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## **U.S. Publicity Rights: An Economic Perspective**

Twelfth Session of the WIPO Conversation: Intellectual Property and Synthetic Media

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# The New Digital Frontier

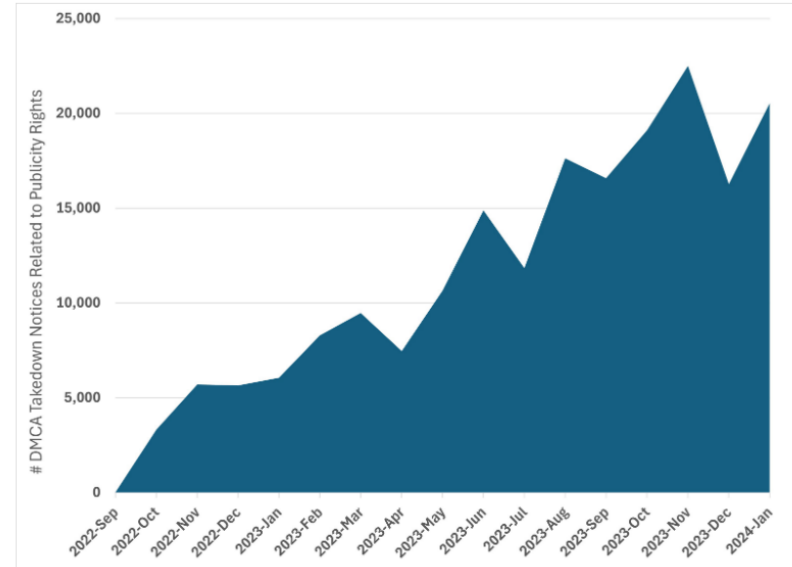
Publicity rights governing commercial use of someone's image, name, voice and likeness are poorly understood from an economics perspective.

- Elvis estate still generates millions annually from his "brand" - the hair, sideburns, jumpsuits.
- Similarly, Michael Jordan has earned \$1.5 billion - not from basketball, but from his 'Airness' and engagement with Nike.
- This isn't only about athletic or artistic skill - it's about persona as economic asset.

# Why This Matters: Technological Change

- Today's digital economy has created a new form of valuable asset: our digital selves - *who* controls and profits from digital replica?
- AI can now replicate anyone's voice, face, and gestures *at scale*, including unethical uses
- The line between authentic and synthetic identity is blurring.
- Economic value increasingly tied to managing one's image, not just creative output.

Figure 1: Trends in Perceived Publicity Rights Violations Online



Note: This chart tracks complaints about unauthorized use of an individual's persona overtime using DMCA takedown notices compiled by the Lumen project. We cannot systematically capture all such complaints; thus, we use keyword searches to identify complaints that specifically mention "deepfakes" as a proxy for such complaints. We observe no such complaints prior to September, 2022.

# Key Research Findings

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- Original WIPO research joint with the *U.S. Copyright Office*.
- First empirical economic study of publicity rights using variation in U.S. state laws and changes in postmortem protection, e.g. NY's Digital Replica Laws.
- When celebrities die before/after law changes, this creates a clean comparison, as only the *latter* are granted publicity rights.
  - Large dataset of (deceased) U.S. celebrities in creative occupations.
  - Combined with Google search, advertising and shopping data, copyright registrations at U.S. Office, trademark filings at the USPTO, and online enforcement (DMCA takedown notices).

# Rights Matter for Market Value

- U.S. celebrities who lose postmortem publicity rights experience *15 percent lower search visibility*, seeing popularity and online attention decline substantially.
  - Inconclusive for more direct commercialization measures such as Youtube or Google Shopping data.
- Without exclusive control, relatively harder to maintain coherent branding and authorized licensing, while competition among advertisers increases.
  - Eventually, longer-term incentives to invest in persona might be reduced.
- Evidence for markets becoming more valuable as publicity rights are granted and likely increase producer welfare.

# IP Rights Form an Interconnected System

- When publicity rights are not available, rightsholders *substitute* with other IP:
  - Copyright registrations increase 300-400 percent,
  - Online DMCA takedown notices 16-times larger,
  - Trademark registrations triple.
- This reveals publicity rights are part of broader “*integrated*” IP strategy, drawing on the same underlying celebrity asset source.

# Tentative Discussion

For the AI Age:

- Not just celebrity issue - AI *democratizes* persona replication.
- Without clear frameworks, anyone's likeness can be copied and monetized without permission.
- Trust in creative markets at stake when authentic/synthetic *indistinguishable*.
- Publicity rights can re-establish authenticity as enforceable market attribute.

# Key Takeaways

- *Recognition*: Publicity rights are now economically significant and deserve policy attention alongside copyright, trademarks, patents.
- *Integration*: Consider them as part of broader IP ecosystem, not in isolation.
- *Balance*: Design rights strong enough to support legitimate commerce, but flexible enough to preserve innovation and cultural expression.
- *Call for Evidence*: More empirical research is needed to assess overall effect on economic welfare.

# Thank you for your attention.

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- Reach out to [alexander.cuntz@wipo.int](mailto:alexander.cuntz@wipo.int)
- WIPO – U.S. Copyright Office Working Paper available [here](#)