still unknown, ‘right to privacy’.

The very next year, in 1891, a well-known English doctor, filed a lawsuit in New York against ‘Soden Mineral Pastilles’, an American manufacturer of purported remedies for throat ailments. The defendant alleged that the plaintiff used an unauthorized, spurious testimonial claiming to be from him, along with a facsimile of his signature, to sell its throat remedies. The defendant claimed damage to his reputation and income, as well as an infringement of his sole right to the use of his name. Notwithstanding the fact that in his native England, he would have not prevailed, the New York court granted a preliminary injunction against the plaintiff, without offering any explanation or citing any precedent. This case showed that yet again, at least in the US, and in New York more specifically, the courts were beginning to be sympathetic towards those whose right of privacy was violated (*Mackenzie v. Soden Mineral Springs Co.*, 1891).

The trend towards passing a statutory law recognizing a person’s right to privacy gained steam when a law was proposed in 1895, in an editorial in a legal magazine (Case & Comment, 1895), that sought to criminalize the unauthorized use of a person’s image in advertising.

Some social commentators went even further, in stipulating that even people, such as actors, who actively sought out the limelight, as part of their profession, had the right to privacy, when their day’s work was done. For example, John Gilmer Speed wrote in 1896 that,

“It needs no citation from law or reason to establish the rule that the habit indulged in by so many actors of thrusting their portraits before the public, and filling the columns of daily newspapers with the most intimate as well as most trivial of their private affairs, does not take away from any member of the profession *the right to be let alone* when the curtain which hides his



assumed character from the world is drawn close.” (italics inserted)

However, the passage of any such statutory law (i.e., enacted by a legislature), or its recognition in the common law (i.e., by the courts) was far from a done deal. A case in point was a decision reached by the Michigan Supreme Court in 1899, in *Atkinson v. John E. Doherty & Co.* In this case, the plaintiff Lyda Atkinson, was the widow of Colonel John Atkinson, a “well-known lawyer and politician” (p. 372). She sought an injunction from the Circuit Court against the defendant, the John E. Doherty & Company, a cigar manufacturer, to restrain them from using her husband’s name and likeness on the labels of a brand of cigars that it advertised as “John Atkinson Cigars”. The injunction was denied, whereupon the plaintiff appealed to the Michigan Supreme Court. This case was significant for many reasons. First, the Michigan Supreme Court refused to acknowledge that a person had the exclusive right to the use of his/her name and that a person’s name could therefore be used in commerce without his/her permission, as long as it was not libelous. The court, in citing Warren and Brandeis’ ‘Right to Privacy’, said that this was “a proposition of modern origin” (p. 374) and though there was much public sentiment, at the time, being expressed in its favor, it wasn’t sufficiently established in the (case) law for it to be acted upon. In effect, the court was saying that Michigan did not recognize a ‘right to privacy’. Second, the court pointed out that this was not a property right (which were protected), but it was a personal right and such personal rights when infringed upon were indeed morally reprehensible, but they were not legally protected at that time. Third, the court pointed out that “Col. John Atkinson would himself be remediless, were he alive” (p. 373), implying that since he was dead it was even more clear that he would have no ‘remedy’. In essence, Delebs did not have rights.

### ***The Communications Revolution begins and Celebrity begins to be Broadcasted’ - Early 1900s.***

As the 1900s rolled in, Neil Harris’ (1990) “Visual Reorientation”, noted earlier, had laid the foundation for what Daniel J. Boorstin termed a “Graphic Revolution”, that was underway (Madow, 1993). Chief among the factors driving this revolution was the introduction of motion pictures, as well as the later introduction of radio broadcasting. These two new technologies of mass-communication helped de-link the pre-existing connection between fame and greatness of achievement. Up to that point in time, people usually became famous by doing something great. Now, suddenly people could become famous simply by having some striking physical characteristic (e.g., beauty) that could be broadcasted to mass audiences (Madow, 1993). Next, we review these technologies, as well as other significant developments of this period.

The young nation, fresh from re-building from a civil-war and having just

‘visually re-oriented’, as noted earlier, looked for fresh faces to adore and new celebrities to see and worship. Lo and behold, there was a nascent industry looking for just such eager new customers. It was called the ‘movie industry’, silent at first, but full of images of ‘new celebrities’ (actors and actresses). What was more, these images were moving and they told a story. They were called ‘motion pictures’, they debuted shortly after 1900 and soon became very popular (Madow, 1993).

At the same time as these technological developments were underway, there was a simultaneous shift in cultural attitudes towards actors and entertainers. Among the younger social set, there was a growing rebellion against the prudishness and formality of the Victorian-era, which was rapidly coming to an end (McArthur, 1984). One aspect of the Victorian mind-set was that it was fine to admire entertainers from a distance, but they were not welcome in polite society (Madow, 1993). Consequently, among the rebelling socialites of the younger generation, entertainers become prized social companions and dinner guests (McArthur, 1984). Not surprisingly, this choice was reflected in the advertising of the day, as entertainers such as these supplanted European royalty in advertising (Goodrum and Dalrymple, 1990).

The year 1902 marked a turning point in the fight for the ‘right of privacy’ for the common man. Abigail M. Roberson sued the Rochester Folding Box Company (*Roberson v. Rochester Folding Box Co.*, 1902) for the unauthorized use of her likeness on about 25,000 lithographic prints used to advertise the sale of bags of flour in saloons, stores and warehouses. She claimed severe physical and emotional distress from a jeering public and suffered nervous shock and had to be confined to bed. She therefore sought damages and an injunction against further use of her image by Franklin Mills (the flour manufacturer). The trial court ruled in favor of Ms. Roberson and Franklin Mills appealed. The New York Court of Appeals however rejected Ms. Roberson’s claim. The Appellate court’s decision shocked the conscience of the nation, because Abigail was a minor at the time and there was much public concern in New York at that time about the use of child labor. This case provided the first real test in court of the need for a right that protected any individual from the unauthorized use of his/her name and image.

Shocked and embarrassed by the significant public disapproval of this decision, the very next year, the New York state legislature took up the challenge issued by the court and responded with a statute that prohibited the “use of name, portrait, picture or voice of a living person for advertising or purposes of trade without written consent” (N.Y. Civ. Rights Law §§ 50-52; Case & Comment, 1903, underscores inserted). The statute established significant civil and criminal penalties for those who breached it. However, as per this statute, dead people were left out in the cold and were still fair game for commercial exploitation.

Courts in other states were however more sympathetic towards an individual's right of privacy. In 1905, the Supreme Court of Georgia, in *Pavesich v. New England Life Insurance Co.*, ruled in favor of the plaintiff Paola Pavesich, an artist, whose photograph was used, without his authorization, in an advertisement falsely claiming that he had taken out a life insurance policy with the defendant. The court ruled that this was an invasion of the plaintiff's privacy. In so doing, Georgia started a judicial trend that was soon followed by courts in other states.

In this same year, 1905, an unknown patent-examiner named Albert Einstein published a paper on the 'photoelectric effect', for which he was later (in 1921) awarded the Nobel prize in physics (Inman, 2009). The discovery of the photoelectric effect, whereby light is converted to an electric charge, laid the foundation for the (much later) invention of digital photography. Digital imagery, was the foundation upon which Delebs were later resurrected, from the grave.

In the meantime, on the legal side, courts in other states were soon following Georgia's example and in some cases building upon it. The following are just a few of the more well-known examples. In 1907, a New Jersey court (*Edison v. Edison Polyform Manufacturing*) forbid the unauthorized use of a person's name and image to sell a product and in so doing, it added an economic argument to the 'right of privacy'. The court held that a person's name and image was his/her personal 'property' and only s/he has a right to own and profit from it. In so doing, this case was a significant advancement upon rulings of the time, because it was "perhaps the earliest judicial statement of the view that the interest infringed by unauthorized appropriation of a *public figure's* identity is *economic*" (Madow, 1993, p. 156), rather than just being merely an invasion of a person's privacy or an assault on a person's dignity. Also in 1907, a federal court, in the eastern district of Pennsylvania (*Von Thodorovich v. Franz Josef Beneficial Association*), found that the unauthorized use of a person's name &/or image was 'passing off' and ruled it as illegal (Petty, 2013). In brief, the plaintiff alleged that the defendant, used the name and portrait of the reigning Austro-Hungarian emperor to attract people of Austro-Hungarian descent in the US, so that it could sell its insurance policies to them under the (false) pretense that it was doing so under the "special patronage" and "imperial sanction and concern" of the emperor. The court agreed with the plaintiff and enjoined the defendant from further doing so. This was another legally significant nuance made by a (federal) court upon the basic 'right of privacy'. In 1909, a Kentucky court ruled in favor of Senator J. P. Chinn (*Foster-Milburn Co. v. Chinn*), a prominent politician and awarded him sizeable damages, after he sued the maker of Doan's kidney pills for the unauthorized use of his name, picture and false testimonial, in an advertisement by the defendant.

Also in 1909, Guglielmo Marconi and Karl Ferdinand Braun were awarded

the Nobel prize in Physics, for their earlier development of wireless telegraphy, which laid the foundation for later radio transmissions and broadcasts. Also in 1909, the first private radio broadcasts began in the US (Greb and Adams, 2003). But, it would not be until the early 1920s, as discussed later, that nationwide radio broadcasts would begin and add more steam to the communications revolution underway, which in turn facilitated celebrity worship.

***The Rise of the ‘Manufactured’ Star and Celebrities become product endorsers - 1910 to 1927.***

As the first decade of the twentieth century came to a close, a ‘star system’ began to develop in Hollywood (Madow, 1993) that would add more fuel to the fire of celebrity worship. Since there are conflicting, unresolved accounts of how and why this system came into being, in the interest of brevity, we refer the reader to a good discussion of the same elsewhere (see Madow, 1993).

Whereas historically, actors, entertainers and athletes were socially marginalized, in the decades prior to World War I (WWI), their social standing began to improve. This was due in part to at least two reasons. The first reason was a greater acceptance of these celebrities by the younger socialites, as discussed earlier. The second reason was the greater attention that began to be lavished on them by the popular press interested in “their lives, doings, and views” (p. 226). Not coincidentally in 1911, the first fan magazine appeared, to feed the voracious appetite of a public curious about the lives and loves of the rising class of Hollywood ‘stars’ (Madow, 1993).

As the nation turned its attention overseas, to fight in WWI, these celebrities began to be accepted even by the establishment in Washington. This was partly because Hollywood stars were enlisted to help with the war effort, for example to help sell war bonds (Schickel, 1985).

After WWI ended, the acceptance of these entertainment and sports celebrities by the elites in society and its institutions only accelerated, as they mingled frequently in the glamorous ‘café society’ of the 1920s (Erenberg, 1981). Concurrent with this acceptance, these celebrities soon began to appear in all kinds of product testimonials. This practice was led by the J. Walter Thompson advertising agency (Madow, 1993) and soon it became widespread (Segrave, 2005). Not coincidentally, the use of ‘experts’ for product endorsements in advertisements also emerged as a practice in this period (Segrave, 2005). Interestingly, a business article in this period even discussed this ongoing trend, which favored the use of ‘famous’ and ‘society’ people as product endorsers over the earlier use of ordinary people (Segrave, 2005).

### ***The Law Begins to Wake up to Celebrity Rights - 1928 to 1952.***

With celebrities being used for product endorsements and testimonials, it did not take long for celebrity personas to be appropriated for other uses, but without their prior permission. One such case arose in 1928, when actor Charles ('Charlie') Chaplin sued a celebrity imitator, Charles Amador, who starred in motion pictures as 'Charlie Aplan', portraying a character imitating Chaplin's "Little Tramp" character. The California appellate court found that the commercial use in movies of the character created by and associated with Charlie Chaplin, was indeed misappropriated by Amador (*Chaplin v. Amador*, 1928). This case is significant because a court had for the first time not only recognized the broader concept of a celebrity's 'persona', but it had also recognized that it had commercial value that needed to be protected. In contrast with the 1907 court decisions, discussed earlier, what was being protected here went beyond just the celebrity's name. What was being proscribed in this case were: (a) the imitation of a name through use of similar-sounding names, and (b) the appropriation of a 'character' (i.e., the 'Little Tramp') developed by a celebrity, albeit on-screen.

