

ANIL KAPOOR'S JHAKAAS AND BEYOND: UNVEILING THE LANDSCAPE OF PERSONALITY RIGHTS

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Abstract: The ease of digital mediums, which has helped many celebrities showcase their work of art more to audiences in order to become likable and popular, has made today's celebrities gain more fame than ever. The fame of celebrities, or for that matter, any artist, always comes with its own set of pros and cons. People tend to imitate an actor's voice tone, personality, famous dialogues, etc., without their permission to satiate their monetary needs. With generative artificial intelligence coming into the picture, infringing a celebrity's personality rights has become more prominent day by day.

So, this paper delves into the background of personality rights and how they are getting infringed substantively through generative artificial intelligence. From there, it discusses India's current jurisprudential stand on this issue and whether it is a holistic approach in handling this issue at hand when compared to the international stance on the same. It then aims to recommend certain suggestions by which the infringement of personality rights can be handled better, at least in the context of India. This paper also aims to answer whether any particular dialogue or act that an actor performs makes him liable to have exclusive ownership over it or whether it is owed to all the writers, directors, producers, scriptwriters, and the audiences as well who bring that dialogue or act to success.

Keywords: Generative AI, Celebrity Personality Rights, Intellectual Property Rights, Global Context etc.

I. INTRODUCTION

In the modern, rapidly evolving world, where technological progress happens on a daily basis, we have access to a wide range of entertainment choices. Whether we choose to watch the latest blockbuster on a state-of-the-art PVR screen or relax on our own sofas, enjoying web series from a multitude of Over-The-Top (OTT) platforms, we have an abundance of choices at our fingertips. It's within this dynamic media landscape that artists find themselves with more avenues to display their talents and connect with audiences. These evolving platforms offer them the opportunity to reach wider and more diverse viewership, which can lead to increased popularity and a stronger connection with their fans.

However, as with any level of fame, there are both advantages and disadvantages. The heightened visibility of celebrities often prompts fans and even opportunistic individuals to imitate their favourite actors. This imitation can encompass various aspects, from mimicking the actor's distinctive voice tone to adopting elements of their personality or reciting famous

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dialogues. Unfortunately, these imitations often occur without the artists' consent, driven by individuals seeking financial gains.

In this evolving media landscape, the emergence of generative artificial intelligence has intensified the issue of infringing on a celebrity's personality rights. Such technologies have made it even easier for individuals to exploit the likeness, image, and persona of celebrities without obtaining proper authorization. This growing concern has brought the matter of protecting personality rights to the forefront of discussions on the intersection of technology, entertainment, and intellectual property. It's also crucial to address the question of whether a specific dialogue or performance by an actor warrants exclusive ownership, or if it should be attributed to all the contributors, including writers, directors, producers, scriptwriters, and even the audiences who played a part in making that dialogue or performance a success.

II. BACKGROUND OF PERSONALITY RIGHTS

Personality rights essentially encompass an individual's capacity to safeguard their personal identity concerning property and privacy rights. Celebrities, in particular, place great importance on these rights as their names, images, or even voices can be exploited by different enterprises for financial gain. These rights can be categorized into two main groups:

A. Right to Privacy

Personality rights serve to shield individuals from the unauthorized commercial utilization of their likeness or image, ensuring they have a say in such usage or receive due financial compensation. The right to privacy comprises four distinct interests, each corresponding to a different category of invasion of privacy:¹

1. **Intrusion:** This pertains to an encroachment on an individual's physical privacy or seclusion.
2. **Revelation of Private Information:** This refers to the revelation of personal information, even if it's true, in a manner that a reasonable person would consider offensive. For example, revealing a former prostitute's history.

¹ William L. Prosser, Privacy, 48 CAL. L. REV. 383 (1960).

3. **False Light:** This occurs when information is published that portrays the plaintiff in a misleading or inaccurate manner. For instance, using someone's image in connection with an article where no reasonable connection exists, while implying such a connection.
4. **Appropriation:** This encompasses the utilization of the name or image without securing authorization.

