



Personality Rights

AI and the way forward

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UNPACKING PERSONALITY RIGHTS

- In India, personality rights are derived from common law; they are inherent and inalienable
- Bundle of rights including the right to privacy and right to publicity
- Indian courts have held that these rights can be derived from Article 21 of the Constitution of India, i.e. the fundamental right to life
- Elements of personality rights in India are captured in various legislations/regulations in India, including the Copyright Act, 1957, the Trade Marks Act, 1999 and the Code of Advertising Standards Council of India

COPYRIGHT ACT, 1957

The Copyright Act does not define the word 'personalities' or 'celebrities'. However, the Copyright Act defines the term 'performer' under Section 2(qq) as actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

A celebrity can aptly fall within the ambit of a 'performer' and thus be entitled to rights construed to a 'performer'.

Section 38 of the Copyright Act defines "Performer's right" and states that performer's right shall be available for a period of 50 years from beginning of calendar year following the year in which the such performance was made.

Apart from the above-mentioned exclusive right of a performer, the rights conferred on a personality can be derived/restricted from Sections 17, 38A, 39 and 52 of the Copyright Act.

TRADE MARKS ACT, 1999

Section 2(m) of the Trademarks Act, includes the term "names" in its definition of what constitutes a "mark". Section 14 of the Trade Mark Acts deals with the use of name or representation of a living person or a recently deceased person. Section 35 of the Trademarks Act permits anyone to do business in their own name in a bonafide manner.

ASCI CODE

Chapter 4 of the Code of Self-Regulation in Advertising in India- ASCI released by the Advertising and Standards Council of India (ASCI) postulates the following with reference to misappropriation and exploitation of names in advertisements:

"4.2 Advertisements shall not make unjustifiable use of the name or initials of any other firm, company or institution, nor take unfair advantage of the goodwill attached to the trademark or symbol of another firm or its product or the goodwill acquired by its advertising campaign."

Elements of Personality Rights

Personal attributes are protectable, which include:

(Plus digital variables of these including animations, AI deepfakes, etc.)

NAME

IMAGE

LIKENESS

VOICE

SIGNATURE



Development of the Law on Personality Rights in India

1. **ICC Development (International) Ltd. vs. Arvee Enterprises**

Right to publicity is derived from right to privacy

2. **Auto Shankar Case (R. Rajgopal vs. State of Tamil Nadu)**

Right to privacy is implicit in the fundamental right to life and liberty guaranteed to all citizens in the country

3. **Daler Mehndi (D.M Entertainment Pvt. Ltd. vs Baby Girl Gift House & Ors.)**

To avail remedy against infringement of the right to publicity, the individual must be identifiable.

Right to publicity is derived from individual's inherent right to choose whether to commercially exploit their personality.

Development of the Law on Personality Rights in India

4. Titan Industries vs. Rajkumar Jewellers

Injunction granted against the unauthorised use of Amitabh Bachchan's image on a billboard. Held that the right to control commercial use of human identity is the right to publicity

5. Film, “Main Hoon Rajnikanth” (Shivaji Rao Gaikwad vs. Varsha Productions)

Actor Rajnikanth was granted an injunction against the use of the title “Main Hoon Rajnikanth”

SHIFT IN THE LANDSCAPE OF PERSONALITY RIGHTS

Amitabh Bachchan vs. Rajat Negi & Ors.

In 2022, the Delhi High Court, for the first time passed a John Doe order (an order against the world at large, including unknown defendants), for protection of personality rights. In a first of its kind order, the Delhi High Court restricted known and unknown defendants from illegally exploiting Amitabh Bachchan's rights, including his right to personality, right to publicity, rights under the Copyright Act 1957 and other common law rights. The order not only restricted conventional methods of misuse, but also frowned upon any kind of passing off whether via standard means and modes or future mediums inclusive of NFT (Non-Fungible Token) and the Metaverse.

Following Amitabh Bachchan's case, several other celebrities / public figures have approached court seeking to enforce their personality rights:

1. Anil Kapoor

Anil Kapoor vs Simply Life India & Ors



2. Jackie Shroff

Jaikishan Kakubhai Saraf v. The Peppy Store & Ors.



3. Karan Johar

Film "Shadi ke Director Karan Aur Johar" (Karan Johar v. Indian Pride Advisory Pvt. Ltd.)



4. Arijit Singh

Arijit Singh v. Codible Ventures LLP



Personality Rights of famous characters?

The producers of the show, Taraak Mehta Ka Ooltah Chashma, filed a suit before the Delhi High Court seeking an injunction against the unauthorised use of the name of the show, its characters, and other intellectual property therein. Specific concerns were raised about deepfakes of the show characters, unlawful use of the same for vulgar, pornographic content, and commercial activities.

The Delhi High Court granted an ex-parte injunction to the producers of the show against unauthorised and unlawful exploitation of the show and its characters against the world at large.



PROTECTION OF PERSONALITY RIGHTS VIS-A-VIS GROWTH OF TECHNOLOGY

Danger of Deepfakes

- Unauthorised commercial use
- Fraudulent activities
- Defamation / reputational loss

Musicians, Voice Actors and Artificial Intelligence

- Unauthorised replication of voice leading to loss of livelihood
- Fraudulent activities
- Defamation / reputational loss

ELVIS Act - the need of the hour for musicians?

Ensuring Likeness, Voice, and Image Security Act of 2024 was passed in the State of Tennessee, USA, with effect from 1 July 2024.

It aims to protect musicians from unauthorised use of their voice, i.e. 'soundalikes'.

THE WAY FORWARD

- Comprehensive laws to deal with the rapid development of technology and the subsequent challenges faced as a result of it
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- Laws need to be applicable not only to individuals, and online platforms, including social media platforms and other intermediaries
- Robust reporting mechanism to effectively deal with complaints in a time bound manner
- Global issue, thus needs global cooperation to ensure stringent measures are taken across jurisdictions

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Q & A



THANK YOU

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