By the late 1920s, the product endorsement had strongly re-established itself as an important tool that was used extensively by the advertising industry (Segrave, 2005). This was an important trend, because it was one of the key drivers of the commercial value of celebrity personas. It would lead to many celebrities turning to the courts to seek redress when their personas were used (for endorsements) without appropriate, prior authorization by the celebrity.

One such case was *Hanna Manufacturing Co. v. Hillerich & Bradsby Co.* Hillerich was a sports goods manufacturing company who had contracted with several famous baseball players for the 'exclusive' right to use their names, autographs and photographs on baseball bats and in their advertising. Hanna, another sports goods manufacturing company did not have any such contract with the players in question but made baseball bats with the players' names on them. So, Hillerich sued Hanna in Federal district court to enjoin them from continuing to do so. The court ruled in favor of Hillerich. Hanna appealed and in 1935, the appellate court reversed the lower court's decision on property grounds, but allowed a modified decision to stand on the grounds of unfair competition. This decision is important because it represented an early test of a celebrity's ability to convert his 'fame' into a transferable personal property right. This test succeeded initially, in a lower (district) court, but failed in a higher (appellate) court, because it conflicted with the earlier and still prevailing conception of fame as a 'public good'.

Beginning in the 1940s, celebrity power saw another increase. The earlier practice at the time was for Hollywood stars to be bound by whatever product endorsement deal their studio employers had in place. But now, Hollywood stars who

had very strong bargaining power with their studios began to wrest control from them over the use of their images (Gaines, 1991). This was yet another factor that led to the fight (in the courts) over who had the right to exclusively use celebrity images commercially, as we will shortly see.

However, as late as 1941, courts in many jurisdictions were still generally less sympathetic to 'Rights to Privacy' claims made by celebrities. The prevailing judicial wisdom was that since celebrities sought out fame and publicity, they were not damaged when their images were used commercially without their permission (*O'Brien v. Pabst Sales*, 1941).

Beginning in the 1950s, the Hollywood studio system began to decline and Hollywood stars wrested even more control of their images from the studios (Gaines, 1991).

### ***Dead Celebrity Rights are Recognized - 1953 to 1976.***

In a landmark decision in 1953, Judge Jerome Frank coined the term 'right of publicity'. While determining which of two chewing gum companies had the right to use the image of a baseball player on their trading cards, he stated: "[I]n addition to and independent of that right of privacy... a man has a right in the publicity value of his photograph, i.e., the right to grant the exclusive privilege of publishing his picture ... This right might be called a 'right of publicity'" (*Haelan Labs, Inc. v. Topps Chewing Gum, Inc.*, 1953). This decision was also the first to hold that the right of publicity could be transferred by contract (i.e., it is a property right, not a personal right).

This *Haelan* decision was highlighted the following year by Melville Nimmer, a legal counsel at Paramount Pictures (Madow, 1993), in an influential law review article, titled "The Right of Publicity" (see Nimmer, 1954). This same year however, a New York court decided that the right of publicity was not 'Descendible' (i.e., it does not survive the death of an individual), because in New York the statute only granted rights to "living persons" (*Schumann v. Loew's Inc.*, 1954). Furthermore, as per the *Roberson* decision it was held that there was no common law right of publicity in New York.

Five years later, in 1959, a California court also ruled that the right of publicity was not descendible (*James v. Screen Gems, Inc.*, 1959).

In 1969, Willard Boyle and George E. Smith invented the 'Charge-coupled device' (CCD), that allowed the conversion of a photoelectric charge into a readable (digital) value, thereby making possible the invention of digital photography (Inman, 2009). As we later see, digital images helped bring Delebs back to life, in print and on movie and TV screens.

A year later, in 1970, Robotics researcher Masahiro Mori coined the term ‘uncanny valley’ and theorized that humans could be ‘turned off’ by artificial imitations of the human form and motion if these imitations did not accurately represent them (Mori, 1970). Overcoming this ‘valley’ has been and continues to be a challenge for Deleb animators, as we will later see.

By the mid 1970s, athletes began to dominate the product endorsement business (Segrave, 2005), that had earlier been dominated by other types of celebrities, especially those from Hollywood. This is important because many court battles for celebrity image rights were now being fought on behalf of athletes, as we saw earlier.

### ***‘Uncle Sam’ wakes up to Dead Celebrity Rights - 1977 to 1980.***

It was not until 1977 that the U.S. Supreme Court finally addressed the right of publicity in a case where a “human cannonball’ circus act was broadcast in its entirety as part of the television news, despite the performer’s request not to do so. The nation’s highest Court acknowledged Ohio’s recognition of the right of publicity and viewed it as having the same aim and rationale as patent and copyright protection. It further held that this right was misappropriated by the television station, notwithstanding First Amendment protection of news broadcasts (*Zacchini v. Scripps-Howard Broadcasting Co.*, 1977).

A year later, in 1978, a California-based attorney, Roger Richman, set up an eponymous celebrity licensing and marketing agency. Mr. Richman had originally intended for his agency to represent living celebrities, as was the (unquestioned) custom at the time (Glaister, 2005). This event was important because this agency would later become a trailblazer in pioneering the still unknown practice of representing dead celebrities.

In May of 1979, the estate of actor W. C. Fields contacted Richman and wanted him to sue unlicensed merchandisers of the Deleb. Richman turned them down, noting that as per prevailing ‘Right of Publicity’ laws, heirs of Delebs had no rights (Brott, Craig and Friedman, 2004).

At about the same time, in 1979, Bela Lugosi, Jr. was suing Universal Studios for the rights to the exclusive use of his father, actor Bela Lugosi, Sr.’s image (*Lugosi v. Universal Pictures*, 1979). He lost that battle when the California Supreme court ruled, on December 3, 1979, that the rights to Lugosi, Sr.’s images from the movies made by Universal belonged exclusively to Universal. The court also ruled that Lugosi, Sr.’s family could not control the rights to Lugosi’s image outside of those that were featured in the movies. This was because, as per existing California law at the time, the right of publicity was not descendible. However, the court noted that if

Lugosi Sr. had sold his own image for commercial purposes during his lifetime, his likeness could be considered a common law trademark and since common law trademarks are private property, it could be passed down to his heirs (Brott, Craig and Friedman, 2004).

This 'loophole' in the 80-page court decision was noted by Richman (Carlson, 2004). In the absence of clearly defined property rights for heirs of Delebs, this loophole was the next best thing he could have hoped for (Glionna, 1997). He realized that this new interpretation of the law could give him a new line of business, namely representing families of Delebs, if he could first find proof that the Celeb licensed his/her image while alive. So, Richman "ran out to the Rose Bowl swap meet and bought up all the old magazines" he could find and therein he saw that W. C. Fields had "pitched everything from hairbrushes to whiskey" (p. 95). So, he called up Field's heirs and took on their account (Brott, Craig and Friedman, 2004). Thus was born the first Deleb rights representation agency. Soon, heirs of other Delebs were seeking him out, because other agencies did not see opportunity in their causes (Carlson, 2004, Glionna, 1997).

### ***'Descendibility' is recognized and a Deleb is used in a TV commercial - 1981 to 1983.***

Soon thereafter, in 1981, another trail-blazing attorney, Mr. Mark Roesler set up a Deleb rights representation agency, the Curtis Management Group (CMG), in Indianapolis. Roesler's first interaction with licensing and copyrights came in the late 70s when his then father-in-law, the owner of the Saturday Evening Post, gave him the task of protecting the copyrights to the Norman Rockwell magazine covers, which he did. This work eventually caught the attention of Priscilla Presley, who hired him to develop a marketing strategy for Elvis's estate. After successfully doing so, his next client became Deleb James Dean. Soon, the heirs and estates of Marilyn Monroe, Humphrey Bogart and Princess Diana, among others, were seeking him out (Hass, 2003).

In a landmark decision, in April 1981, the Federal District Court of New Jersey announced that NJ common law would recognize the 'descendibility' clause in the Right of Publicity (*Estate of Elvis Presley v. Russen*, 1981), making it the first state in the U.S. to do so. It was also in 1981 that a Deleb was used, albeit via a look-alike, for the first time in a TV commercial (Goldman, 1994). Ad Agency Lord, Geller, Federico & Einstein used Chaplin look-alike, actor Billy Scudder, to mime his 'Little Tramp' character for IBM PCs (Zientara, 1984).

2-D 'Morphing' was developed in 1982. Now, a digital image could be metamorphosed (hence the term 'morphing') into a different digital image, in 2-dimensional space (Doyle, 2000). This technique would later be used extensively in



Deleb re-animation in movies and commercials.

***California Leads the Way for Dead Celebrities and the term 'Deleb' is coined - 1984 to 1990.***

In landmark legislation in 1984, the California legislature, prodded among others by Richman, passed the 'California Celebrity Rights Act', which forbade the unauthorized use of a celebrity's image, including the name, voice, signature, photograph or likeness without the permission of the family for 50 years after the celebrity's death (Glionna, 1997). Until that point in time, all state statutory laws held that right of publicity was a personal right, not a property right and therefore was not descendible (Hass, 2003). Soon, other states would follow, with similar legislation. However, till today, no such legislation exists at the Federal level (Hass, 2003).

Also in 1984, the term 'Deleb' was coined, as a shortened form for '**De**ad **celebrity**' (D'Rozario, 1984). This term is now used widely by practitioners (see e.g., Roberts, 2008; Kroft, Devine and MacDonald, 2009). In this same year, the estate of Babe Ruth trademarked his name and litigated against its misuse (Towle, 2003). This event embodied the prevailing uncertainty over whether 'Right of publicity' laws would stand up in court and so estates of Delebs resorted to other means of legal protection.

The next year, in 1985, 3D animation was used for the first time in a music video for the Dire Straits song "Money for Nothing" (Doyle, 2000). 'Morphing' was also used for the first time, in a music video, "Cry", by British Band Godley and Creme (Doyle, 2000). Also in 1985, CGI pioneer *Industrial Light & Magic* (ILM) created the first completely computer-generated character, the 'Stained Glass Man', in 'Young Sherlock Holmes' (McBride, 2009). All of these techniques would later be used in Deleb animation efforts.

Two years later, in 1987, Fred Astaire died and left a carefully crafted will in which he stipulated how his image should be used in the future (Astaire, 1998). This event marked the first time that a Celeb had thought ahead enough to expend the time and effort on leaving clear instructions to his heirs/estate as to how he wished to be treated as a Deleb.

The Trademark Law Revision Act was enacted (15 USC § 1025(a)) in 1988, providing yet another legal basis for Celebs and Delebs (through their heirs and estates) to challenge the unauthorized use of their names and likenesses in commerce and entertainment.

A major event took place in the 'Rights Representation Industry' (RRI) in 1989. Digital image licensing company *Corbis* was launched by Bill Gates, because

he felt that “this is a major category that they had to be in” (Cook, 2005). This event is significant because it marked the entry of a well-financed, big competitor into an industry heretofore marked by small operators. Bigger, well-financed firms meant more resources (e.g., more lawyers) to go after the image-infringers.

***First time that Delebs ‘schmooze’ together with a Celeb in a TV commercial - 1991 to 1993.***

For the first time, in 1991, archival imagery of Delebs was used alongside a Celeb, in a TV commercial (Goldman, 1994). Advertising agency Lintas took select archival footage of Delebs Louis Armstrong, Humphrey Bogart and James Cagney from various movies and using various established and state-of-the-art techniques combined them with footage of Celeb Elton John, live background actors and a foreground hostess, to create a lively bar-scene, where diet Coke was seen being consumed by all three Delebs and the Celeb (Isaak, 1991).