B. Right to Publicity

The right of publicity acts as a preventative measure against the unauthorized commercial utilization of an individual's name, image, or other distinctive facets of their identity. It bestows upon individuals the exclusive authority to license and safeguard their identity for commercial utilization. This right is commonly categorized into five distinct interests:²

1. **Performance:** This pertains to the exclusive entitlement to engage in activities that constitute an individual's primary source of income.
2. **Adaptation:** This involves the exclusive right to grant permission for the creation of derivative works that represent the individual's performance, whether produced by the individual or by others.
3. **Personality Products:** This encompasses the exclusive exploitation of merchandise derived from an individual's name, appearance, or likeness.
4. **Endorsement:** This pertains to the use of an individual's name, appearance, image, and standing in connection with the advertising of goods or services.
5. **Reputation:** This safeguards an individual's standing from inappropriate use, even when such use was previously authorized. This right acknowledges that an artist's past performances can have an enduring impact on their future creative works.

III. PERSONALITY RIGHTS AND THEIR ADVERSE RELATION WITH AI

The invention of AI, which is prompt-based, has indeed helped to conserve a substantial amount of human energy for tasks that typically require a lot of time and effort. This feature facilitates the efficient and smooth completion of various tasks. However, it is this very aspect of generative AI that can work in contradiction to the interests of personality rights. Recently, there was news of a college student who provided a prompt to a generative AI application called

² *Id.*

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'chat-gpt,' asking it to compose a sick leave application in the style of Shashi Tharoor's language. The AI's response was posted on Twitter and garnered numerous responses, including one from Mr Tharoor himself, who expressed his disagreement with the AI's output.³

The concern is not that AI generated a response that wasn't in line with Mr Tharoor's style. The major concern is that, at this pace, artificial intelligence could potentially advance to the point of effectively imitating and producing content in the same manner as any other famous personality. These outputs could then be exploited for malicious purposes by individuals with ill intentions. Every artist who showcases their work, whether it's M.F. Hussain's portrayal of Mother Teresa, Prem Chand's 'Godan,' or Gabbar's iconic line 'Ye haath mujhe de de, Thakur' from 'Sholay,' creates a unique and invaluable piece of art. Such creations deserve protection to ensure they are cherished in the same manner as the artist intended.

When it comes to actors, their work of art encompasses their voice tone, dialogues, dressing style, and, essentially, their entire personality. These elements must be legally safeguarded to prevent any form of misuse or impersonation for monetary gain by any other party. The convenience of contemporary times sometimes poses a threat to the essence of art. For an actor, their personality is the sole work of art they own. It's their personality that they strive to protect, and rightfully do so by exercising their rights.

IV. INDIA'S STANCE ON PERSONALITY RIGHTS

A. Provisions under the Constitution

1. Right to Privacy - Article 21

In India, the primary legal provision safeguarding personality rights is Article 21 of the Constitution. While it may initially appear that the existing laws adequately cover the protection of personality rights, a more in-depth examination uncovers the shortcomings in the current mechanism for pursuing remedies within the right to privacy. For instance, the Supreme Court in *Raja Gopal vs. State of Tamil Nadu*⁴ held that the right to privacy is inherent in Article 21, which guarantees the citizens of this nation the right to life and liberty. It is essentially a right to be free from intrusion. A citizen holds the privilege to protect the privacy of various aspects such as personal life, family, marriage, procreation, motherhood, childbearing, and

³ Quint Neon, *Shashi Tharoor Reacts To Man Asking AI Bot To Write Leave Of Absence Like Him*, THE QUINT (Jan. 17, 2023, 2:14 IST), <https://www.thequint.com/neon/social-buzz/shashi-tharoor-reacts-to-man-asking-ai-bot-to-write-leave-of-absence-like-him-chatgpt-viral-tweet.html>

⁴ *R. Rajagopal v. State of Tamil Nadu*, (1994) SCC (6) 632.

