
THE COMMODIFICATION OF IDENTITY: AI-GENERATED REPLICAS AND THE COMMERCIAL EXPLOITATION OF PERSONALITY

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ABSTRACT

The advent of artificial intelligence technologies, especially deepfakes, voice cloning, and digital avatars, has led to an unparalleled threat to the sphere of personality rights. This paper explores the complex issue of the commodification of identity in light of AI-generated clones, considering its legal, moral and socio-cultural implications. By conducting a doctrinal and comparative analysis of Indian law, along with international perspectives, the present study highlights some major gaps in existing legal instruments and makes a compelling case for recognizing personality rights under the Indian law. With reference to precedent decisions like *K.S. Puttaswamy v. Union of India* and *Anil Kapoor v. Simply Life India*, and in the context of contemporary global developments, the current research outlines a blueprint for regulatory reform that ensures an appropriate balance between technological advancement and the inviolability of the right of each person to govern commercial exploitation of their identity.

Keywords: Personality Rights, Artificial Intelligence, Deepfakes, Right of Publicity, Commodification of Identity, Voice Cloning, Digital Avatars, AI Regulation

1. INTRODUCTION

1.1 Background and Evolution of Personality Rights

Personality Rights have expanded from its initial limited scope as provided under privacy law into becoming an increasingly viable area of legal discourse that holds significant commercial weight. Traditionally, the interest of law in matters of personality only extended towards preventing unnecessary encroachment into one's private life. Yet, the process of commercializing fame in modern pop culture called for a reassessment of the traditional conception. The development of the entertainment industry, professional sports, and the mass media made the personal qualities of celebrities, such as their name, face, voice, and personality, a valuable commodity.

The defining case in the area of personality rights was that of *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*¹, decided by the United States Second Circuit which first held that there is a separate 'right of publicity' which can be distinguished from the right of privacy as a proprietary right. Melville Nimmer's seminal work on the subject later provided the intellectual framework for the doctrine, arguing that it is necessary to treat one's personal identity as a valuable commodity². The growth of personality rights in India, on the other hand, has taken a somewhat different route: personality rights have emerged as an extension of the law of privacy, passing off, and constitutional rights, finding its fullest articulation in the Supreme Court's famous privacy judgement³.

Personal rights today include a wide range of rights, including the right to control the commercial exploitation of one's name, picture, voice, signature, or any other personal characteristic.

1.2 Emergence of AI-Generated Replicas (Deepfakes, Voice Cloning, Digital Avatars)

The emergence of deep learning and artificial intelligence technologies has added unprecedented levels of complexity to this developing legal scenario. Technologies that used to be limited to Hollywood special effects production houses can now be accessed by regular consumers with limited computational power. The term deepfake refers to technologies that

¹ *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866 (2d Cir. 1953).

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

³ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

use deep learning methods to create audio and visual content that resembles reality. These technologies allow for the creation of videos where the face of one person is superimposed on the body of another person, as well as the creation of entirely fabricated videos featuring real people engaging in actions that they never did.

Voice cloning systems powered by artificial intelligence can accurately clone the vocal patterns of a person based on just a couple of seconds of training audio. This allows for the creation of completely novel audio content delivered in the voice of the actual person. Avatar technologies allow for the creation of virtual personalities, some of which are inspired by actual people. These personalities can act as brand ambassadors or social media influencers.

There are many practical uses of synthetic media. The advertising industry has used synthetic images of celebrities who have never approved of being used in such ads. The entertainment industry has brought back dead artists through synthetic technology to perform on stage after their death. Synthetic anchors have been used by news channels. There are fully artificial influencers who have millions of followers on social media and earn money through advertisements.

1.3 Research Problem and Objectives

The main research question driving this work is that the current laws regulating personality rights, whether in India or globally, are completely insufficient for tackling the commercial use of personality rights through AI replicas. The law, which has been built gradually over the years based on analogical cases decided by judges, has not been able to cope with the rapid developments brought about by the use of AI technology.

There are four major objectives of this study. Firstly, it seeks to establish the theoretical background behind personality rights and their commercial exploitation. Secondly, the study aims to evaluate the technical possibilities and commercial uses of AI replicas. Thirdly, the study intends to critically analyze the legal framework governing personality rights, both in India and globally. Fourthly, the study endeavors to identify the gaps in the existing legal framework and suggest reforms.

1.4 Scope and Limitations of the Study

The present study examines the commercialization of personality rights via artificial

intelligence (AI) generated avatars, with special emphasis on India and comparative insights from the US and EU. It neither claims to give a comprehensive analysis of all aspects of AI regulations nor privacy laws; rather, it considers personality rights in relation to these broad legal contexts where pertinent. This paper is mainly doctrinal in nature, supported by the use of case studies. A drawback of this study is that technological and legal developments in this field happen swiftly, and future legislation or judicial decisions might impact this research.

1.5 Research Methodology

The research method used is predominantly based on the legal doctrine, where an in-depth study of laws and case law is undertaken. Sources such as constitutional provisions, legislations, and case law of India, USA, and European Union are the primary sources of research. Academic papers, international organizations report, and policy papers constitute the secondary sources of research. The comparative method is used to come up with the best practices to propose reforms. The case study approach is adopted to examine instances of exploitation of personality rights by AI.