The next year, in 1992, Delebs were again used, but this time in what some (e.g., Sweney, 2013) claim is the world’s first CGI TV commercial with a Celeb. Again, Lintas took select archival footage of Delebs of Gene Kelly, Cary Grant and Groucho Marx from various movies and using advanced techniques, seamlessly combined them with footage of Celeb Paula Abdul dancing, to create a lively bar-scene with Abdul and all three Delebs (Elliott, 1992; Gellene, 1997).

The next year, in 1993, an Oscar was awarded to *Industrial Light & Magic* for its work using computer graphics (CG) to portray human skin in ‘Death Becomes Her’ (McBride, 2009). This event is significant because it is another significant (CGI) step taken towards overcoming Mori’s (1970) ‘uncanny valley’, discussed earlier. Also in 1993, CGI innovator and pioneer *Digital Domain* (DD) was founded (Verrier and Keegan, 2012). As we will shortly see, DD soon established a name for itself, as a special effects (CGI) pioneer, not only in the entertainment industry but also in the field of Deleb animation.

***‘Morphed’ Delebs appear on TV - 1994 to late 1990s.***

The first known use of ‘morphing’ in a TV commercial was in 1994. Advertising agency ‘The Arnell Group’, used digital ‘morphing’ to change model Carol Bouquet into (Deleb) Marilyn Monroe (using archival imagery) and back again to herself in an Ad for Chanel No. 5. (Elliott, 1994). This was the first time that digital ‘morphing’ was used with the image of a Deleb.

Also in 1994, Ad agency Young and Rubicam created a Black and White TV commercial for *Kentucky Fried Chicken* (KFC), in which they used actor Henderson Forsythe to dress up and talk like KFC founder Colonel Harland Sanders. The Ad was poorly executed and “was roundly criticized for defaming the dead” (Naughton

and Vlastic, 1998, p. 63). This event was significant because it served as an example to the entire (Deleb animation) industry as to how a Deleb (through poorly-executed animation) could indeed fall deep into Mori's (1970) 'uncanny valley'.

The next year, in 1995, digital image licensing agency *Getty Images* is founded by Mark Getty and Jonathan Klein (Cook, 2008). It soon became the second major competitor in the industry and a rival to *Corbis*. Also, in 1995, in 'Batman Forever', a computer-generated double performs stunts for actor Val Kilmer (McBride, 2009). This event is significant because it is yet another big (CGI) step taken towards overcoming Mori's (1970) 'uncanny valley'.

1997 was the year in which Deleb Fred Astaire danced in a hugely successful TV commercial for the Dirt Devil vacuum cleaner. Contrary to criticism of the 1992 Diet Coke commercial, in which some critics (Lippert, 1992) felt that Paula Abdul "seemed a bit stiff next to Cary Grant", in this commercial Astaire danced seamlessly with the Dirt-Devil, to illustrate how easy it was to use. The Ad was hugely popular, with 62% of Super Bowl viewers remembering having seen it, "only surpassed by Miss Piggy and Baked Lays in brand recall" (Bloomberg, 1997). This event was significant for several reasons: (a) Deleb animation had finally realistically approached Mori's (1970) uncanny valley, (b) Delebs were now entertaining mass audiences (via Superbowl broadcasts), and (c) Delebs were memorably good, a fact not lost on the Ad industry.

Also in 1997, Deleb Ed Sullivan introduced the M-Class sport utility vehicle in a TV commercial for Mercedes-Benz. This ad was created by "technicians at Digital Domain ... (who) ... animated (Ed) Sullivan's jaw so it appears that he is introducing the Mercedes M-Class sport utility vehicle...In addition, graphic artists altered Sullivan's appearance slightly from the original television clips, removing side-burns and smoothing wrinkles so that images from different programs would look alike". This event was significant because it marked the first time a commercial was created by (digitally) altering the actual image of a Deleb. Sullivan's voice was created by an "impressionist" (Gellene, 1997, p. D4).

Finally, in 1997, in the movie 'Titanic', the ship was filled with CGI characters created by Digital Domain. However, few close-ups are shown of these characters (McBride, 2009). This event is significant because one key test of whether Mori's 'uncanny valley' has been crossed is whether a realistic CGI-generated human-face can be shown in close-up (CU). Apparently, the field of CG was not there yet.

### ***California gets in on the (Dead Celebrity) Act again - 1999 to 2011.***

Pressured by Hollywood, in 1999, the California Legislature broadened the scope of its 1984 act and adopted the 'Astaire Celebrity Image Protection Act', which

among other provisions, extended the right of publicity from 50 to 70 years after the death of a celebrity (Connolly, 2008).

Also in 1999, voice ‘morphing’ technology was developed at Los Alamos National Laboratory (Arkin, 1999). This was a significant step taken towards eliminating the need for ‘voice-impersonators’, as was done in the Ed-Sullivan Mercedes commercial. Now, it was technically possible to actually use old audio recordings of a person, to create ‘new’ lines spoken by that person (dead or alive), with or without his/her permission. Finally, also in 1999, in the movie ‘The Mummy’, ILM used CGI to create “layers of muscles, sinew and tissue” to create “the most realistic digital human character seen in film”, up to that point in time (McBride, 2009, p. R4). Yet another major (CGI) step was taken towards crossing Mori’s (1970) ‘uncanny valley’.

The next year, in 2000, in the movie ‘Hollow man’, Sony Image-works used CGI to create a digital copy of actor Kevin Bacon and then “layer by layer strips away its skin, muscle and bone” (McBride, 2009, p. R4). This again is another significant (CGI) step taken towards crossing Mori’s (1970) ‘uncanny valley’.

Realizing the significance of Deleb earning power, in 2001, *Forbes* magazine launched its annual ranking of the “top-earning dead celebrities” (Fong and Lau, 2001). This event meant that the market for Delebs was now significant enough to be reported (by *Forbes*) on an annual basis. Also, in 2001, AT&T introduced its revolutionary text-to-speech (TTS) software which allowed the digital audio of any person to be manipulated. It allowed digital text to be converted into audible speech via a two stage process (Goldman, 2001). Anyone who contemplated making a Deleb speak before but couldn’t, now had a new, powerful tool at their disposal.

The first known use of an animated Deleb in a movie, took place in 2004, when a morphed image of Deleb Laurence Olivier played Dr. Totenkopf in the science-fiction movie ‘Sky Captain and the World of Tomorrow’ (Brott, Craig and Friedman, 2004). Also in 2004, in the movie “Lemony Snicket’s A Series of Unfortunate Events”, baby ‘Sunny’ is the first CGI-based human character ever to be shown in (ECU) extreme closeup (McBride, 2009). As stated earlier, this is one key test of whether Mori’s ‘uncanny valley’ has been crossed. Many believed this valley had now been crossed. This assumption is being empirically tested by the present author. In December 2004, *Corbis* acquired *Zefa*, the third-largest stock photography firm in the world, in addition to other key acquisitions (Verrier, 2005). The digital image licensing industry was consolidating and at least some of its major competitors were getting bigger.

In a precedent-setting move, in February 2005, daughter Lisa Marie reportedly sold an 85% stake in the Presley estate to Robert F. X. Sillerman’s

entertainment/marketing company *CKX* for \$100 million. Sillerman had plans to build a Las Vegas based, Elvis-themed casino/hotel (Glaister, 2005). This event is significant because it was the start of a trend in the Deleb market, whereby the heirs/estates of Delebs sell out to well-financed entertainment/marketing companies.

In a move that portended the future consolidation of the Rights Representation Industry, in April 2005, the pioneering Roger Richman Agency was sold to Corbis for an “undisclosed amount” (Verrier, 2005), putting *Corbis* “neck and neck with Getty Images” in the image-licensing industry (Saucedo, 2005). Also in 2005, in yet another sign that indicated the growing significance of the Deleb market, *Marketing Evaluations*, the company that offers Q scores of living Celebs, began to offer ‘Dead Q’ scores to assess the popularity of Delebs (Friedman, 2005).

A signal of the growing maturity of the Deleb market occurred in 2006. Deleb Audrey Hepburn danced in skinny pants, in a scene taken from the movie ‘Funny face’ and modified for a TV commercial for ‘Gap’. Although the commercial was technically well-executed and loved by many, it was pilloried by Ad critics for craven exploitation of the dead (Glaister, 2006). Also in 2006, Muhammad Ali, the ageing, but still living (at the time) celebrity, sold a majority (80%) interest in his image and naming rights to *CKX* for \$50 million (Bryceson, 2006), continuing the trend started by Lisa-Marie Presley, but this time the ‘sellout’ was by a Celeb.

Another animated Deleb fell down Mori’s (1970) uncanny valley in 2007, when Ad agency Crispin, Porter & Bogusky created a TV Commercial for *Orville Redenbacher* that featured the company’s eponymous Deleb founder. The Deleb was poorly animated, resulting in a “dead-eyed zombie” that was criticized by many (Garfield 2007). Like the earlier KFC colonel, this advertising debacle proved that even with all the technology available, unwary advertisers could still fall deep into Mori’s (1970) ‘uncanny valley’. Also in 2007, Deleb Kurt Cobain was shown in a zombie-like pose in a print Ad for Doc Martens footwear. The Ad was criticized as craven exploitation of the dead (Pfanner, 2007). Finally, in 2007, in the movie ‘Beowulf’, a cast of characters is based on real-life actors and actresses. However, “many viewers think the characters seem flat” (McBride, 2009, p. R4). This example proved that even tech-savvy and special-effects-savvy Hollywood can sometimes fall into Mori’s (1970) ‘uncanny valley’, if they are not careful.

The movie ‘The Curious Case of Benjamin Button’ aired in 2008, broke new ground on many technological fronts and was critically-acclaimed (McBride, 2009). Of particular relevance to Deleb animators was the fact that a CGI version of Brad Pitt as an older man (created by Digital Domain), was used “for almost an entire hour of the movie” (McBride, 2009, p. R4). This might be the first example to have clearly crossed Mori’s (1970) ‘uncanny valley’. Also in 2008, industry leader *Getty Images* (Glaister, 2005), was bought out by the private equity firm Hellman &

Friedman, for \$2.1 billion (Cook, 2008). This indicates the potential profitability of the image-licensing business, which includes the licensing of Delebs.

Another significant event also took place in 2008, when actor Paul Newman died and left a carefully crafted will in which he stipulated in detail how his image should and should not be used in the future (Cowan, 2008). As was the case with Fred Astaire, discussed earlier, this event signaled an important trend that was taking place in the Deleb marketplace, namely Celebs who carefully plan out the after-life of their image and leave clear instructions via a will.

Publisher *Harper-Collins* announced in 2009 that at least two posthumous Michael Crichton novels (one to be completed after his death, by a ghost writer) would be released starting this year (Rich, 2009). This event showed us that many Celebs still die unexpectedly and leave a lot of unfinished creative material behind with significant posthumous earning potential. Also in 2009, *Imagem* Music Group bought the rights to the Rodgers and Hammerstein catalog (Rose, Pomerantz, Paine and Greenburg, 2010). This example further confirms the trend started by Lisa-Marie Presley, namely of heirs/estates selling out to entertainment companies.

A ground-breaking digital-image-manipulation company, namely *Magic Leap*, was founded in 2010, whose technology goes beyond virtual reality, by allowing moving 3D images to be superimposed on real world objects (CNN, 2014). This technology is of significance to Deleb marketers because it has the potential for Deleb entertainers to be superimposed in 3D, on a stage amidst live, on-stage entertainers. Also in 2010, *Iconix* purchased an 80% stake and the Schulz family acquired a 20% stake in the 'Peanuts' brand, from the E. W. Scripps Co. (Lattman 2010). The trend, of heirs/estates selling out to entertainment companies was gaining momentum.

CGI technology pioneer and frequent Deleb animator *Digital Domain* issued an IPO in 2011 (Ostrowski, 2011). Digital (including Deleb) animation appeared to be maturing as a profitable business that the investing public could buy a stake in. Also in 2011, Canadian Marketing firm *Authentic Brands Group* purchased the right to license Marilyn Monroe for an estimated \$20 to \$30 million (Pomerantz, 2014; O'Reilly, 2013). In addition, Apollo Global Management bought out *CKX Entertainment*, which owned majority stakes in the Elvis and Muhammad Ali estates (Pomerantz, 2014). These two examples confirm the trend toward acquisition of Deleb properties by big entertainment conglomerates.