education, among others. No one can disclose information related to these matters without the individual's consent, regardless of whether it is accurate, complimentary, or critical. If someone does so, they would be infringing upon the person's right to privacy and may be liable for damages. However, the situation may vary if an individual willingly becomes embroiled in a dispute or intentionally initiates or engages in a controversy.⁵

This scenario highlights the challenges a celebrity may encounter when pursuing damages through a privacy-based tort claim. When this right is limited to celebrities and is established within the framework of privacy, our legal system demonstrates that the tort becomes self-defeating, as celebrities cannot file claims based on privacy rights. This is a complexity that is often overlooked by the Indian courts.

Nonetheless, in certain cases, the courts have overlooked these apprehensions and offered solutions. In the process, they have overlooked the more comprehensive notion of personality, which should encompass all elements safeguarded by the country's existing intellectual property laws.⁶

2. Upholding the Freedom under Article 19(1)(a)

The freedom of speech and expression is a vitally important fundamental right within the constitutional framework, assured by Article 19(1)(a).

The American Doctrine of the Public Figure received approval in India in the *R. Rajagopal Case*.⁷ The concept of the public figure doctrine raises a concern related to freedom of speech and sets a more stringent standard in defamation cases for individuals in the public eye. To prevail in a libel case, public figures must demonstrate that the defendant acted with deliberate falsehood or reckless disregard for the truth. The reasoning behind this doctrine is evident—it upholds the media's free speech rights when reporting on subjects of public significance.

However, Article 19(1)(a) inherently emphasizes the need for an unrestricted flow of ideas in the public sphere, and it suggests that public figures shouldn't be able to use publicity rights as a shield. It's essential to acknowledge that the freedom protected by Article 19(1)(a) should not be undermined by the notion of publicity rights. For instance, Article 19(1)(a) would conflict with any effort by a celebrity to employ publicity rights to prevent the development of a biography or a play based on publicly accessible information about them. Consequently, Article

⁵ *Id.*

⁶ The Trademarks Act, 1999, § 2(m), No. 47, Acts of Parliament, 1999.

⁷ *R. Rajagopal*, *Supra* note 4.

19(1)(a) serves as the foundation for constructing a strong defence against a publicity rights claim.

B. Grounds for protection under existing Intellectual Property Laws

1. Under the Copyrights Act, 1957

Although trademarks, as seen in the above-mentioned paragraphs, have been a good example for comprehending the concept of personality rights, copyrights can also be considered to understand personality rights, even though the act does not explicitly protect personality rights on a prima facie basis.

- i. *Section 2(qq)*: outlining the scope of performers' rights, potentially encompassing personality rights.
- ii. *Section 38*: a provision allowing performers to assert their rights and thwart the unauthorized exploitation of their performances.
- iii. *Section 57*: granting safeguarding of moral rights as a legal safeguard.
- iv. *Section 17(b)*: establishing the initial copyright holder of a creative work.

In the case of *Titan Industries Ltd. v. Ramkumar Jewellers*,⁸ the central issue involved the defendant erecting billboards featuring the prominent Indian stars Amitabh and Jaya Bachchan, who endorsed the defendant's jewellery store. The plaintiff alleged a breach of personality rights based on a contractual agreement in which these public figures had transferred their personality rights to the plaintiff. Furthermore, the plaintiff initiated legal action to secure an injunction against copyright infringement, put a stop to the unlawful utilization of personality rights, and obtain compensation for the deceptive use of their image. The court ruled that, in accordance with Section 17(b)⁹ of the Copyright Act of 1957, the plaintiff was the rightful owner of the copyright in the mentioned advertisement. This ownership was confirmed by the endorsement agreements, which explicitly indicated copyright ownership belonging to the plaintiff. As a result, the defendant's unauthorized utilization of a similar advertisement for their products on billboards and the replication of the celebrities' images in the same context as the plaintiff's constituted a violation of copyright rights.