2. CONCEPTUAL FRAMEWORK: PERSONALITY AS PROPERTY

2.1 Meaning and Nature of Personality Rights

Personality rights refer to a set of legal rights that ensure the various components of one's personal identity are protected against any misuse. The personal attributes referred to here include the right to one's own name, image, likeness, voice, signature, persona, unique manners, and so forth. The nature of personality rights is twofold: Personality rights share traits of personal rights in the sense that they derive from personal dignity and autonomy, but they also share the nature of property rights because they can have economic value⁴.

There has been considerable debate over what kind of legal rights personality rights are in philosophical and legal writings. The Hegelian school, exemplified in the legal literature by Margaret Jane Radin, argues that certain types of objects, such as those derived from the attributes of one's person, are integral to a person's personal identity in a way that alienating them is morally wrong. Under this approach, personality rights must be characterized as personal rights, which means that they cannot be alienated or transferred. The modern

⁴ Margaret Jane Radin, "Property and Personhood," 34 *Stanford Law Review* 957 (1982).

jurisprudence on personality rights in the common law world has evolved into an instrumental amalgam in which personality rights are understood as property rights capable of being transferred, although not necessarily wholly so due to their inherently personal aspects.

As far as India is concerned, personality rights have been held to emanate from the right to privacy guaranteed by Article 21 of the Constitution, as interpreted by the Supreme Court in the case of *K.S. Puttaswamy v. Union of India*⁵. The High Court of Delhi has expressly upheld personality rights, specifically those of celebrities, as encompassing rights in names, pictures, and images that cannot be exploited commercially without their consent⁶.

2.2 Right of Publicity and Commercial Value of Personality

Right of publicity is the particular legal instrument used for protecting personality rights in its commercial form. The right gives an individual exclusive authority to regulate the commercial exploitation of his/her personality by licensing it to whomever he/she desires and by excluding unauthorized use by any third party.

The right of publicity has gained much recognition in America. It has been recognized both at common law and under statutory provisions in almost all states of America. The Restatement (Third) of Unfair Competition describes the right of publicity as the right of each individual to prevent the use of his/her name, likeness, and other personal characteristics for commercial purposes without permission.

The monetary worth of one's celebrity persona is astronomical. Billions of dollars flow from endorsement deals, licensing arrangements, merchandising, and paid content into the hands of performers, athletes, and other celebrities each year. However, this worth is not merely an outcome of the star's fame; it is a result of the investments made in developing his unique persona and reputation. This principle forms the basis of the law of publicity rights. It aims to make sure that such investments benefit the person himself, and not others who derive money out of his efforts without contributing anything themselves.

2.3 The Difference between Privacy Rights and Publicity Rights

While there is a connection between personality rights and privacy rights that stems from the

⁵ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

⁶ *Titan Industries Ltd. v. Ramkumar Jewellers*, 2012 SCC OnLine Del 2382 (India).

desire to protect an individual's identity, there are fundamental differences between the two rights. First, privacy rights protect the individual's rights related to controlling the information flow regarding himself/herself. In essence, privacy rights allow for the right to be let alone, control personal information, and avoid unnecessary invasions of one's privacy⁷. Publicity rights, on the other hand, refer to the individual's rights in regards to controlling the use of his/her identity for commercial purposes. As famously stated by William Prosser, there are four kinds of torts associated with privacy rights—appropriation being among them⁸.

This distinction makes all the difference in practice. If an individual's likeness is appropriated for use in an advertisement without his or her permission, there is a claim based on the right to privacy. However, in addition to being able to assert a right to privacy, a celebrity can claim the right of publicity, which is the right to exploit one's likeness as an economic asset, even in the absence of any invasion of privacy or reputation, because the use concerns information about a publicly known aspect of the person, such as a celebrity's appearance.

2.4 Theories of Commodification of Identity

The phenomenon of the commodification of identity - the transformation of personal qualities into commodities that can be traded on markets - has been subjected to consistent critique within the disciplines of law and sociology. The notion of commodification refers to the general logic according to which the principles of the market economy have been expanded beyond their usual domain into spheres such as family, friendship, or personal identity⁹.

According to Marxian theory, the commodification of celebrity identity is merely one of the tendencies that arise under capitalism whereby all facets of social life are transformed into items of value that can be bought and sold. In other words, the identity of the celebrity is turned into a "brand" – a kind of cultural capital that can be exploited, packaged, and marketed for profit. According to liberal-individualism, the commodification of identity is inherently legitimate if the process in question is based on voluntary consent and proper distribution of property rights.

Third, a communitarian/postmodern theory of social interaction asks if celebrity identity can

⁷ Samuel Warren & Louis Brandeis, "The Right to Privacy," 4 Harvard Law Review 193 (1890).

⁸ William L. Prosser, "Privacy," 48 California Law Review 383 (1960).

⁹ Jeremy Rifkin, *The Age of Access: The New Culture of Hypercapitalism* (Tarcher/Putnam, 2001).

ever be solely the property of the person concerned. Instead, fame becomes socially constructed, where the identity of the celebrity is collectively produced via the interpretations offered by the fan community, the critics, the media, and other cultural producers. This theoretical stance is relevant to the question of how wide the scope of personality rights ought to be in light of AI-produced artifacts based on a particular cultural meaning of the celebrity.

3. AI-GENERATED REPLICAS: TECHNOLOGY AND CAPABILITIES

3.1 Understanding Deepfake Technology

The development of deepfake technology relies heavily on a type of machine learning framework called Generative Adversarial Networks (GANs). According to Goodfellow et al., these were created in 2014¹⁰. A GAN includes two neural networks – a generator and a discriminator. During their training, the former creates synthetic images or videos while the latter tries to detect whether the data is authentic or generated by the other network. Gradually, the generator acquires the ability to create output that cannot be distinguished from actual recordings by the discriminator. Thus, extremely realistic fake audiovisual material is achieved.