### ***Dead Celebrities begin to appear 'Live' in Concert - 2012 to the present.***

Deleb Tupac Shakur (created by Digital Domain) performed on-stage via a 2D 'hologram' in 2012 and interacted with live artists Dr. Dre and Snoop Dogg, at the

2012 Coachella Music Festival (Ngak, 2012). The performance was well-received by the audience and indicated the future potential for 'live', on-stage performances by (other) Delebs. But, this is the 'older' technology and though impressive, it projects images only in 2D. In contrast, *Magic Leap's* technology, discussed earlier is newer, state-of-the-art and more impressive because it projects images in 3D. Unfortunately in 2012, CGI pioneer and innovator *Digital Domain Media Group* (DDMG) filed for Chapter 11 bankruptcy protection, because of internal conflicts within the company (Abramson, 2012). This indicates that the digital animation business is fraught with risk. Finally, in 2012, *Oculus Rift* was founded, allowing users an immersive interaction with virtual reality via a head-mounted display (Prisco, 2015). But, this is a more 'gadget-prone' alternative to *Magic Leap's* user-friendly technology and therefore may be less likely to succeed.

The first completely CGI-built Deleb debuted in a TV commercial in 2013, when candy-maker Mars used Deleb Audrey Hepburn in an Ad for Galaxy chocolates. For this commercial, Ad agency AMV BBDO London and digital effects firm Framestore (Hiltzik, 2014) rebuilt Hepburn's face with CGI and superimposed it on a modern-day actress (Krashinsky, 2013). This event is significant because it showed the extent to which advertisers were willing to go, in terms of time, technology and expense it took to create a realistic CGI Deleb for a commercial. Also in 2013, *UltraHaptics* was founded, which now allowed a viewer's tactile sense to interact in 3D with virtual reality images (Prisco, 2015). This technology could now potentially allow an audience's third sense (in addition to visual and auditory) to interact with digital performances.

Also in 2013, whisky-maker *Johnnie Walker* used a CGI image of Deleb Bruce Lee in a commercial for their liquor brand, even though Bruce Lee never drank while alive (Davidson, 2013). This event highlighted an ethical dilemma for heirs, estates and marketers that still remains unresolved. Can fan memories of their favorite Delebs be disregarded by heirs, estates and marketers who are driven solely by the profit motive, rather than by fan authenticity motives.

In another ground-breaking 'live' performance, a hologram of Deleb Michael Jackson performed *Slave to the Rhythm*, from his posthumous album *Xscape*, alongside live, on-stage dancers, at the 2014 Billboard Music Awards show (AP, 2014). This performance too was well-received by the audience and only further confirmed the future potential for 'live', on-stage performances by (other) Delebs. Also in 2014, Robin Williams died, leaving a carefully crafted will in which he stipulated that his image cannot be used for commercial purposes in the future (Ellis-Petersen, 2015b). This event is significant because for the first time, a Celeb had proscribed posthumous performances by his otherwise would-be Deleb.

In a world first, in 2015, a protest was held solely in hologram mode, in which

thousands of people marched past a Spanish parliament building in Madrid, via their holographic images, but none were physically present (Mullen, 2015). This example offers us yet another ethical/public-policy implication of digital animations. Could for example, Delebs be made to stage 'high-profile protests' on issues that they may not have had anything to do with when alive.

Also in 2015, the family of Deleb Bruce Lee went to court to prevent the production of a movie made without their permission (Ellis-Petersen, 2015a). This raises ethical issues of whether it is appropriate for a teetotaler like Lee to appear in a whisky commercial, but not in a martial-arts film, even though he was a martial artist? Should estate/heir rights trump fan rights?

The family of Deleb 'Tejano' singer Selena announced in 2015 that a hologram of her (funded through crowd-sourcing) would go on-tour, for on-stage performances in 2018 (Emery, 2015). Finally, in 2015, Hologram USA announced that in 2016, Patsy Cline would be the first country music Deleb to be revived on-stage via hologram. Earlier, Hologram USA announced that Delebs Liberace and Buddy Holly would also soon be revived (Stutz, 2015). Apparently, Deleb music concerts now appear to be a separate trend, catering to nostalgia-prone audiences, within the 'live' entertainment industry.

## Summary

The use of Delebs in commerce has had a long, winding and eventful history, which we reviewed in detail earlier in this paper. It has taken a variety of events, some legal, some technological and many cultural, to bring us to the point where we are today. The following is a synopsis of the major events and trends that have taken place in the Deleb market.

### *Evolution of Cultural preferences for Celebs and Delebs.*

In the U.S., public preferences for celebrities have evolved from European royalty and elected officials in the nineteenth century, to entertainers and performers in the early twentieth century. Preferences for Delebs continued from there and is skewed towards entertainers and performers.

### *Evolution of the law pertaining to Deleb rights.*

The fight for Deleb rights began in earnest only after celebrities first gained recognition for their rights in 1953, when the legal term 'Right of publicity' was coined. This right gave celebrities the right to control the use of their image and persona in the public arena. The next major milestone in the fight for Deleb rights came in 1979 when the California Supreme court ruled that a Deleb's heirs could inherit the right to his/her image, only if s/he had attempted to market himself or



herself (e.g., by appearing in ads) while living. However, it was not until 1981, in New Jersey, that the courts began to recognize that the 'right of publicity' was descendible. It was only in 1984 that a state legislature (i.e., in California) recognized for the first time that Celebs have rights that are descendible. Today the right of publicity is recognized by common law (i.e., enacted by courts) or by statute (i.e., passed by a legislature), to varying degrees, in 14 out of the 50 states in the Union (Petty and D'Rozario, 2009). Yet, no law exists today that recognizes this right at the federal level, though the Supreme court addressed this right in 1977.

### ***Evolution of technology related to Delebs.***

The technology that has impacted Delebs began in 1905, when physicist Albert Einstein published a paper theorizing the 'photoelectric effect', whereby light could be converted into electricity. Einstein's theoretical contribution had many practical applications, one of which laid the foundation for digital photography, when in 1969 Willard Boyle and George E. Smith invented the 'Charge Coupled Device' (CCD). The CCD allowed light to be instantly converted into electrical charges and stored, for later conversion into a 'digital image'.

Behavioral science has also affected Deleb science. In 1970, roboticist Masahiro Mori coined the term 'uncanny valley' and theorized that humans could be 'turned off' by anthropomorphic beings that do not realistically represent the human form and motion. Successfully overcoming this 'valley' has become the 'gold standard' for Deleb animators.

Then, in 1970, in the field of Computer-generated Imagery (CGI), the first step towards bringing back Delebs to life on screen (i.e., 'animation') was taken when the technique of two dimensional (2-D) 'morphing' was developed. Morphing was made more sophisticated, when in 1985, it could be done in 3-D. Now it was technically possible to take the 3-D image of any person (including that of a Deleb, for example from old movie and TV footage) and make him/her do something else, which s/he never did in reality.

When 'voice morphing' technology was developed by Los Alamos laboratory in 1999, it allowed a similar technology to be applied to the prior sound recordings of a person, to create new speech, that the person in question never vocalized in reality. When AT&T introduced Text-to-speech (TTS) software in 2001, the third vital tool for Deleb animation was put in place. Now, it was technically possible to take the prior-recorded image and speech of a Deleb and using 3-D morphing, voice morphing and TTS, Delebs could be made to move and say exactly as wanted. The stage was now set for animated Delebs in entertainment and commerce, as discussed next.

### ***Evolution of the use of Delebs in the entertainment industry.***

The first known use of a Deleb in a movie took place in 2004, when a morphed image of Laurence Olivier played Dr. Totenkopf in 'Sky Captain and the World of Tomorrow' (Brott, Craig and Friedman, 2004). Since then morphed images of other Delebs have been used in entertainment, though most of them have been for performances on-stage, before live audiences.

### ***Evolution of the use of Delebs in the advertising industry.***

The earliest known use of a Deleb in a TV commercial took place in 1981, when a look-alike of Deleb Charlie Chaplin was used in TV commercials for IBM PCs (Zientara, 1984). Starting in 1991, this evolved to the use of pre-recorded analog footage of Delebs 'sandwiched' along with contemporary recordings of Celebs and back-ground actors, as was done in the TV commercials for Diet Coke. However, it was not until 1994 that 'morphing' was first used in a TV commercial, when model Carol Bouquet was 'morphed' into Marilyn Monroe and back again to herself in an Ad for Chanel No. 5 (Elliott, 1994). The year 1997 saw the next logical next step, when digitized images from prior-recordings of Delebs were modified prior to use, as was the case when an image of Deleb Ed Sullivan was used in a TV commercial for Mercedes-Benz (Gellene, 1997). 1997 was also the year in which a Deleb, Fred Astaire, appeared in a well-executed, widely-acclaimed TV commercial for the Dirt Devil vacuum cleaner (Bloomberg, 1997).

It was not until 2013 that an animated Deleb may have finally crossed Mori's 'uncanny valley', at least in the eyes of some Ad critics (Ellis-Petersen, 2015a; Krashinsky, 2013), when Deleb Audrey Hepburn appeared in a TV Commercial for 'Galaxy' chocolates.

### ***Evolution of the use of Delebs in the (entertainment) marketing industry.***

Beginning in 2005, a series of events took place, signaling a trend in how entertainment marketing and finance viewed Deleb properties. First an 85% stake in the Elvis Presley Estate was sold in 2005 by daughter Lisa Marie (Glaister, 2005). Then, in 2006, the still living Muhammad Ali sold an 80% interest in his image and naming rights (Bryceson, 2006). In 2009, the *Imagem* Music Group bought the rights to the Rodgers and Hammerstein catalog (Rose, Pomerantz, Paine and Greenburg, 2010). In 2010, *Iconix* purchased an 80% stake in the 'Peanuts' brand (Lattman, 2010). All four events appeared to show that Deleb estates/properties were now viewed as 'brands', in which shares could be sold to third-party investors unrelated to the Deleb.

### ***Evolution of Celeb preferences (i.e., pre-mortem).***

There are three separate, different trends when it comes to Celebrity preferences when they are still alive. The first trend was started by Fred Astaire in

1987 and continued by Paul Newman in 2008. In both cases, they left behind a carefully crafted will with clear stipulations as to how they wanted their names and images used in commerce in the future (Cowan, 2008; Astaire, 1998).

The second trend was started by the sale by Muhammad Ali in 2006 of an 80% interest in his image and naming rights (Bryceson, 2006). It marked the first reported instance of a living celebrity selling the future rights to his name and image to anyone.

The (possible) third trend began when Robin Williams died in 2014 and forbade the use of his image for 25 years after his death. This is the first time such a stipulation has been left in a will by a Deleb. Experts believe it will be imitated by other celebrities (Ellis-Petersen, 2015b).

### ***Evolution of the RRI industry.***

In 1978, the rights representation industry (RRI) began when industry pioneer Roger Richman started the *Roger Richman Agency* in California. In 1979 it began representing the families of Delebs. In 1989, the soon-to-be industry-leader, *Corbis* was launched by Bill Gates (Cook, 2005). In 1995, another soon-to-be industry leader *Getty Images* was co-founded (Cook, 2008).

It was not very long before the well-financed corporate behemoths began buying out smaller rivals, including independent agencies, in an industry consolidation. In 2005, the Roger Richman Agency was purchased by *Corbis* (Glaister, 2005). Corbis was now neck-and-neck with Getty Images, holding the rights to 70+ million images in its archives, at the time (Saucedo, 2005).

Given the lucrative nature of the industry, it was not long before the corporate raiders entered. So it was in 2008, when *Getty Images*, the market leader at the time (Glaister, 2005), was bought out by the private equity firm Hellman & Friedman for \$ 2.1 billion (Cook, 2008).