In the latest Delhi High Court judgment of *Anil Kapoor vs. Simply Life India & Ors.*,¹⁰ plaintiff's likeness, image, voice tone, and personality were used on various platforms. Some

⁸ *Titan Industries Ltd. v. Ramkumar Jewellers*, (2012) SCC OnLine Del 2382.

⁹ The Copyrights Act, 1957, § 17(b), No. 14, Acts of Parliament, 1957.

¹⁰ *Anil Kapoor v. Simply Life India & Ors.*, (2023) LiveLaw (Del) 857.

created a website named after him, like www.anilkapoor.com, and even came up with merchandise featuring his famous dialogue “Jhakaas” without the plaintiff's permission. The court observed that such activities can significantly harm a celebrity's right to endorsement and hence issued an injunction against the defendants.

2. Under the Trademarks Act, 1999

In certain instances, even trademark laws have been applied to regulate the unauthorized utilization of personal attributes. An illustrative case is *D.M. Entertainment*¹¹ which marked the first Indian instance addressing the commercial facet of personality rights. In 1996, the plaintiff, Indian artist Daler Mahendi, established a venture named D.M. Entertainment Pvt. Ltd., where they secured a registered trademark for the initials DM, signifying their name. All rights, encompassing the right of publicity, commercial endorsements, and related entitlements, were vested in the company.

The defendants, who owned and operated toy and gift stores in the vicinity of Delhi, became embroiled in a dispute regarding the sale of dolls inspired by Daler Mehndi, one of which sang a few lines from his songs, and was created by the defendant. The plaintiffs claimed false endorsement, passing off, and the violation of the right to publicity. In the absence of specific legislation safeguarding personality rights, the court provided a remedy by invoking provisions within trademark law, specifically addressing issues like passing off and false endorsement.

3. Use of Identifiability as the foundation for the Right to Publicity tort

The criteria for this test stipulates that the individual's persona should be easily recognizable by name or identity to the general public.¹² In a notable case at the Madras High Court, *Shivaji Rao Gaikwad vs. Varsha Production*,¹³ The court emphasized the requirement for the individual to be a celebrity, meaning widely recognized by the public, for the right to publicity tort to be applicable. A significant aspect in this case was the defendant's decision to promote the movie with a title that was almost defamatory, namely, 'Hot Kavita Radheshyam as Sex Worker for Rajinikanth,' which introduced an aspect of the right to privacy to the case.

It's worth highlighting that the case did not primarily concern the privacy of the plaintiff, Shivaji Rao Gaikwad, but rather, it cantered on the usage of the stage name 'Rajinikanth' as the

¹¹ *D.M. Entertainment (P) Ltd. v. Baby Gift House*, CS (OS) No. 893 of 2002 (2010).

¹² Nina R. Nariman, *A Cause Célèbre: Publicity Rights in India*, SCC ONLINE BLOG (Jan. 24, 2022), <https://www.scconline.com/blog/post/2022/01/24/a-cause-celebre-publicity-rights-in-india.html>

¹³ *Shivaji Rao Gaikwad v. Varsha Production*, (2015) SCC OnLine Mad 158.

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'identifiable' name protected by the right to publicity. In this scenario, it becomes apparent that the judgment supports positioning the right to publicity within the realm of property rights, emphasizing the preservation of the economic value associated with the pseudonym 'Rajinikanth,' as opposed to addressing the personal privacy of the individual, Shivaji Rao Gaikwad.

V. INADEQUACY OF EXISTING LAWS

A. Trademarks Act, 1999

1. Scope of Protection

The Trademarks Act of 1999 and personality rights have different scopes of protection. Personality rights pertain to the safeguarding of the commercial exploitation of attributes associated with an individual's persona, whereas trademarks ensure the exclusive rights of the trademark owner to employ the mark in association with commercial products or services. Therefore, it can be inferred that the subject matter of the Trademarks Act, concerning personality rights, currently remains inadequate.