Deepfakes have been applied for the creation of deepfake videos in cases related to personality rights in the most significant way possible. They are created in order to transfer the facial features of one individual onto another individual in the footage, where the first individual is mostly a famous public figure. The method referred to as 'face-swap' makes it possible to swap faces in videos through algorithms trained on sets of target individual images. Modern deepfake technologies, including open-source ones, are capable of creating undetectable by sight face-swap videos.

Implications regarding commercial use are very clear. With deepfake videos, celebrities can be included in advertisements for products they never endorsed; a fake appearance of association or endorsement with something that goes against their image or principles is also possible. What's even more shocking about the technology is how cheap it makes it for people to produce misleading material and how difficult it is to catch them.

¹⁰ Ian J. Goodfellow et al., "Generative Adversarial Networks," *Advances in Neural Information Processing Systems* 2672 (2014).

3.2 AI Voice Cloning and Synthetic Media

The technology behind voice cloning involves artificial intelligence and deep neural networks, such as WaveNet and its follow-up technologies, which are used to create voice models using recordings of someone's voice. Once the model is created, it is able to generate speech in that person's voice based on any text, with prosody, timbre, and accents that are similar to the original voice. The amount of data needed to train the system has greatly reduced, and today there are models that can create a voice clone based on just a few seconds of audio.

There are obvious commercial uses for the technology of voice cloning, especially regarding personality. For instance, an advertisement can be generated for a product without the celebrity knowing about it, a political actor can make up audio clips of the person saying something that they never said, and a content farm can generate synthetic podcasts or audiobooks in the voice of a known author or commentator.

AI-based media production, in general, includes the creation of text, imagery, sound, and video content that mimics the real thing, simulating actual interactions between humans. All these features working together – face generation, voice cloning, and text generation – allow the development of completely artificial personalities that can participate in interactions through social networks, video chats, or online customer support, while mimicking a real person.

3.3 Digital Avatars and Virtual Influencers

Another type of artificial personality involves digital avatars and virtual influencers, who constitute a separate subset. In contrast to deepfakes, virtual influencers are entirely synthetic personas without any resemblance to real-life people. These avatars are created by certain companies and individuals for various purposes, with specific looks, personalities, and social media accounts¹¹.

Some popular examples include Lil Miquela, created by Brud, Imma, created by AWW Inc., a Japanese studio, and KFC's virtual Colonel Sanders. Virtual influencers attract millions of fans on social media, demand substantial payments from companies interested in collaborations, and interact with their audience similarly to real-life personalities.

¹¹ George Lawton, "Rise of the Digital Human," *Computer* 52(9):16 (2019).

Virtual influencers raise different legal issues compared to deepfakes since there is no issue of personality rights violation involved due to the lack of real-life counterparts to such personas. On the other hand, if an avatar is created partially or fully on the basis of another person's look or personality, similar problems arise.

The rise of virtual influencers also prompts larger questions regarding the concept of authenticity in the world of influencers, the disclosure requirements for artificial personas, and the regulations needed to control AI-enabled business communication.

3.4 Commercial Uses in Advertising and Branding

The business uses of AI-generated duplicates in advertising and branding are numerous and increasing. Advertisers have used the deepfake technique to adapt international ads by substituting the voice of a celebrity with an artificial duplicate of the voice speaking in the local language. Film studios have used artificial duplicates of dead actors like Carrie Fisher and Peter Cushing to recreate their performances in new films. Television channels have tested out artificial newsreaders for broadcasting and distribution online. Video game developers have licenced or pirated the duplicates of sports stars for video games.

These business uses are lucrative but pose important legal questions regarding consent, remuneration, and control. The primary question from a legal standpoint is whether the individual whose identity has been appropriated or whose successors may inherit the right can assert any legal control over such business uses in the absence of a comprehensive statutory framework.

4. COMMERCIAL EXPLOITATION OF PERSONALITY IN THE DIGITAL AGE

4.1 Endorsements and Brand Collaboration

Contractual endorsements serve as the most explicit and commercially significant cases of personality commercialization. Celebrities enter into meticulously crafted contracts that define the type of goods to be endorsed, ways in which images of the individual are to be utilized, time frame for such authorization, and amount of compensation that will be received. In this way, endorsements serve as the epitome of consensual personality commercialization, characterized by contractual negotiation and reasonable compensation for the same. Through creating fictional endorsements, the system is abused through creation of endorsement

scenarios wherein there is no endorsement contract or compensation involved.

Negative consequences of unauthorized use of AI generated celebrity endorsements are wide-ranging. For one, celebrities forfeit the potential income, since such endorsement was never contracted for. Celebrities' reputation might also take a hit due to the endorsement of products which they consider distasteful¹². Celebrity endorsements cease being reliable given doubts surrounding authenticity. Companies relying on celebrity endorsements are put in an unfavorable business position.

4.2 Unauthorized Commercial Use of Likeness

Apart from the endorsement situation where AI-made clones can be used, there are numerous business uses of the clone of celebrities without their consent. For example, a company may employ the use of a deepfake in order to create an advertisement that involves a popular athlete without seeking his consent in order to generate profits without paying the athlete for endorsements. Influencers can employ the use of an artificial voice cloning tool to make a replica of a famous sportscaster in order to persuade people to join their paid subscription website.