### ***Evolution of Ethics vis-a-vis Delebs.***

After the novelty effect of Delebs appearing in Ads in the early 1990s wore off, it was not long before critics began questioning whether it was appropriate to use Delebs in commerce, because it was “craven exploitation of the dead” (Van Der Pool, 2003). For example, when Deleb Audrey Hepburn appeared in a TV commercial for *Gap*, one critic said “Gap should be ashamed”, even though the commercial was approved by the Deleb’s heirs (Glaister, 2006).

There are other ethical issues as well. For example, when Deleb Bruce Lee, a teetotaler, was used in a TV commercial for Johnnie Walker, the ad “received

blowback” (Davidson, 2013), apparently from fans concerned about the distortion of his image.

### ***Emergence of a market for Delebs.***

As a result of the aforementioned casual factors, Delebs are now a large and growing market. According to some estimates, it is now worth an annual \$ 2.25 billion (CBC, 2013; Kirsta, 2012).

## **Implications for Marketing Educators, Researchers & Practitioners.**

Deleb presence in our daily lives is now a *fait accompli*. They now co-exist with Celebs and appear in many spheres of our daily life, such as in print advertising, TV commercials, biopics, post-mortem movies, novels and music, theme parks, licensed and unlicensed merchandise, personal property auctions and annual rankings of postmortem earnings, to name just a few of their omnipresent manifestations in our economy, culture and society.

Consequently, interest in them from fans and the general public must be constantly catered to by journalists reporting in the popular press. Their value as creators of nascent markets must be constantly monitored and reported on, by writers and commentators in the business press and the trade literature. Their influence on consumers must be studied by marketing educators and researchers and recorded in the academic journal literature. We briefly discuss each of these next

Fans and the general public learn about the latest Celeb demises from the obituaries reported in the daily newspapers, radio and TV news and the internet. These same sources also report on the post-mortem fallout of Celeb demises, such as lawsuits filed over Deleb estate disputes and little-known facts about Celebs that were not reported when they were alive.

Consumers learn about the latest Deleb estate sales, merchandise sales, commemorative sales, tours and releases, etc. from the business press and the trade literature in particular and the popular press and the internet, more generally.

Marketing educators and researchers study various aspects of the Deleb phenomenon, such as, how Delebs and Celebs are similar and yet also different from each other (see D’Rozario, 2013; D’Rozario and Bryant, 2013), that they merit their own separate treatments, in theory (see D’Rozario, 2016a) and practice (see D’Rozario, 2017). In time, these similarities and differences will, it is hoped, appear as accepted ‘principles’ in text-books in the field of marketing education.

Practitioners document how Delebs are being used in various aspects of

commerce (see D’Rozario, 2016b) and in their impact on our economy. *Forbes’* annual ranking of Deleb earnings is one such example of how practitioners are tuned in to this growing phenomenon.

This paper, it is hoped, will provide each of the above-mentioned constituencies with the proper background and context within which they can ‘situate’ and ‘anchor’ their work, by providing them with the relevant history and analysis of the origin and growth of the Deleb market.

## Conclusions

Delebs are a large and growing market. It is served by the RRI industry, which is very profitable and is dominated by a few big, well-financed competitors. They typically earn larger commissions representing Delebs than Celebs. Delebs are increasingly being seen by entertainment conglomerates as investable properties, to be acquired and held in a portfolio.

The battle over Deleb rights spanned almost the entire twentieth century. Deleb rights are now recognized to varying degrees in 14 states in the Union. However, there are no laws that recognize Deleb rights at the level of the Federal government.

Delebs are now commonly used in entertainment and advertising. To succeed, Deleb animation has to be technically well-executed and in such cases, it can result in successful Ads and programming. However, even when well-executed, it can be seen by some fans as “shameful” (Glaister, 2006). When poorly-executed, Delebs can fall into the ‘uncanny valley’ and be rejected by audiences. In addition, it may be seen by many as “grave robbing” (Davidson, 2013).

Deleb animation technology is now very sophisticated, including the use of 3D image morphing and voice morphing. This technology when used skillfully can make Delebs appear convincingly live. It is debatable whether Mori’s uncanny valley has been crossed in the world of Advertising. It is more likely to have been crossed in movies and in live entertainment.

Most Celebs allow their images to be used post-mortem, with few conditions. A few Celebs however have imposed many conditions on the post-mortem use of their images. So far only one Celeb (i.e., Robin Williams) has completely prohibited his image from being used post-mortem and even then only for a fixed period. More Celebs are expected in the future to restrict their image use post-mortem. Even when heirs/estates consent, some fans can see Deleb use as distorting the Deleb’s image.

## References

- Abramson, Andrew (2012), "West Palm officially gets land back from Digital Domain", *Palm Beach Post*, (November 9), <http://www.palmbeachpost.com/news/news/local-govt-politics/city-officially-gets-land-back-from-digital-domain/nS3FZ>.
- Arkin, William M. (1999), "When Seeing and Hearing Isn't Believing," *The Washington Post*, (February 1).
- Associated Press* (2014), "Michael Jackson hologram debuts at Billboard Awards", (May 18), <http://www.cbc.ca/news/arts/michael-jackson-hologram-debuts-at-billboard-awards-1.2646840>.
- Astaire, Robyn (1998), "Selectivity, and Cooperation, are the Keys," *Brandweek*, 39 (37), (October 5), 28.
- Atkinson v. John E. Doherty & Co.* (1899a), 80 N.W. 285 (Mich.).
- Bloomberg News Service (1997), "Ad Strategies Seeking to Raise the Dead", *Los Angeles Times*, (July 8), <http://articles.latimes.com/1997/jul/08/business/fi-10596>.
- Boorstin, Daniel J. (1961), *The Image: A Guide to Pseudo-events in America*, New York: Harper & Row.
- Braudy, Leo (1986), *The Frenzy of Renown: Fame & Its History*, NY: Vintage Books.
- Brooks, John A. (1900), "Atkinson v. John E. Doherty & Co.," in *Michigan Reports*, Volume 121, First Edition, Chicago: Callaghan & Co., pp. 372-384.
- Brott, Tamar, John Craig and Amanda Friedman (2004), "Grateful Dead," *Los Angeles Magazine*, 49 (12), (December), 92-97 and 172.
- Bryceson, David (2006), "Muhammad Ali Sells His Rights," *The Epoch Times*, (April 18).
- Carlson, Peter (2004), "Breathing New Life into Dead Celebrities," *The Washington Post*, Section: Style, (December 7), C01.
- Case & Comment* (1903), "A Check on the Insolence of Advertisers", Vol. 10, No 5, (October), p. 49-60.

*Case & Comment* (1895), “Advertising Brigands”, editorial, 2 (December), pp. 3-4.

CBC (2013), “Nobody's Dead Anymore: Marketing Deceased Celebrities”, *CBCRadio*, (May 25), <http://www.cbc.ca/undertheinfluence/season-2/2013/05/25/nobodys-dead-anymore-marketing-deceased-celebrities-1>.

*Chaplin v. Amador* (1928), 93 Cal. App. 358.

CNN (2014), “Magic leap makes its Debut”, (October 27), <http://www.cnn.com/video/data/2.0/video/bestoftv/2014/10/26/cnn-orig-crane-magic-leap.cnn.html>.

Connolly, Songmee (2008), “California’s Amended Right of Publicity Statute (California Civil Code A§ 3344.1),” *Intellectual Property*, Winter Bulletin. pp 1-2.

Cook, John (2008), “Getty Images OKs Buyout. Shareholders Must Now Sign Off on \$2.1 Billion Deal”, *The Seattle Post-Intelligencer*, Section: Business, (February 26), C1.

Cook, John (2005), “Corbis Finds Lively Market for Dead Stars,” *The Seattle Post-Intelligencer*, Section: Business, (April 6), E1.

Cowan, Alison Leigh (2008), “Paul Newman, Philanthropist, Does Hereby Leave...,” *New York Times*, Section: City Room, (November 26).

Davidson, Jacob (2013), “Digital Necromancy: Advertising with Reanimated Celebrities”, *Time.com*, Section: Media, (August 2), <http://business.time.com/2013/08/02/digital-necromancy-advertising-with-reanimated-celebrities>.

Doyle, Audrey (2000), “Sound Effects,” *Computer Graphics World*, 23 (4), 22-24, 26 and 28.

D’Rozario, Denver (2017), “Delebs’ (Dead Celebrities) - Why Some Succeed and Some Fail”, *Journal of Customer Behaviour*, Vol. 16, No. 3, (Summer), pp 161-181.

D’Rozario, Denver (2016a), “The market for ‘Delebs’ (dead celebrities): A revenue analysis”, *Journal of Customer Behaviour*, Vol. 15, No. 4, (Winter), pp.395-414.

D’Rozario, Denver (2016b), “Dead Celebrity (Deleb) Use in Marketing: An Initial Theoretical Exposition”, *Psychology & Marketing*, Volume 33, Issue 7, (July), pp. 486-504.

D'Rozario, Denver (2013), "Dead Celebrity Uses in Advertising and Marketing," *International Journal of Consumer Research*, Volume 2, Issue #1, pp. 59-83.

D'Rozario, Denver and Frank K. Bryant (2013), "The Use of Dead Celebrity Images in Advertising and Marketing - Review, Ethical Recommendations and Cautions for Practitioners," *International Journal of Marketing Studies*, (April), Vol. 5, #2, pp. 1-10.

D'Rozario, Denver and Frank K. Bryant (2011), "An Analysis of Stakeholders in the Market for Dead Celebrities - Benefits Sought, Harms Caused, Ethics and Recommendations," *2011 American Marketing Association Marketing and Public Policy Conference Proceedings*, eds. Elizabeth Howlett, John Kozup and Jeremy Kees, Chicago, IL: American Marketing Association.

D'Rozario, Denver, Ross D. Petty, Leah C. Taylor and Frank K. Bryant (2007), "The Use of Images of Dead Celebrities in Advertising - History, Growth Factors, Theory, Legality, Ethics and Recommendations," *Advances in Consumer Research*, eds. Gavan J. Fitzsimons and Vicki G. Morwitz, Vol. XXXIV, Duluth, MN: Association for Consumer Research, pp. 446-447.

D'Rozario, Denver (1984), "Dead Celebrities are Re-born as Delebs", *Working Paper*, Normal, Illinois.

*Edison v. Edison Polyform Manufacturing* (1907), 67 A. 392 (N.J. Ch.).

Elliott, Stuart (1994), "A high-tech fragrance campaign resurrects a Hollywood icon", *The New York Times*, (December 2), <http://www.nytimes.com/1994/12/02/business/media-business-advertising-high-tech-fragrance-campaign-resurrects-hollywood.html>

----- (1992), "New Spots Are Set For Diet Coke, Pepsi", *The New York Times*, (July 24), <http://www.nytimes.com/1992/07/24/business/the-media-business-advertising-addenda-new-spots-are-set-for-diet-coke-pepsi.html>.

Ellis-Petersen, Hannah (2015a), "Frankly my dear, I do give a damn - I am ready for my digital remake", *The Guardian*, (April 11), Section: National, Film, pages 14-15.

----- (2015b), "Robin Williams went above and beyond to stop his image being used", *The Guardian*, (31 March), <http://www.theguardian.com/film/2015/mar/31/robin-williams-restricted-use-image-despite-existing-us-laws>.



Emery, Debbie (2015), "Selena Hologram Tour Announcement Gets Mixed Reaction From Fans", *The Wrap*, (April 9), <http://www.thewrap.com/selena-hologram-tour-announcement-gets-mixed-reaction-from-fans>.

Erdogan, B. Zafer (1999), "Celebrity Endorsement: A Literature Review," *Journal of Marketing Management*, 15 (4), 291-314.

Erenberg, Lewis A. (1981), *Steppin' Out: New York Nightlife and the Transformation of American Culture, 1890-1930*, Westport, Connecticut: Greenwood Press.

*Estate of Elvis Presley v. Russen* (1981), 513 F. Supp. 1339 (D. N.J).

Fong, Mei and Debra Lau (2001), "People: Earnings From the Crypt," (accessed November 22, 2005), [available at: <http://www.Forbes.com>].