2. Element of 'Distinctiveness'

With regard to trademarks, registration is required, which can be based on distinctive signatures or product names. However, in the case of personality rights, every individual is unique and distinctive in their own way, and they cannot be asked to be registered solely based on a signature. This is a major inadequacy in trademark law.

B. Copyrights Act, 1999

Not all performers can meet the requirements of being recognized figures, which demonstrates that the protection under the category of 'performers' is inadequate. On the contrary, personality rights are regarded as an inherent entitlement of every individual without making distinctions between celebrities and non-celebrities, as established by the statute. However, Indian courts often appear to interpret personality rights as an exclusive privilege of celebrities, a perspective that contradicts the fundamental essence of personality rights.

On the other hand, copyright primarily protects original literary, theatrical, musical, and artistic works, encompassing cinematograph films, sound recordings, and other creative expressions, to guarantee creators exclusive rights to their creations. Personality rights, on the other hand, empower individuals with exclusive authority over their names, appearances, and personal

attributes. Therefore, as previously mentioned, the subject matter of copyright and personality rights differ significantly. Copyright stimulates creativity by providing creators with financial incentives for their creative works, whereas personality rights grant individuals control over their personal identity rather than their specific forms of creative expression.

C. The 'Passing Off' Remedy

The legal remedy of passing off is another method employed by the courts to protect personality rights, although it may not be entirely suitable for this purpose. In passing off cases, there are three fundamental criteria that must be satisfied to make a claim based on these rights: reputation, misrepresentation, and harm to goodwill or reputation. In instances involving the unauthorized exploitation of personality rights, misappropriation often occurs, and in some cases, the individual's reputation may remain unharmed, but unauthorized usage can still transpire. If the reputation remains intact, a remedy under passing off may not be applicable. As a result, these elements of passing off can present challenges when seeking remedies for the violation of personality rights.

VI. RECOGNITION OF PERSONALITY RIGHTS ACROSS BORDERS

A. Germany

German law serves as one of the best examples by acknowledging a broad right to individual personality, which forms the foundation for the comprehensive protection of personal rights.¹⁴ German law clearly recognizes the right to personal identity and provides specific legal protections against the unauthorized commercial use of an individual's image.¹⁵ Pop stars, television personalities, and celebrated athletes have all sought legal protection to prevent the unauthorized commercial exploitation of their likenesses.¹⁶ Since 1954, Germany has recognized the fundamental right to personal identity through rulings by the German Federal Court of Justice (Bundesgerichtshof). This right is constitutionally guaranteed under Articles 1 and 2 of the Basic Law (Grundgesetz) and is legally protected in civil law under Sections 823(1) and 1004 of the German Civil Code (Bürgerliches Gesetzbuch).¹⁷ This legal framework

¹⁴ Johann Neethling, *Personality Rights: A Comparative Overview*, 38 COMP. & INT'L L.J. S. AFR. 210 (2005).

¹⁵ Corinna Coors, *Image Rights of Celebrities vs. Public Interest – Striking the Right Balance Under German Law* (March 30, 2014) JIPLP (2014) 9 (10): 835-840.

¹⁶ *Id.*

¹⁷ Constant case law since BGH of 25 May 1954, I ZR 211/53 - Schacht-Brief - BGHZ 13, 334.

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ensures the protection of human dignity and the freedom of personal development, providing a shield against the unauthorized use of specific aspects of an individual's character.¹⁸

In the legal dispute involving former German goalkeeper Oliver Kahn and EA-Sports, the Hamburg Court of Appeal concluded that Oliver Kahn's consent was necessary for the inclusion of his name and likeness in a video game. This requirement stemmed from the utilization of Mr. Kahn's image for commercial gain, and there was no discernible public interest justifying the use of his name or likeness.¹⁹ The case cantered on Mr. Kahn's objection to the defendant's utilization of his likeness and name in the video game "FIFA Soccer Championship 2002" and the related promotional activities.