A good illustration of this issue is the *White v. Samsung Electronics America, Inc.*¹³ case. In the said case, the Ninth Circuit Court concluded that the use of a robot that looks like Vanna White in both physical appearance and context but does not match in identity, voice, and likeness might constitute an invasion of the person's publicity rights. The expansive interpretation of publicity rights serves as a forewarning of the problems with the use of AI-made replicas.

Even the Indian judiciary has come to accept the concept that the commercial exploitation of the identity of the individual without his or her permission is a wrongful act. For instance, in the case of *Titan Industries Ltd. vs Ramkumar Jewellers*, the Delhi High Court granted an injunction against the use of the image of a celebrity couple without their permission for advertisements.

¹² Madhavi Divan, *Facets of Media Law* (2d ed., Eastern Book Company, 2013).

¹³ *White v. Samsung Electronics America, Inc.*, 971 F.2d 1395 (9th Cir. 1992).

4.3 Influencer Economy and Digital Identity Monetization

The rise of the age of influencer economy has altered the entire appearance of monetization opportunities related to digital identity. Modern social media platforms have created new ways for monetization of one's personal identity through earning money from sponsored posts, affiliate marketing, merchandise sales and platform monetization¹⁴. The monetization value of influencer identity is defined by its followers' number, their engagement rate and demographic characteristics. The value is produced via regular content updates and interaction with the influencer's followers.

There are a lot of dangers that arise for the discussed ecosystem of influencer identity monetization due to development of AI technologies. First, deepfakes make possible creation of counterfeit content made as if by real people, who distort messages of genuine influencers. Second, voice cloning makes possible creation of counterfeit podcasts based on an influencer's voice. Third, there might be other social networks where AI creates replicas of influencers in order to attract their audience and advertising budget.

4.4 Case Studies on Celebrity Exploitation through AI

Examples of cases that showcase the potential for commercial exploitation of AI replicas include, for instance, the case where the Indian actor Anil Kapoor succeeded in obtaining an injunction from the Delhi High Court against the unauthorized use of his name, voice, and personality traits in AI-created works¹⁵. In doing so, the court took into consideration the broader implications of the potential harm that could result from the risks associated with the use of generative AI technology.

In the United States, for example, the estate of the late country singer Randy Travis filed a lawsuit claiming violation of its rights due to the unauthorized use of an AI-generated copy of his voice on a posthumously released song. The issue being addressed here relates to issues such as the nature of the likeness generated, the extent of posthumous rights, consent and other similar matters.¹⁶

On an international basis, there have been cases involving the unauthorized use of deceased

¹⁴ Pramod K. Nayar, *Seeing Stars: Spectacle, Society, and Celebrity Culture* (Sage, 2009).

¹⁵ *Anil Kapoor v. Simply Life India & Ors.*, CS(COMM) 652/2023

¹⁶ Cal. Civ. Code § 3344 (West 2023).

Bollywood actors' likenesses created using AI technology¹⁷.

5. LEGAL FRAMEWORK GOVERNING PERSONALITY RIGHTS

5.1 India

5.1.1 Constitutional Protection (Right to Privacy under K.S. Puttaswamy v. Union of India)

The constitutional foundations of personality rights in India were laid by the precedent nine-judge bench decision of the Supreme Court of India in *K.S. Puttaswamy (Retd.) v. Union of India*, wherein it was conclusively established that privacy is definitely a fundamental right and it falls within the ambit of Article 21 of the Constitution¹⁸. The significance of the judgment in terms of contributions to personality rights jurisprudence is primarily seen through the court's recognition of the concept of privacy both informational and that of 'privacy of one's personality,' i.e., the right of every individual regarding how their personality should be presented and exploited.

In his opinion, Justice D.Y. Chandrachud has elaborated on his conception of privacy that encompasses physical and informational privacy as well as the right of an individual to decide what to do with their personality. Although the question of artificial intelligence representations of a person's personality was not directly discussed in the case at hand, this constitutional basis may become a basis for further legislation concerning the rights in question.

5.1.2 Judicial Recognition of Personality Rights

One important evolution of personality rights jurisprudence in Indian courts is judge-made law in accordance with the passing off principle and tortuous appropriation. This was done in the case of *Titan Industries Ltd. v. Ramkumar Jewellers*¹⁹, where the use of photographs of Amitabh Bachchan and Jaya Bachchan, a famous Bollywood couple, whose earlier endorsements with another company was used in the defendant's advertisement was held to be an infringement. The defendant was ordered to stop doing so, because there exists an intellectual property right to the plaintiffs' image which can be appropriated for commercial

¹⁷ *Sonu Nigam v. T-Series & Ors.*, CS(COMM) 2023 (Delhi High Court, 2023).

¹⁸ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

¹⁹ *Titan Industries Ltd. v. Ramkumar Jewellers* CS(OS) No.2662/2011

benefit.

Before this, the court recognized personality rights in the case of DM Entertainment Pvt. Ltd. v. Baby Gift House²⁰ by restraining the defendants from manufacturing dolls that resembled Daler Mehndi. Similarly, the High Court of Madras recognized personality rights of Rajnikanth in Shivaji Rao Gaikwad v. Varsha Productions.²¹

5.1.3 Recent Developments (Anil Kapoor v. Simply Life India)

Anil Kapoor v. Simply Life India & Ors. is a landmark case decided by the Delhi High Court involving the issue of AI-based exploitation of personality rights. In the matter, the plaintiff, who is a famous actor in Bollywood films, initiated legal proceedings seeking interim relief against the unauthorised exploitation of certain aspects of his personality through various types of AI technology, including the use of deepfakes, voice cloning, and even creating merchandise. The suit was successful and resulted in a blanket injunction not only in relation to the exploitation of plaintiff's right to his individual attributes but also his 'celebrity rights' as an aggregated bundle of rights.