*Foster-Milburn Co. v. Chinn* (1909), 120 S.W. 364 (Ky.).

Friedman, Wayne (2005), "Selling From the Grave," *Television Week*, Section: Advertising, 24 (20), (May 16), 12.

Gaines, Jane M. (1991), *Contested Culture: The Image, the Voice, and the Law*, Chapel Hill, NC: University of North Carolina Press.

Garfield, Bob (2007), "Better Off Dead: Orville Resurrection a Bad Move," *Advertising Age*, 78(4), (January 22), 25.

Gellene, Denise (1997), "Outlived by Fame and Fortunes. Dead Celebrities As Pitchmen? Advertisers See Them as 'a Safe Bet'," *Los Angeles Times*, Section: Business, Financial Desk, Sub-section: Advertising & Marketing, (September 11), D4.

Glaister, Dan (2006), "Hepburn gives posthumous boost to Gap", *The Guardian*, (September 26), <http://www.theguardian.com/business/2006/sep/26/2>.

Glaister, Dan (2005), "Dead Stars Who Rain Money on the Living: Sale of Image Rights Agency Focuses Attention on Lucrative After-life of Deceased Celebrities," *The Guardian*, Section: Foreign Pages, (April 9), 20.

Glionna, John M. (1997), "The Late, Great (and Profitable) Advertising: Beverly Hills Lawyer Guards Against Trademark Infringement for Heirs of 45 Celebrities. Some Spots He Oks, Tasteless Ones Don't Stand a Chance," *Los Angeles Times*,

(October 6), B1.

Goldman, Debra (2001), "Consumer Republic: Digital wonders leave the human ones struggling to catch up," *Adweek*, Section: Art & Commerce, 42 (32), (August 6), 14.

Goldman, Kevin (1994), "Advertising: Dead Celebrities are Resurrected as Pitchmen", *Wall Street Journal*, Eastern Edition, (January 7), Section B, pp. 1-2.

Goodrum, Charles and Helen Dalrymple (1990), *Advertising in America - The First 200 Years*, NY: Harry N. Abrams, Inc.

Greb, Gordon and Mike Adams (2003), *Charles Herrold, Inventor of Radio Broadcasting*, North Carolina: McFarland & Company.

Greenburg, Z. O. (2015, October 27). "The 13 Top-Earning Dead Celebrities of 2015". *Forbes Magazine*, Retrieved from <http://www.forbes.com/sites/zackomalleygreenburg/2015/10/27/the-13-top-earning-dead-celebrities-of-2015>

*Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* (1953), 202 F.2d 866, 868 (2d Cir.), cert. denied, 346 U.S. 816.

*Hanna Manufacturing Co. v. Hillerich & Bradsby Co.* (1935), 78 F.2d 763 (5<sup>th</sup> Cir), cert. denied, 296 U.S. 645.

Harris, Neil (1990), "Iconography and Intellectual History: The Halftone Effect", *Cultural Excursions: Marketing Appetites and Cultural Tastes in Modern America*, Chicago, IL: University of Chicago Press.

Harris, Neil (1985), "Who Owns Our Myths? Heroism and Copyright in an Age of Mass Culture", *Social Research*, Volume 52, #2, (Summer), pp. 241-267.

Hass, Nancy (2003), "I Seek Dead People," *The New York Times*, Home Design Magazine, Section 6, Part 2, Column 1, (October 12), 38.

Hiltzik, Michael (2014), "Introducing the creepiest TV commercial ever made", *Los Angeles Times*, (March 4), <http://articles.latimes.com/2014/mar/04/business/la-fi-mh-creepiest-tv-commercial-20140304>.

Hirsch, Robert (2000), *Seizing the Light: A history of photography*, New York: McGraw-Hill.

Inman, Mason (2009), "Nobel Prize in Physics Goes to "Masters of Light", *National Geographic News*, (October 6), <http://news.nationalgeographic.com/news/2009/10/091006-nobel-prize-2009-physics-communications-light-fiber-optics.html>.

Isaak, Sharon (1991), "Reuniting legends in a TV ad", *Entertainment Weekly*, (December 20), 12:00 AM EST, <http://www.ew.com/article/1991/12/20/reuniting-legends-tv-ad>.

*James v. Screen Gems, Inc.* (1959), 174 Cal. App. 2d 640.

Kirsta, Alix (2012), "Selling the dead", *The Telegraph*, (February 3), <http://www.telegraph.co.uk/finance/9056455/Selling-the-dead.html>.

Krashinsky, Susan (2013), "A marketer's chocolate Charade brings back Audrey Hepburn", *The Globe and Mail*, (February 28), <http://www.theglobeandmail.com/report-on-business/industry-news/marketing/a-marketers-chocolate-charade-brings-back-audrey-hepburn/article9189654>.

Kroft, Steve, L. Franklin Devine and Jennifer MacDonald (2009), "A Living for the Dead," *60 Minutes*, CBS, Transcript, [available at: <http://www.cbsnews.com>].

Lattman, Peter (2010), "Iconix Acquires Peanuts Brand", *The Wall Street Journal*, (April 28), <http://www.wsj.com/articles/SB10001424052748704471204575209712652591970>.

Lippert, Barbara (1992), "Same Old Song and Dance?", *Adweek*, (August 3), p. 21.

*Lugosi v. Universal Pictures* (1979), 25 Cal. 3d 813.

*Mackenzie v. Soden Mineral Springs Co.* (1891), 18 N.Y.S. 240, 249 (Supreme Court, New York County).

Madow, M. (1993), "Private Ownership of Public Image: Popular Culture and Publicity Rights", *California Law Review*, Vol. 81, (January), No. 1, pp. 125-240.

McArthur, Benjamin (1984), *Actors and American Culture, 1880-1920*, Iowa City: University of Iowa Press.

McBride, Sarah (2009), "Is It Brad or Is IT Fake? - Breakthroughs in computer-generated characters open up all sorts of artistic possibilities. Just don't tell that to the actors," *The Wall Street Journal*, (April 20), R4 and R5.

McCracken, Grant (1989), "Who Is the Celebrity Endorser? Cultural Foundations of the Endorsement Process," *Journal of Consumer Research*, 16 (December), 310-321.

Mori, Masahiro (1970), "The Uncanny Valley", *Energy*, Volume 7, #4, 33-35.

Mullen, Jethro (2015), "Virtual protest: Demonstrators challenge new law with holograms", *CNN.com*, (April 12), <http://edition.cnn.com/2015/04/12/europe/spain-hologram-protest/index.html>.

Naughton, Keith and Bill Vlasic (1998), "The Nostalgia Boom - Why the old is new again," *Business Week*, (March 23), 58-64.

*New York Times* (1890), "Manola Gets An Injunction", (June 18), column 2, p. 2.

Ngak, Chenda (2012), "Tupac Coachella hologram: Behind the technology", *CBS News*, (November 9), <http://www.cbsnews.com/news/tupac-coachella-hologram-behind-the-technology>.

Nimmer, Melville B. (1954), "The Right of Publicity", *Law & Contemporary Problems*, 19 (2), 203-223.

N.Y. Civ. Rights Law §§ 50-52

*O'Brien v. Pabst Sales Co.* (1941), 124 F.2d 167, 169 (5th Cir.), *cert. denied*, 315 U.S. 823.

O'Reilly, Terry (2013), "Nobody's Dead Anymore: Marketing Deceased Celebrities", *Under the Influence*,

*CBCRadio*, (May 25), <http://www.cbc.ca/radio/undertheinfluence/nobody-s-dead-anymore-br-marketing-deceased-celebrities-1.2801803>.

Ostrowski, Jeff (2011), "Digital Domain IPO raises \$39 million", *Palm Beach Post*, (November 18), <http://www.palmbeachpost.com/news/business/digital-domain-ipo-raises-39-million/> nLzpL.

*Pavesich v. New England Life Insurance Co.* (1905), 122 Ga. 190; 50 S.E. 68 (Ga.).

Petty, Ross D. (2013), "From Puffery to Penalties: A historical analysis of US masked marketing public policy concerns", *Journal of Historical Research in Marketing*, Vol. 5, No. 1, pp. 10-26.

Petty, Ross D. and Denver D'Rozario (2009), "The Use of Dead Celebrities in Advertising and Marketing: Balancing Interests in the Right of Publicity", *The Journal of Advertising*, Volume 38, #4, (Winter), pp. 37-49.

Petty, Ross D. and Denver D'Rozario (2007), "The Use of Dead Celebrities in Marketing: A Legal and Public Policy Analysis," *2007 American Marketing Association Marketing and Public Policy Conference Proceedings*, Vol. 17, eds. Manoj Hastak, John L. Swasy and Sonya A. Grier, Chicago, IL: American Marketing Association, 158 and 221.

Pfanner, Eric (2007), "Dead Celebrities are Hot", *International Herald Tribune*, (June 6), [http:// www.ihf.com/articles/2007/06/06/business/ad.php](http://www.ihf.com/articles/2007/06/06/business/ad.php).

Pomerantz, Dorothy (2014), "Michael Jackson Tops Forbes' List Of Top-Earning Dead Celebrities With \$140 Million

Haul", *Forbes.com*, (October 15), <http://www.forbes.com/sites/dorothy-pomerantz/2014/10/15/michael-jackson-tops-forbes-list-of-top-earning-dead-celebrities>.

Presbrey, Frank (1929), *The History and Development of Advertising*, NY: Doubleday, Doran & Company.

Prisco, Jacopo (2015), "Devices with feeling: new tech creates buttons and shapes in mid-air", *CNN.com*, (April 1), <http://edition.cnn.com/2015/04/01/tech/ultrahaptics-tactile-feedback-mci/index.html>.

Rich, Motoko (2009), "Posthumous Crichton Novels on the Way," *New York Times*, (April 6), New York Edition, C1.

*Roberson v. Rochester Folding Box Co.* (1902), 171 N.Y. 538; 64 N.E. 442 (N.Y.).

Roberts, Jo (2008), "Vintage Glamour: Mae Gets a Makeover", *Brand Strategy*, (December 10), 228, 18-19.

Rose, Lacey, Dorothy Pomerantz, Jake Paine and Zack O'Malley Greenburg (2010), "Special Report: Top-Earning Dead Celebrities," (accessed October 25, 2010), [available at: <http://www.forbes.com>].

Saucedo, Matt (2005), "Corbis Corporation", [www.hoovers.com](http://www.hoovers.com).

Schickel, Richard (1985), *Intimate Strangers: The Culture of Celebrity in America*, Garden City, NY: Doubleday

*Schumann v. Loew's Inc.* (1954), 135 N.Y.S.2d 361.

Segrave, Kerry (2005), *Endorsements in Advertising: A Social History*, Jefferson, NC: McFarland & Company.

Speed, John Gilmer (1896), "The Right of Privacy", *The North American Review*, Volume 163, # 476, (July), pp. 64-74.

Stutz, Colin (2015), "Patsy Cline Hologram Coming Next Year", *Billboard*, (June 22), <http://www.msn.com/en-us/music/news/patsy-cline-hologram-coming-next-year/ar-AAAbWVBF>.

Sweney, Mark (2013), "Diet Coke 'hunk' to return in TV ad campaign", *The Guardian*, (January 28), <http://www.theguardian.com/media/2013/jan/28/diet-coke-hunk-ad-campaign>.

Towle, Angela Phipps (2003), "Celebrity Branding", *The Hollywood Reporter*, (November 18).

Van Der Pool, Lisa (2003), "Thomasville furniture casts Bogart for new line", *Adweek*, Vol. 44, Issue #7, (February 17), p. 18.

Verrier, Richard (2005), "California; Agency for Dead Starts is Sold", *Los Angeles Times*, Section: Business; Business Desk, Part C, (April 7), p. 2.

Verrier, Richard and Rebecca Keegan (2012), "Digital effects firm's partnership with college draws artists' ire", *Los Angeles Times*, (April 03), <http://articles.latimes.com/2012/apr/03/business/la-fi-0403-digital-domain-20120403>.