B. Canada

The foundation of personality rights in Canada is based on a combination of statutory provisions and tort law. It's important to note that each province in Canada has its variations in handling these rights, leading to some differences in the way they are addressed.²⁰ When it comes to the elements encompassed by the "personality" category, the Canadian provinces of Manitoba, Newfoundland, and Saskatchewan have explicitly incorporated the use of a person's name, likeness, or voice as potential forms of personality appropriation into their statutes. In contrast, the statute in British Columbia specifically mentions only the use of a person's name or portrait.²¹

In Canadian common law, the acknowledgement of personality rights is relatively restricted. The initial acknowledgement of these rights took place in the case of *Krouse v Chrysler Canada Ltd.*²² In this particular case, the court established that when an individual's likeness possesses commercial value and is employed in a manner that suggests an endorsement of a product, there are legal grounds for a claim concerning the appropriation of personality. This concept was further refined and expanded upon in the case of *Athans v Canadian Adventure Camps*,²³ where the court ruled that personality rights encompass both an individual's image and their name. As these two cases revolved around celebrities, it seems that the scope of common law personality rights is confined to celebrities, considering that the requirement of exclusive marketing for profit typically applies primarily to celebrities, rather than extending to ordinary

¹⁸ BGH of 14 February 1958 - Herrenreiter - BGHZ 26, 349.

¹⁹ Unreported, 13 January 2004, OLG Hamburg.

²⁰ See generally, Amy Conroy, "Personality Rights".

²¹ 2 William Blackstone, *Commentaries on the Laws of England* (1809).

²² *Krouse v. Chrysler Canada Ltd* (1971), 5 C P R (2d) 30.

²³ *Athans v. Canadian Adventure Camps*, (1977), 17 O.R. (2d) 425.

individuals. This is in spite of assertions that it is a common law tort with broader applicability. In areas like Ontario, the development of celebrity rights revolves around the legal principle of appropriation. Conversely, in provinces like Quebec, the emphasis has been on the protection of privacy as a Charter²⁴ right, as demonstrated in the case of *Aubry v. Éditions Vice-Versa Inc.* (1998).²⁵

C. France

In civil law jurisdictions, in contrast to common law systems, there are dedicated statutory regulations designed to safeguard an individual's image, personal data, and other confidential information. For example, in France, personality rights are rooted in Article 9 of the French Civil Code. France acknowledges and safeguards a right known as "droit à l'image," which encompasses elements like similarity, voice, photographs, portraits, and video reproductions.²⁶ French law allows legal action in cases where someone's image or personal history is exploited without permission. The right to image has evolved from its original role in protecting privacy-related principles to also encompass economic aspects. As a result, it is frequently perceived as a combination of personality rights, encompassing moral rights of authors, the right to privacy, the right to safeguard one's reputation and integrity, and the right to govern the utilization of one's likeness.

D. United Kingdom

English law has historically been reluctant to embrace the notion of publicity rights. The concept of publicity rights and other rights about celebrities is seen as benefiting only a select portion of the population, with limited tangible advantages for the broader public. The United Kingdom lacks dedicated legislation for personality rights, as some other nations have in place. In the UK, a combination of existing laws and common law principles is used to handle matters concerning personality rights, particularly in cases involving celebrities.

In British cases involving personality rights, the most commonly employed legal concept for seeking redress is the "passing off" tort, which bears similarities to trademark infringement in the United States. In cases falling under this legal category, the plaintiff must establish that the defendant's unapproved use of their name, image, or likeness creates a likelihood of confusion

²⁴ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11 (U.K.).

²⁵ *Aubry v. Éditions Vice-Versa Inc.*, 78CPR (3d) 289 (SCC) (1998).

²⁶ Elisabeth Logeais & Jean-Baptiste Schroeder, *The French Right of Image: An Ambiguous Concept Protecting the Human Persona*, 18 L.A. ENT. L.J. 511, (1998).

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concerning the source of products or services, leading to damage to the plaintiff's well-established reputation or goodwill.