Injunction in this case demonstrates the threats associated with exploitation of personality rights using advanced AI technologies. It has been pointed out by the court that the application of deepfake technology, voice cloning, etc., poses new challenges to the exploitation of individuals, and no laws exist currently to address them.

5.2 International Perspectives

5.2.1 United States: Right of Publicity Doctrine

Of all nations, the United States is at the forefront of legislation concerning the right of publicity. Right of publicity laws have been enacted in most states in the U.S.; however, California and New York are the two significant states. Section 3344 of the California Civil Code provides that it is an infringement of the right of publicity to commercially use without permission, the names, voices, signatures, images, or likenesses of living persons.

California's Celebrity Rights Act (Section 3344.1) extends the right of publicity law to offer

²⁰ DM Entertainment Pvt. Ltd. v. Baby Gift House & Ors., 2010 SCC OnLine Del 2137 (India).

²¹ Shivaji Rao Gaikwad v. Varsha Productions, 2015 SCC OnLine Mad 158 (India).

protection of the personal rights of dead celebrities in the seventy years after their deaths.²²

The U.S. Supreme Court ruled in *Zacchini v. Scripps-Howard Broadcasting Co.*²³ that the right of publicity achieves a distinctive purpose in enabling performers to benefit from their performances just as artists can through patents and copyrights of their works. The U.S. federal courts have extended the right of publicity to cover the protection of voice impersonations in the cases of *Midler v. Ford Motor Co.* and *Waits v. Frito-Lay, Inc.*²⁴

In light of the particular problems that arise due to AI, some American states have adopted laws or introduced bills to counter the creation of replicas through AI. The draft NO FAKES Act, which will establish federal rights of publicity for digital replicas created through AI, will serve as a benchmark for all other states.

5.2.2 European Union: Data Protection and Image Rights

As opposed to the right of publicity doctrine, the personality rights system within the EU is largely defined through data protection legislation. As an illustration, the GDPR safeguards personal data, encompassing biometric data like facial scanning and voice prints, through mandating the requirement of obtaining consent prior to processing such data.²⁵ Additionally, individuals possess the rights of access, erasure, and objection relating to the data concerned.

Further, Article 9 of the GDPR provides that biometric data utilized for identifying individuals comprise a specific category of personal data deserving additional safeguards.

Moreover, in Europe, various nations have enacted image rights within the context of the general right of personality (*allgemeines Persönlichkeitsrecht*) under civil law. For instance, in the case of *Caroline of Monaco v Germany*, the Federal Constitutional Court of Germany ruled that celebrities benefit from an inviolable zone of personality protection against exploitation of their image for commercial purposes.

Furthermore, the European Court of Human Rights has recognized image rights within the ambit of the right to privacy protected under Article 8 of the European Convention on Human

²² Cal. Civ. Code § 3344.1 (West 2023) (Astaire Celebrity Image Protection Act).

²³ *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977)

²⁴ *Midler v. Ford Motor Co.*, 849 F.2d 460 (9th Cir. 1988).

²⁵ General Data Protection Regulation, Regulation (EU) 2016/679 (GDPR), arts. 4, 9, 17.

Rights.²⁶

The EU Artificial Intelligence Act, adopted in 2024, classifies AI systems used to create deepfakes as requiring transparency disclosure, and prohibits certain high-risk applications of AI-generated synthetic media

5.2.3 Comparative Analysis

The comparison between the two systems shows the merits and demerits associated with both of them. While the American system of the right of publicity provides the easiest method of protecting the right of publicity, it is inconsistent between various states and may be seen to be excessively broad and detrimental to the arts. The European GDPR system is highly advanced technologically and is appropriate for situations where there is a need to process biometric information through the use of AI technology. However, the system is mainly remedial in nature. The civil law regimes of the general personality rights offer great flexibility but are rather wide-ranging and may lack precision.

6. LEGAL ISSUES ARISING FROM AI-GENERATED REPLICAS

6.1 Consent and Authorization

Consent lies at the heart of the legal regime around the commercial exploitation of personality rights. The use of another's identity for commercial gain is legal insofar as it has been agreed upon by the person whose identity is used; any other use constitutes a breach of the law.

There are several obstacles associated with applying the law of consent in the case of AI-generated imitations. It goes without saying that no consent was obtained from the person depicted in the AI-generated image of a deepfake or voice clone. The issue here is whether the present legal framework sufficiently bans such a lack of consent and offers suitable legal sanctions.

There are various issues involved that complicate the process of analysis. The current consent mechanisms were developed for either the analog or earlier digital environment; there is nothing that states that this consent is transferable to using someone's image as training data

²⁶ *Reklos & Davourlis v. Greece*, App. No. 1234/05, 47 EHRR 421 (2009).

for an AI application. If consent has been granted for the usage of a person's image on an analog medium such as in the making of a movie, it is not certain whether that consent would apply if the same person's image was used to create AI models that generate fake content of that person.