*Von Thodorovich v. Franz Josef Beneficial Association* (1907), 154 F. 911 (E.D. Pa.).

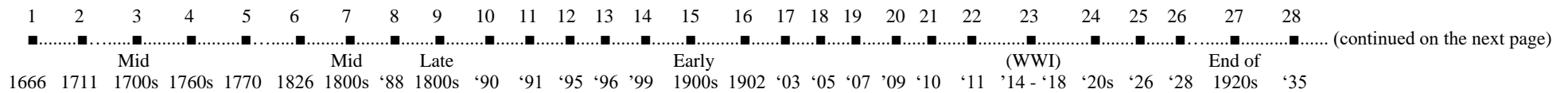
Ware, H. S. (2007), "Firms Dig for Rights to Dead Celebrities," *New York Post*, (accessed November 11, 2007), [available at: <http://www.nypost.com>].

Warren, Samuel D. and Louis D. Brandeis (1890), "The Right to Privacy", *Harvard Law Review*, 4(5), (December 15), 193-220.

*Zacchini v. Scripps-Howard Broadcasting Co.* (1977), 433 U.S. 562, 576.

Zientara, Marguerite (1984), "Charlie Chaplin earns kudos for IBM", *InfoWorld*,  
Section: Industry, (March 5), p. 71.

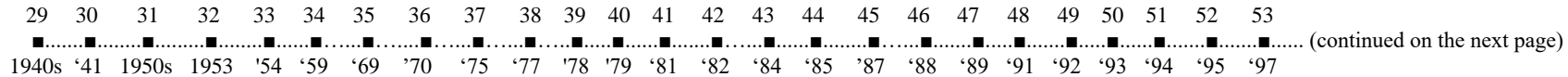
**Figure 1.** Time-line of major events pertaining to the use of Deleb (Dead Celebrities) images in Advertising, Marketing and Entertainment.



- Legend:**
- 1 - In one of the earliest known testimonial ads, a woman named Mary Glover declares that she is cured of deafness and blindness when 'Valentine Greatrakes' (a quack) just touches her (Segrave 2005)
  - 2 - Another early testimonial in advertising appears in an ad for a teething preparation (Presbrey 1929)
  - 3 - The earliest product endorsements appear, when certain 'Elixirs' are granted "a patent of Royal favor" by the English Crown and so carry the Royal Crest (Goodrum & Dalrymple 1990)
  - 4 - The printing and engraving trades expand greatly, with a major part of their output being the reproduction of portraits (using appropriated images) of famous people (Braudy 1986)
  - 5 - The London *Chronicle* newspaper publishes an ad containing an endorsement from 'Mary Graham', who testifies to the healing power of 'Dr. Rysseeg's Balsamic Tincture' (Segrave 2005)
  - 6 - Nicéphore Niépce takes a photograph and creates the first permanent photograph (Hirsch 2000)
  - 7 - Members of the U.S. Senate, along with European royalty are used to endorse P. T. Barnum's patent medicines (Goodrum & Dalrymple 1990)
  - 8 - George Eastman introduces his 'Kodak' camera and in so doing introduces photography to the mass market.
    - Celebrities begin to be used for product endorsements. For example, Pears Soap features endorsement by actress Lily Langtry and Soprano (Madame) Adelina Patti (Goodrum & Dalrymple 1990)
  - 9 - New engraving techniques (e.g., the "half-tone" process) are developed that enable newspapers and magazines to "reproduce instantaneous photographs of people" (Madow 1993, p. 158)
    - Chromolithography is perfected, making possible for the first time "visual (i.e., image-based) advertising", whereas earlier advertising was mostly "word-based" (Madow 1993)
    - A new type of journalistic style emerges that is comprised of "genuinely pictorial or illustrated 'personalities'" (Madow 1993, p. 158)
    - Advertisers go "on a binge of image appropriation, ransacking..." among other images, those of "illustrious persons, both living and dead" (Madow 1993, p. 157)
  - 10 - Marion Manola, a comic opera star in NYC, seeks and obtains an *ex parte* injunction against the use of her image in costume (tights), for a poster advertising her show (N.Y. Times 1890)
    - Concerned about the "trivializing effects of gossip and the dangers of instantaneous photography" (Madow 1993), Warren and Brandeis propose a 'Right to Privacy' in the *Harvard Law Review*.
  - 11 - A New York court prohibits the use of a spurious testimonial, with facsimile signature of a prominent English physician (*Mackenzie v. Soden Mineral Springs Co.*, 1891)
  - 12 - An editorial in a legal magazine, proposes "a statute criminalizing the unauthorized use in advertising of the 'portrait, likeness, or caricature of any person, living or dead'" (Madow 1993, p. 158)
  - 13 - Noted author and historian John Gilmer Speed (1896) notes that even an actor has "the right to be let alone when the curtain which hides his assumed character from the world is drawn close".
  - 14 - Michigan Supreme Court does not recognize a right to privacy, when the widow of a Deleb sued to prevent a cigar maker from using his likeness on its label (Petty 2013).
  - 15 - "Motion pictures were introduced shortly after 1900" (Madow 1993, p. 160)
    - Among the younger social set, there is a growing rebellion against the prudishness and formality of the Victorian-era mind-set of the older generation (McArthur 1984)
    - Consequently, entertainers (e.g., theater actors) become prized social companions for the social set, among the younger generation (McArthur 1984)
    - European royalty are supplanted by entertainers and sports figures for celebrity testimonials (Goodrum & Dalrymple 1990)
  - 16 - First documented case of the commercial appropriation of the image of a minor. Plaintiff loses (*Roberson v. Rochester Folding Box Co.*, 1902).
  - 17 - NY state legislature defines the 'Right to Privacy' and passes a statute that enacts this right (Petty and D'Rozario 2009; Case & Comment 1903).
  - 18 - Supreme Court of Georgia rules in favor of the 'Right to Privacy' (*Pavesich v. New England Life Insurance Co.*, 1905) and so begins a trend followed by other state courts.
    - Einstein publishes his paper wherein he theorized about the 'photoelectric effect', for which he was later (in 1921) awarded the Nobel prize in physics (Inman 2009)
  - 19 - A New Jersey court holds that a person's name is his/her personal 'property' and only s/he has a right to own and profit from it (*Edison v. Edison Polyform Manufacturing*, 1907)
    - A Federal court finds unauthorized use of a person's name and portrait (*Von Thodorovich v. Franz Josef Beneficial Association* 1907) to be 'passing off' and rules it as illegal (Petty 2013)
  - 20 - A Kentucky court rules in favor of a prominent politician who sues a pill-maker for unauthorized use of his name and picture in a spurious testimonial ad (*Foster-Milburn Co. v. Chinn* 1909)
    - Guglielmo Marconi and Karl Ferdinand Braun are awarded the Nobel prize in Physics, for their development of wireless telegraphy, which laid the foundation for radio transmissions and broadcasts.
    - The first private (i.e., not by the US government) radio broadcasts begin in the US (Greb and Adams, 2003).
  - 21 - "A 'star system' took root in Hollywood as early as 1910" (Madow 1993, p. 161)
  - 22 - "The first fan magazine appeared in 1911" (Madow 1993, p. 162)
  - 23 - During WWI, Celebrities become more accepted, partly because they are enlisted to help the war effort by doing PR for the US govt., for example, by selling war bonds (Schickel 1985)
  - 24 - After the end of WWI, social and institutional elites begin to mingle more regularly with entertainment and sports celebrities in the 'café society' popular in this period (Erenberg 1981)
    - The use of celebrity names and faces in product testimonials is revived, led by the J. Walter Thompson ad agency (Madow 1993) and this practice becomes widespread (Segrave 2005; Madow 1993)
    - The use of 'experts' for endorsements in ads emerges as a practice (Segrave 2005)
  - 25 - A business article discusses an ongoing trend away from the use of ordinary people as endorsers and towards the use of famous and society people as testifiers (Segrave 2005)
  - 26 - A court decision recognized the commercial value of a celebrity's persona (*Chaplin v. Amador*, 1928)
  - 27 - The endorsement ad has strongly re-established itself as an important tool used in the advertising industry (Segrave 2005)
  - 28 - Plaintiff (a sports goods mfg. co) initially establishes a property right in the players' names, with whom it had contracted, but loses on appeal (*Hanna Manufacturing Co. v. Hillerich & Bradsby Co.*)

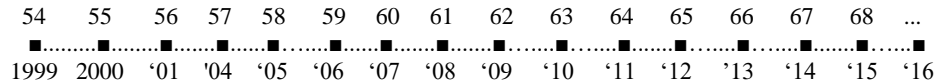


**Figure 1. Time-line of Deleb use (continued).**



- Legend:**
- 29 - Beginning in the 1940s, Hollywood stars who had very strong bargaining power with the studios begin to wrest control from the studios, over the commercial use of their images (Gaines 1991)
  - 30 - Courts however are still generally unsympathetic to ‘Right to Privacy’ claims made by celebrities (e.g., *O’Brien v. Pabst Sales Co.*, 1941).
  - 31 - The Hollywood studio system begins to decline and consequently, Hollywood stars begin to gain control over their images and how they are used commercially (Gaines 1991)
  - 32 - Judge Jerome Frank coins the term and recognizes a ‘Right of Publicity’, but refuses to acknowledge if it is a ‘property right’ (*Haelan Labs., Inc. v. Topps Chewing Gum, Inc.*, 1953).
  - 33 - Melville Nimmer, a legal counsel at Paramount Pictures at the time (Madow 1993), publishes an influential law review article on ‘The Right of Publicity’ (see Nimmer 1954)
    - NY court decides (*Schumann v. Loew’s Inc.*, 1954) that the Right of Publicity is not ‘Descendible’ (i.e., it cannot be passed on to survivors of a celebrity, for example, through a Will)
  - 34 - California courts also rule that the Right of Publicity is not ‘Descendible’ (*James v. Screen Gems, Inc.*, 1959)
  - 35 - Willard Boyle & George E. Smith invent the ‘Charge Coupled Device’ (CCD), laying the foundation for digital photography, for which they are awarded the Nobel for Physics in 2009 (Inman 2009)
  - 36 - The term ‘Uncanny Valley’ is coined by Masahiro Mori, to describe the revulsion felt by many when they perceive a character that looks ‘uncannily’, though not perfectly human (Mori 1970)
  - 37 - Athletes begin to dominate the endorsement business more than any other type of celebrity (Segrave 2005)
  - 38 - U.S. Supreme Court views ‘Right of Publicity’ as having the same aim and rationale as patent and copyright protection (*Zacchini v. Scripps-Howard Broadcasting Co.*, 1977)
  - 39 - Industry pioneer Roger Richman starts the celebrity licensing and marketing agency, *The Roger Richman Agency Inc* (Glaister 2005).
  - 40 - Estate of W.C. Fields asks Roger Richman to be Fields’ agent, despite the fact that Fields had passed away more than 32 years ago. Richman turns them down (Brott, Craig and Friedman 2004).
    - Bela Lugosi Jr. loses court battle for the exclusive rights to the image and likeness of his father Bela Lugosi, Sr. to Universal Studios (see *Lugosi v. Universal Pictures*, 1979)
    - Richman notes loophole in *Lugosi v. Universal Pictures* (1979), that allows heirs to inherit a celebrity’s image if the celebrity had appeared in ads in his/her lifetime (Carlson 2004)
    - Richman rushes out to Rose Bowl swap meet, buys old magazines and notes W.C. Fields and several other Celebs (now Delebs) in Ads (Brott, Craig and Friedman 2004).
    - Richman contacts estate of W.C. Fields and now agrees to represent them (Brott, Craig and Friedman 2004).
  - 41 - Another Industry trail-blazer, Mark Roesler, starts the creative licensing firm *Curtis Management Group (CMG) Worldwide, Inc* (Hass 2003)
    - Federal District Court of NJ announces that NJ common law would recognize the ‘descendibility’ clause in the Right of Publicity (*Estate of Elvis Presley v. Russen*, 1981).
    - First known use of a Deleb in a TV commercial (Goldman 1994). Ad Agency Lord, Geller, Federico & Einstein used Actor Billy Scudder to mime Charlie Chaplin for IBM PC Ads (Zientara 1984).
  - 42 - Through CGI (Computer Generated Imagery), 2-D ‘Morphing’ is developed, whereby a digital image can be metamorphosed into a different digital image, in 2-dimensional space (Doyle 2000)
  - 43 - California enacts the “California Celebrity Rights Act” (Carlson 2004)
    - The term ‘Deleb’, for dead celebrity, is coined (D’Rozario 1984)
    - Babe Ruth’s Estate trademarks his name and litigates against its misuse (Towle 2003)
  - 44 - 3D animation is used for the first time in a Music Video for the Dire Straits song “Money for Nothing” (Doyle 2000).
    - Morphing is used for the first time, in a Music Video, “Cry”, by British Band Godley and Creme (Doyle 2000).
    - CGI pioneer *Industrial Light & Magic (ILM)* creates the first completely computer-generated character, the ‘Stained Glass Man’, in ‘Young Sherlock Holmes’ (McBride 2009, p. R4)
  - 45 - Fred Astaire dies and leaves a carefully crafted will in which he stipulates how his image should be used in the future (Astaire 1998).
  - 46 - The Trademark Law Revision Act is enacted (15 USC § 1025(a)), providing another specific basis for celebrities to challenge unauthorized uses of their names and likenesses.
  - 47 - The *Corbis* agency is launched by Bill Gates (Cook 2005).
  - 48 - Deleb Louis Armstrong plays alongside Celeb Elton John, while Delebs Humphrey Bogart & James Cagney schmooze in a bar, in a Commercial for *Diet Coke* (Goldman 1994; Isaak 1991).
  - 49 - Delebs Cary Grant and Groucho Marx and a young Gene Kelly (who was alive at the time) dance alongside Celeb Paula Abdul, in a Commercial for *Diet Coke* (Sweeney 2013; Elliott 1992).
  - 50 - An Oscar is awarded to *Industrial Light & Magic* for its work using computer graphics to portray human skin in ‘Death Becomes Her’ (McBride 2009, p. R4)
    - CGI Innovator and pioneering Deleb animator *Digital Domain* is Founded (Verrier and Keegan 2012).
  - 51 - First known use of ‘morphing’ in a TV commercial, when model Carol Bouquet morphed into Marilyn Monroe and back again to herself in a commercial for Chanel 5 (Elliott 1994).
    - *KFC* Commercial using an actor dressed up to look and talk like the Colonel “was roundly criticized for defaming the dead” (Naughton and Vlasic 1998, p. 63).
  - 52 - *Getty Images* is co-founded by Mark Getty and Jonathan Klein (Cook 2008)
    - In ‘Batman Forever’, a computer-generated double performs stunts for actor Val Kilmer (McBride 2009, p. R4)
  - 53 - Hugely successful TV commercial was shown on Superbowl XXXI, in which Deleb Fred Astaire danced flawlessly with the Dirt Devil vacuum cleaner (Bloomberg 1997).
    - *Digital Domain* creates a TV commercial for Mercedes-Benz, featuring digitally-enhanced clips of Deleb Ed Sullivan ‘introducing’ (with an impressionist’s voice) the M-Class SUV (Gellene 1997).
    - In the movie ‘Titanic’, the ship is filled with CGI characters created by CGI specialist Digital Domain. However, few close-ups are shown of these characters (McBride 2009, p. R4)