E. Jamaica

The issue of celebrity rights was examined in Jamaica in 1994 through a Supreme Court decision commonly referred to as The Dino Michelle Case.²⁷ In this particular case, the defendant illicitly marketed T-shirts that prominently displayed Bob Marley's name and image, all without obtaining the necessary authorization from the estate's license holders. The judge in the case recognized "passing off" and "appropriation of personality" as the legal grounds for safeguarding Bob Marley's name and image in this particular situation. Upon a thorough review of the case's particulars, the knowledgeable judge concluded that the defendant's actions created a misleading impression among the public. This situation gave rise to the misconception that there was some form of connection, whether of a commercial nature or otherwise, between the plaintiff and the T-shirts sold by the defendant. Clarke J emphasized that the legal doctrine of passing off was created to safeguard established reputations, and in this case, there was no question that Bob Marley's name and image carried substantial reputation value. When dealing with the matter of appropriation of personality, the judge emphasized that Jamaican law acknowledges the property rights linked to the reputation built by a celebrity's persona. The judge stated that these rights could be infringed upon if elements of a celebrity's persona were used for commercial gain in a way that unjustly enriched another individual.²⁸

F. Spain

Spain provides robust protections for personality rights.²⁹ Article 18 of the Spanish Constitution ensures the protection of the right to honour, personal and familial privacy, and one's own image. Article 1 of the Organic Law enacted on May 5, 1982, officially categorizes these rights as fundamental. Additionally, Articles 7.5 and 7.6 establish broad prohibitions against the capture, reproduction, or dissemination of a person's image in private settings or beyond, whether through photography, filming, or any other means. These provisions also

²⁷ The Robert Marley Foundation v. Dino Michelle Limited, CL R115/1992 (Supreme Court of Jamaica 1994). JM 1994 SC 032

²⁸ Pusey, Ingrid, and Marc Morgan, *Celebrity Personality Rights in Jamaica: A Path for Development*, Social and Economic Studies, vol. 61, no. 2, 2012, pp. 99–125. (last visited 30 Oct. 2023) JSTOR, <http://www.jstor.org/stable/41803755.html>

²⁹ Lowenstein Sandler, *A COMPARATIVE EXAMINATION OF PUBLICITY RIGHTS IN US AND EUROPE*, (last visited Oct. 28, 2023). <https://www.lowenstein.com/media/4712/publicity-rights.pdf>.

restrict the use of an individual's name, voice, or likeness for purposes related to advertising, commerce, or similar activities.

G. Australia

In Australia, similar to the U.K., there is no distinct legal framework for image or publicity rights related to an individual's name or image. The Courts of Australia have instead advanced a legal concept resembling the right of image or personality through the doctrine of passing off. A prominent case involved Paul Hogan.³⁰ In this specific case, a footwear manufacturer, Pacific Dunlop, showcased a character donning an outfit reminiscent of Hogan's film character in their advertisements. The court sided with Hogan, accepting his passing off claim, as it was determined that the public might reasonably infer that Hogan had granted his permission or endorsed Pacific Dunlop to use the image of his character Crocodile Dundee.³¹

VII. RECOMMENDATIONS AND FUTURE IMPLICATIONS

In the age of Artificial Intelligence, the protection of personality rights for celebrities is of paramount importance due to the proliferation of deepfake technology, privacy concerns stemming from data mining, the potential for commercial exploitation without consent, misinformation facilitated by AI, and the ethical challenges posed by this technology. Establishing robust legal frameworks to safeguard personality rights in the context of AI is crucial to protect celebrities from reputation damage, privacy infringements, and unauthorized use of their likeness and voice in a rapidly evolving digital landscape.

In numerous jurisdictions, a blend of laws is employed, encompassing contract law, regulations related to trademarks, copyright, privacy, and data protection. These legal instruments have been utilized to protect celebrities, but together, they provide only partial protection. While it's recognized that the common law system is flexible enough to remain pertinent and effective, there is a concern that the efforts to establish and protect celebrity personality rights might potentially result in the courts overreaching the original intentions of the existing laws. This could result in unanticipated and possibly unintended consequences. In contemporary times, public figures invest substantial sums of money in

³⁰ Hogan v. Koala Dundee Pty, (1988) 20 F.C.R. 314.