6.2 Ownership of AI-Generated Persona

Ownership of such AI-generated personas presents challenges. Where the AI system generates a synthetic persona from a real individual, the issue of ownership of the generated material arises. Here, the real individual has an interest in personality rights arising out of the AI-generated material because of his or her personality being incorporated in the work. The developer of the AI software may seek to make intellectual property claims to the generated synthetic media.²⁷

The majority of copyright statutes do not recognize AI-generated material without human creativity in the creation of the works. In India, "author" under the copyright act is defined to be the human person who created the work, not the AI software that generated the work.²⁸ Hence, the copyright of AI-generated material will belong to the human who prompted the software to generate the work. However, the personality rights interest of the real individual is independent of such an intellectual property claim by the AI software's developer.

6.3 Liability: Creator, Platform, or User?

The question of how liability for such unauthorized AI-generated reproductions should be allocated remains unanswered by statute and case law in India. There are three possible defendants in most instances: the designer of the AI system responsible for the reproduction, the platform hosting the synthetic material, and the person who created the material using the AI tool.

The intermediary liability regime established under India's Information Technology Act, 2000,²⁹ as amended in 2021, may offer some grounds for imposing liability on the hosting platform in situations where it actually knows about the presence of infringing material and fails to remove it within a reasonable period of time. Nevertheless, the "safe harbor" protections

²⁷ Nils Blythe et al., "Who Owns AI-Generated Content?" World Intellectual Property Organization (2022).

²⁸ Copyright Act 1957 (India), s. 2(d).

²⁹ Information Technology Act 2000 (India), s. 66E.

enjoyed by intermediaries may provide immunity to the hosting platform if there was no actual knowledge of the nature of the synthetic content or if the platform turned a blind eye to it. Liability may be placed on the designer of the AI system on the grounds of negligence or tort if the system did not contain appropriate safeguards against its misapplication in personality exploitation cases.

6.4 Passing Off and Misrepresentation

The passing off tort seeks to prevent misrepresentation that occurs during trade, which injures the goodwill of another person. With regards to personality rights, the use of an AI-generated impersonation of a celebrity in a commercial setting amounts to making a false representation that the celebrity approves or is related to the defendant's business dealings. Such representations will be made to the relevant public, who are susceptible to being misled.³⁰

The Indian judiciary has invoked the doctrine of passing off for the protection of the personality of celebrities in cases like Titan Industries and DM Entertainment Pvt. Ltd. The application of passing off requires elements such as misrepresentation, goodwill, and likelihood of injury. The creation of an AI-generated impersonator in a commercial context would easily satisfy these conditions. The biggest hurdle in enforcing such laws would be proof and prosecution of such violations, considering how fast such content might be developed and disseminated online.

6.5 Defamation and Reputational Harm

The AI-created replicas of actual people are not always made with the motive of exploiting them for profit, as they may sometimes be created with the intent of disparaging or damaging the reputation of their actual persons. A deepfake video showing an actual person performing a criminal act, uttering obscene language, or indulging in sexual activities could ruin the person's reputation. Defamation law is one legal remedy that could be sought against any false statement of fact that has caused harm to the reputation of a person, which a deepfake video depicting actual actions would constitute provided harm to reputation is proven.

Nevertheless, applying defamation law to cases involving AI-generated synthetic media may face several doctrinal issues. The necessity of proving a false statement of fact may become

³⁰ Reckitt Benckiser (India) Ltd. v. Hindustan Unilever Ltd., (2009) 40 PTC 13 (India).

difficult when the AI-generated video does not state anything in words but rather leaves a false impression on the viewer's mind. Moreover, identifying the defendant may pose problems due to the anonymity of the perpetrator and international nature of publishing on the internet. Additionally, the rapid transmission of such videos across networks may render post-publication relief ineffective.

7. INTERSECTION WITH INTELLECTUAL PROPERTY LAW

7.1 Copyright Issues in AI-Generated Content

The meeting of AI-generated replicas with the concept of copyright law can be considered from two standpoints; the first concerns whether AI-generated synthetic works enjoy copyright protection, while the second relates to using copyrighted works as inputs into an AI system.

In the case of the first question, in most nations, copyright law stipulates that there should be a human author behind the work to have copyright protection. Purely AI-generated works (works generated without the contribution of human creativity) would thus not enjoy copyright protection according to the current Indian law ('author' is defined as requiring human involvement) and US law as per recent guidelines from the Copyright Office regarding AI-generated works. It seems quite ironic that AI-generated replicas of actual people do not enjoy copyright protection on behalf of the AI software or developer of the software, yet their personality rights are wholly engaged.

With regard to whether the utilization of copyrighted images and audio recordings in an AI system amounts to infringement of copyright, no clear ruling is available in India. The analysis would depend on whether AI training is considered reproduction in terms of the Copyright Act, 1957.

7.2 Trademark and Persona as a Source Identifier

Trademark attributes of personality rights exist when a celebrity's name or distinct personality becomes a source indicator, meaning that in the minds of consumers, the name or personality serves as a means of distinguishing the products or services of one person from those of others. Under the Trade Marks Act 1999, a name or sign that is distinctive and has acquired distinctiveness through use in commerce can be registered as a trademark.³¹ Several celebrities

³¹ Trade Marks Act 1999 (India), s. 2(1) (zb).

have registered their names and stylised signatures as trademarks in India and internationally.

The use of an artificial intelligence-generated image of a celebrity for commercial purposes could infringe on the trademark when such an image becomes sufficiently similar to the celebrity's trademarked name or stylized signature. Passing off, as another form of legal protection, complements this approach in instances where the celebrity's name is not trademarked but has acquired the character of an unregistered mark by virtue of its usage.