**Figure 1. Time-line of Deleb use (continued).**



- Legend:**
- 54 - The California Legislature adopts the Astaire Celebrity Image Protection Act, extending the right of publicity duration from 50 to 70 years after the death of a celebrity (Connolly 2008)
  - Voice ‘morphing’ technology developed at Los Alamos National Laboratory (Arkin 1999)
  - In ‘The Mummy’, ILM uses CGI to create “layers of muscles, sinew and tissue” to create “the most realistic digital human character seen in film”, up to that point in time (McBride 2009, p. R4)
  - 55 - In ‘Hollow man’, Sony Image-works uses CGI to create a digital copy of actor Kevin Bacon and then “layer by layer strips away its skin, muscle and bone” (McBride 2009, p. R4)
  - 56 - *Forbes* Magazine begins reporting its ranking of the “Top-Earning Dead Celebrities” (Fong and Lau 2001)
  - AT&T introduces the revolutionary, ‘Text-to-speech’ software that, “would allow the dead to speak” (Goldman 2001, p. 14)
  - 57 - In the movie ‘Lemony Snicket’s A Series of Unfortunate Events’, the baby ‘Sunny’ is the first CGI-based human character ever to be shown in (ECU) extreme closeup (McBride 2009, p. R4)
  - *Corbis* acquires the German firm *Zefa*, the 3<sup>rd</sup> largest stock photography company in the world (Verrier 2005)
  - First known use of an animated Deleb in a movie. A morphed image of Deleb Laurence Olivier plays Dr. Totenkopf in ‘Sky Captain and the World of Tomorrow’ (Brott, Craig and Friedman 2004).
  - 58 - 85% Stake in the Elvis Presley Estate sold by daughter Lisa Marie Presley to Businessman Robert F. X. Sillerman’s Entertainment Marketing company *CKX*, for \$100 million (Glaister 2005)
  - Roger Richman Agency purchased by *Corbis* (Glaister 2005). *Corbis* is now neck-and-neck with Getty Images, holding the rights to 70+ million images in its archives (Saucedo 2005)
  - *Marketing Evaluations* begins to offer ‘Dead Q’ scores for Dead Celebrities (Friedman 2005)
  - 59 - Muhammad Ali (aging, but still living at the time) sells a majority (80%) interest in his image and naming rights to *CKX* for \$50 million (Bryceson 2006).
  - Deleb Audrey Hepburn danced in Skinny pants, in a scene taken from ‘Funny face’ and modified for the TV commercial for ‘Gap’. The Ad was criticized for exploiting the dead (Glaister 2006).
  - 60 - *Orville Redenbacher’s* Ad featured the company’s eponymous Deleb founder looking like a “dead-eyed zombie” and was criticized by many in the Ad industry (Garfield 2007)
  - Deleb Kurt Cobain was shown in a zombie-like pose in a print Ad for Doc Martens footwear. The Ad was soundly criticized as craven exploitation of the dead (Pfanner 2007).
  - In the movie ‘Beowulf’, a cast of characters is based on real-life actors and actresses. However, “many viewers think the characters seem flat” (McBride 2009, p. R4)
  - 61 - Paul Newman dies and leaves a carefully crafted will in which he stipulates in detail how his image should and should not be used in the future (Cowan 2008)
  - *Getty Images*, the market leader (Glaister 2005), is bought out by a private equity firm (i.e., Hellman & Friedman) for \$2.1 billion (Cook 2008)
  - In the movie ‘The Curious Case of Benjamin Button’ a CGI version of Brad Pitt as an older man (created by Digital Domain), is used “for almost an entire hour of the movie” (McBride 2009, p. R4)
  - 62 - *Harper-Collins* announces that at least two posthumous Michael Crichton novels (one to be completed after his death, by a ghost writer) will be released starting this year (Rich 2009).
  - *Imagem* Music Group bought the rights to the Rodgers and Hammerstein catalog (Rose, Pomerantz, Paine and Greenburg 2010)
  - 63 - *Magic Leap* is founded, whose technology goes beyond virtual reality, by allowing (moving) 3D images to be superimposed on real world objects (CNN 2014)
  - *Iconix* purchases an 80% stake and the Schulz family acquires a 20% stake in the ‘Peanuts’ brand, from the E. W. Scripps Co. (Lattman 2010).
  - 64 - The CGI technology pioneer *Digital Domain* issues an IPO (Ostrowski 2011).
  - Canadian Marketing firm *Authentic Brands Group* purchases the right to license Marilyn Monroe for an estimated \$20 to \$30 million (Pomerantz 2014; O’Reilly 2013).
  - Apollo Global Management bought out *CKX Entertainment*, which owned majority stakes in the Elvis and Muhammad Ali estates (Pomerantz 2014)
  - 65 - A 2D ‘hologram’ of Deleb Tupac Shakur (created by Hologram USA) performed on-stage and interacted with live artists Dr. Dre and Snoop Dogg at the 2012 Coachella Music Festival (Ngak 2012)
  - CGI pioneer and innovator *Digital Domain Media Group* (DDMG) files for Chapter 11 bankruptcy protection (Abramson 2012).
  - *Oculus Rift* was founded, allowing users an immersive interaction with virtual reality via a head-mounted display (Prisco 2015).
  - 66 - *UltraHaptics* is founded, which will now allow a viewer’s tactile sense to interact in 3D with virtual reality images in 3D (Prisco 2015).
  - Possibly the first animated Deleb in a TV commercial to have crossed Mori’s ‘uncanny valley’, when Deleb Audrey Hepburn was used in a commercial for ‘Galaxy’ chocolates (Krashinsky 2013).
  - Whisky-maker *Johnnie Walker* used a CGI image of Deleb Bruce Lee in a commercial for their liquor brand, even though Bruce Lee never drank while alive (Davidson 2013).
  - 67 - A hologram of Deleb Michael Jackson performed *Slave to the Rhythm* from his posthumous album *Xscape* along with live background dancers at the 2014 Billboard Music Awards show (AP 2014)
  - Robin Williams dies and leaves a carefully crafted will in which he stipulates that his image cannot be used for commercial purposes for 25 years after his death (Ellis-Petersen 2015b)
  - 68 - In the world’s first holographic protest, thousands of people march past a Spanish parliament building in Madrid, via their holographic images, but none were physically present (Mullen 2015).
  - The family of Deleb Bruce Lee goes to court to prevent the production of a movie made without their permission and based entirely on a CGI animation of the Deleb (Ellis-Petersen 2015a).
  - The family of Deleb ‘Tejano’ singer Selena announce that a hologram of her (created through funding crowd-sourced from fans) will go on-tour for on-stage performances in 2018 (Emery 2015)
  - Hologram USA announces that in 2016, Patsy Cline will be the first ever country music Deleb to be revived on-stage via hologram (Stutz 2015).

## Author Information

Denver D'Rozario is a Professor of Marketing, Department of Marketing, School of Business, Howard University. He has a Bachelor's degree in Chemical Engineering from the University of Madras (1983), an MBA from Illinois State University (1987) and a PhD from the Leonard N. Stern School of Business, New York University (1992). His research interests include cross-cultural marketing, ethnic marketing, nostalgia-based marketing, the use of dead celebrities in marketing and psychometric issues in marketing, among other areas. His work has been published in the *Atlantic Marketing Journal*, *Journal of Advertising*, *Journal of Consumer Marketing*, *Journal of Consumer Psychology*, *Journal of Customer Behaviour*, *Journal of Global Scholars of Marketing Science*, *Journal of Macro-Marketing*, *Journal of Marketing Management*, *Journal of Public Policy and Marketing*, and *Psychology and Marketing*, among other Journals and conference proceedings. He has done consulting work for the Ford Motor Company, the Defense Department and the Social Security Administration, among others. He has been quoted in several news media, including ABC (Channel 7 News), Bankruptcy News.org, BET's National News, Black Enterprise, BlackEnterprise.com, CNN.com, Cuepoint, The Dispatch, Educational Games Research, The Guardian, The Hindu, The Indian Express, Les Echos, Los Angeles Times, Minnpost.com, NBC (Channel 4 News), The Pantagraph, Radio W4WN, Time.com, The Washington Times, The Wall Street Journal, The Washington Informer and WNDU.com, among others.

Guang Yang, Ph.D. is an Assistant Professor of Marketing at College of Business, University of Lynchburg, in Lynchburg, Virginia, USA. He holds a Doctoral degree in Marketing and Management from the University of California, Irvine. His research interests are in cross-cultural buyer-seller negotiations, personal selling and sales management, and other societal and psychological factors influencing the marketing exchange. His work has been published in *Journal of International Business Studies*, *Journal of Product Innovation Management*, and *Journal of Public Policy & Marketing*, among others.