³¹ Mary LaFrance & Gail H. Cline, *Identical Cousins: On the Road with Dilution and the Right of Publicity*, 24 Santa Clara Computer & H.T. L.J. 641 (2007).

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their public image, which holds significant value. Recognizing this valuable asset as a form of property suggests that it may be subject to taxation as a capital asset, akin to other forms of intellectual property.³² This recognition may contribute to government revenue while protecting celebrities' interests and preserving their ability to capitalize on their public personas.

Decisions like those in the cases of Anil Kapoor and Amitabh Bachchan carry profound future implications and recommendations. On the positive side, these rulings signify a growing legal awareness and recognition of the critical need to protect the personality rights of celebrities in an age of advanced technology, AI, and deepfake threats. Such judgments reinforce the significance of safeguarding a celebrity's image, identity, and personal brand, discouraging unauthorized and potentially damaging exploitation. These decisions provide a legal precedent that can serve as a deterrent against the misuse of technological tools for financial gain, reinforcing the principle of informed consent and ethical AI usage.

However, on the negative side, they may also raise concerns regarding potential overreach, as they could be seen as limiting free speech and artistic expression as can be seen in Anil Kapoor's case where the court went a bit far in restricting the use of the word "Jhakaas" as asserted that he brought widespread recognition to this term through his appearance in the Hindi film *Yudh*. Nevertheless, the term had been in use by countless individuals prior to his acting career. Publicity rights should not enable the wealthy and well-known to maintain exclusive control over language in a world that is becoming increasingly commercialized.³³ Striking a balance between protecting personality rights and safeguarding fundamental rights like freedom of speech and creativity remains a challenge. Furthermore, enforcing these judgments effectively, especially across digital platforms, can be intricate. The global nature of the internet and AI makes it challenging to ensure consistent and standardized implementation of such rulings. Consequently, while these decisions are a vital step towards preserving celebrity personality rights, they highlight the need for comprehensive, well-defined legal frameworks, global cooperation, and ongoing ethical discussions to navigate the complexities of the digital age.

³² *Zacchini v. Scripps-Howard Broad. Co.*, (1977) 433 U.S. 562, 578.

³³ Anupriya Dhonchak, *Why Anil Kapoor Shouldn't Own Jhakaas*, THE INDIAN EXPRESS (Sep. 30, 2023, 12:38 IST), <https://indianexpress.com/article/opinion/columns/anil-kapoor-and-the-overzealous-defence-of-jhakaas-8960571/.html>

VIII. CONCLUSION

The visual representation, name, and distinctive attributes of an individual have historically been subject to commercial exploitation, notably for advertising purposes. However, over the last few decades, advancements in technology have significantly expanded the economic potential of these personality features beyond what was previously possible. The recent ruling in the Anil Kapoor case represents a positive stride in the right direction. The rights of celebrities constitute an essential aspect of an artist's or an individual's identity and are also situated within the domain of Intellectual Property Rights. Given the substantial impact that celebrities wield on the lives of ordinary people and the evolving legal landscape in our nation, it is opportune for legislators to enact dedicated legislation concerning celebrity rights. Such a law could define, elucidate, and offer safeguards against the exploitation of rights linked to celebrities while concurrently ensuring their privacy.

It is of utmost importance to delicately balance the preservation of personality rights with fundamental liberties, while also fostering international cooperation to ensure a consistent approach. Strengthening enforcement mechanisms is crucial, and advocating for the ethical use of AI in this context is essential. Additionally, educating both celebrities and the general public about this evolving landscape is pivotal. The legal framework must remain flexible to adapt to technological advancements, and recognizing the economic implications, such as the potential taxation of these rights, is a significant consideration. As we move forward, successfully navigating these complexities is imperative to safeguard the integrity and identity of celebrities in an increasingly digital and AI-driven world.