7.3 Overlap between IP Rights and Personality Rights

Another point at which personality rights and IP rights intersect is that of difficulty in concept and practice. Unauthorised commercial use of a celebrity's likeness could potentially be considered an abuse of personality rights, passing-off, trademark infringement, and a copyright violation if the likeness is embedded in a photo or recording which is itself copyrighted. While having multiple causes of action may be advantageous to claimants, such complexity adds another layer of doctrinal challenge.

Unlike IP rights, however, there is something of a residual nature to personality rights which precludes them from being fully alienable as IP rights can. Although the right to exploit a person's image commercially may be licensed, personality rights themselves cannot be fully assigned or transferred, and this characteristic sets them apart from their property-based counterparts and will prove significant when analyzing AI replicas.

7.4 Enforcement Difficulties

There are significant difficulties in enforcing personality rights in connection with AI replicas. Firstly, the universal nature of the internet implies that the creation of the AI replica could take place in one country, while hosting and accessing the material occurs elsewhere. In other words, it will likely be difficult for any one country to effectively enforce its domestic laws through traditional judicial processes.³²

Secondly, the rapid dissemination of the AI replica via viral marketing techniques makes judicial remedies such as injunctions practically ineffective. In most cases, by the time the plaintiff obtains an injunction from the court and the latter is implemented against the host

³² Frank Pasquale, *The Black Box Society* (Harvard University Press, 2015).

website, millions of people might already have accessed the content, and it would be replicated on many other websites.

8. ETHICAL AND SOCIETAL CONCERNS

8.1 Moral Rights and Identity Integrity

Apart from the economic aspects of personality rights, there are profound ethical considerations regarding the use of AI-generated representations as vehicles for commodifying people's identities. The idea of moral rights—the legal foundation of which is laid in the concept of rights of attribution and integrity protecting the connection between the author and his creation in copyright—is mirrored in personality rights, which imply that each person possesses the right of integrity regarding his identity, which entails the right to manage the presentation³³ of oneself and prevent distortions of his image that would violate his perception of himself.

The employment of AI-generated images in commerce is connected with the notion of what may be called 'violation of identity integrity', which includes using one's identity to promote goods, opinions, or causes one does not believe in, and having one's identity used as support for actions one would rather disown. These offenses can hardly be regarded as purely economic ones, since they involve violations of an essential dimension of human dignity: the integrity of one's personal identity.

8.2 Deepfake Misuse (Fraud, Pornography, Manipulation)

It is more relevant to raise issues on the unethical application of such replicas than issues regarding commercialization of AI-produced replicas. The most common and alarming application of deepfake technology is its use for frauds, non-consensual pornographic production, and manipulation of the political process. In particular, deepfake pornography, the creation of sexually graphic content based on the likenesses of real people without their permission, has been recognized to be among the most prevalent types of deepfakes that do immense damage to the subjects, mostly women, in terms of their reputation and even job security.

The use of AI replicas for financial fraud, including fake audio and video of executives signing

³³ UNESCO, "Recommendation on the Ethics of Artificial Intelligence," UNESCO Doc. SHS/BIO/CONF.2362/2021/4 (2021).

off on fraudulent activities, has already resulted in enormous losses. Finally, AI replicas of political figures saying things that they did not say or creating false impressions of real-life occurrences can do serious damage to the democratic process.

8.3 Impact on Public Trust and Media Authenticity

The advent of synthetic media created through AI technologies has led to an “infocalypse”: a state in which epistemic trust is jeopardized because it is now so widespread and easy to create convincing fake content that society cannot discriminate anymore between genuine and fabricated material. The consequences of this problem extend far beyond the infringement on the right to personal integrity. With audio and visual materials being easily fabricated, the evidence value of such information is undermined, the system of journalism and democratic governance becomes compromised, and trust within the community suffers.

Thus, when formulating measures for addressing this challenge, it will be necessary to think not only about protecting the rights and interests of individual creators but also about developing a solution capable of overcoming the problem itself. These steps include both legal actions (compulsory labeling of synthesized media and liability for non-compliance), as well as technological means (development of authentication tools).

8.4 Gendered and Cultural Dimensions

The negative consequences associated with AI-generated replicas are unevenly distributed across different groups. The targets of deepfake pornography, AI-powered voice cloning as a means of online harassment, and other forms of AI-related identity crimes tend to be women in the overwhelming majority of cases. The intersectionality of gender, race, and celebrity adds up to vulnerability since minority actresses face multiple layers of exploitation in line with the entertainment industry demands and social misogyny and racism.

Cultural aspects should also be considered in relation to the issue of exploitation of celebrities through the use of AI-generated replicas of their personalities. When celebrities represent cultural or religious icons such as Indian actors who enjoy quasi-sacred status in the Indian cinema and its audience, the commercialization of their images or their manipulation using AI takes on an even deeper cultural and social importance.

9. NEED FOR REGULATORY REFORM

9.1 Gaps in Existing Legal Frameworks

The analysis undertaken in previous sections highlights several major lacunae in the current legal regime regulating personality rights as well as AI-generated synthetic media. First, there is no holistic statutory provision in India that protects personality rights; rather, such protection has to be gleaned out of constitutional principles and doctrines, common law torts and IP laws.

Second, existing legislation was not designed keeping in mind the particularities and unique problems associated with AI-generated synthetic media. Definitions like ‘likeness’, ‘image’ and ‘persona’ are analogues in nature and have been defined so in an analogical world; therefore, application of these terms to modern AI technologies, which can simulate a person’s likeness or image, but do not reproduce photographs or recordings, poses new questions.

Third, the existing intermediary liability system designed to tackle problems of user-generated content on internet platforms is incapable of providing adequate protection from the systemic abuse of AI technologies to exploit personality through synthetic media. Fourth, cross-border regulation is inadequate to tackle the globalized nature of such content creation and distribution.

9.2 Need for Legal Recognition of Personality Rights in India

The most important legislative objective proposed through this research is to enact a dedicated Personality Rights Act in India. This act needs to include personality rights as a legal right category which would include rights for commercial exploitation of the personality in respect of all attributes that have commercial value including name, image, likeness, voice, persona, and even digital avatar.³⁴

Such an act needs to include personality rights of the living as well as of the dead, recognising the fact that even after the death of a personality, it may continue generating financial value due to its popularity. The act needs to include necessary provisions on obtaining consent for commercial exploitation, licensing, and damages as the appropriate civil remedy for infringement. Also, a special provision must be made for protecting against exploitation

³⁴ Law Commission of India, Report on Personality Rights and Digital Identity (proposed 2024).

through synthetic media generated through AI.

9.3 Regulation of AI and Synthetic Media

Beyond the regulation of personality rights, a more general regulation regime for the use of AI and synthetic media must be established. By building upon the classification regime of the EU AI Act that categorizes the AI system according to the risks posed and requiring different regulatory duties depending on such risks, India may wish to establish the following: mandatory labeling of AI content; technical specifications for authentication of synthetic media; duty of the platform to detect, label, and where necessary remove infringement AI content; and prohibition of use of certain high-risk applications of synthetic media, especially non-consensual pornographic deepfake videos.

Under the Digital Personal Data Protection Act 2023, some elements of the regulations of AI use may have already been provided by setting out certain requirements for the processing of biometric personal data, including facial images and voices.

³⁵9.4 Policy Recommendations and Safeguards

In light of the above discussion, the following policy recommendations are proposed for safeguarding personality rights in the era of AI in India:

- (i) The enactment of a Personal Rights Act providing for an enforceable right of publicity available both during life and after death, with specific reference to AI-generated synthetic media.
- (ii) Amendments to the Information Technology Act imposing specific duties on intermediary service providers to identify, flag, and take down AI-generated material that infringes on personality rights, failing which they will be liable.
- (iii) The constitution of a Digital Identity Protection Authority responsible for receiving complaints, coordinating enforcement actions, and prescribing technical guidelines for authentication of synthetic media.
- (iv) The criminalization of non-consensual production and dissemination of deepfake

³⁵ Digital Personal Data Protection Act 2023 (India).

pornography and AI-generated materials intended for fraudulent purposes, subject to deterrent penalties.

(v) Mechanisms for international cooperation, both bilateral and multilateral, for cross-border enforcement of personality rights against AI-generated synthetic media.

10. CONCLUSION

10.1 Key Findings

The foregoing discussion has covered the commodification of personality through AI-created personalities from legal, ethical, and societal perspectives. These findings may now be stated in summary form. To begin, personality rights are a sui generis legal concept, being both an aspect of personal rights, based on concepts of dignity and autonomy, and property rights, arising out of the commercial utility of one's identity and therefore calling for statutory codification in India. Furthermore, AI technology has facilitated commercial exploitation of personality in a way that is far ahead of any legal regime formulated before such synthetic media could even be imagined, let alone produced by algorithms. Moreover, while Indian law has evolved significantly in terms of personality rights through judicial pronouncements, such judge-made law will fall short of providing adequate protection compared to comprehensive statutory regulation. Lastly, while the effects of AI personality exploitation include individual financial damage, they also go much further to include reputational damage and identity infringement.

10.2 Future of Personality Rights in the AI Era

It is clear that the future evolution of personality rights will be closely intertwined with the continued evolution of AI technology itself, as well as with the legislation and jurisprudence that arise in response. With improvements in AI technology and its increased accessibility, there will be an increasing number of sophisticated instances of exploitation of personality via synthetic media that will be difficult to address. In order to provide sufficient protection, future personality rights law will need to keep pace with technological changes and respond effectively.

Future legislation relating to personality rights should consider a broader set of individual attributes than name and likeness alone, taking into account the full range of characteristics

that may be captured by modern AI technologies. In addition to addressing the use of these attributes by living individuals, posthumous uses will be particularly relevant in light of the potential for advanced AI technologies to generate realistic representations of deceased people.

10.3 Final Observations

Identity commodification with of AI-based replicates is undoubtedly among the most important legal and moral dilemmas of the modern age. While the issue concerns more than just the financial considerations of celebrities, it involves the fundamental human value of having an intact and autonomous identity. Legal institutions have, on many occasions, proven themselves to be far behind developments in technology. It is, therefore, essential to take decisive steps as quickly as possible to protect individuals' rights in the face of this development.

India finds itself at a crossroads. While its courts have shown imagination in terms of interpreting the law in favor of protecting citizens' rights, the legislative branch of the country must now provide the necessary statutory structure which will empower the courts to uphold these rights in the era of artificial intelligence. The recommendations included in the paper aim to serve as a small contribution to this vital discussion. Identity commodification must not be allowed to proceed unconstrained, uncompensated, and unaccounted, as this would mean treating human beings as resources for profit.