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Publicity Rights and Copyright Overlap

Shravya K R

Jain (Deemed- to-be- University) School of Law

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ABSTRACT

There is a quiet but growing tension at the heart of Indian intellectual property law, one that courts have been asked to resolve case by case, without the benefit of a clear statutory map. The right of publicity, which protects a person's interest in controlling how their name, image, and persona are used commercially, and copyright law, which protects original creative expression, have traditionally been treated as separate concerns. But in practice they keep running into each other. A photographer's ownership of a celebrity's image, an actor's stake in their screen persona, an AI company's claim over a synthesised likeness of a living person all of these situations sit uncomfortably at the boundary between the two regimes. This paper examines that boundary in the Indian legal context, drawing on statutory analysis, judicial decisions, and comparative insights from the United States and the United Kingdom. It argues that Indian law currently lacks the doctrinal clarity needed to resolve these conflicts, and that the time has come for a coherent legislative response. Without one, the law will continue to produce results that feel arbitrary and increasingly, results that fail to keep pace with technology.

KEYWORDS

Right of Publicity, Copyright Law, Personality Rights, Intellectual Property, Celebrity Rights, Digital Identity

INTRODUCTION

Consider what might seem like a simple situation. A professional photographer attends an IPL match and, in the course of her work, takes a striking photograph of a famous cricketer celebrating a century. She owns the copyright to that image there is no real dispute about that. Now suppose she licenses it to a sports drink company, which uses it in a national advertising campaign. The cricketer never agreed to this. He was not consulted, and he was not paid. The company is trading on his face, his reputation, his hard-earned fame. Yet on a narrow reading of copyright law, the photographer had every right to license the image as she saw fit.

Who has the stronger claim here? That question, deceptively simple on its surface, sits at the centre of an unresolved problem in Indian intellectual property law.

Copyright, as most law students learn early on, protects expression, the creative form in which an idea is captured and communicated. The right of publicity, by contrast, is about [1]something more personal: the individual's interest in not having their own identity turned into a commercial product without their knowledge or consent. These are, in theory, distinct concerns. But they share a great deal of real-world territory, and courts including Indian courts have found the boundaries harder to draw than the textbooks suggest.

In the United States, the right of publicity has been recognised and debated since at least the 1950s, and several states have enacted dedicated statutes to govern it.[2] In India, there is no such statute. Courts have developed the law through a series of individual decisions, drawing on constitutional rights, equity, and occasional borrowings from foreign jurisprudence. The result is a body of case law that is genuinely sympathetic to claimants whose identities have been exploited but doctrinally unsystematic in ways that create real uncertainty for litigants, practitioners, and businesses alike.

The digital age has made all of this more urgent. A single viral photograph can earn millions in licensing revenue. AI technology can now produce a photorealistic image of a living person without any underlying photograph. Streaming platforms host performances that belong, under copyright, to producers while the performers themselves have only limited statutory protections. In each of these contexts, the interplay between copyright and publicity

[1] B. Nimmer, "The Right of Publicity," 19 Law & Contemp. Probs. 203, 216 (1954).

[2] See, e.g., California Civil Code § 3344 (West 2022); New York Civil Rights Law §§ 50–51 (McKinney 2022); Indiana Code § 32-36-1-1 et seq.

rights is not just a theoretical concern. It is a live question with significant economic and human stakes.

This paper maps that interplay. It begins with the independent doctrinal foundations of each right, traces the specific factual contexts in which they collide, evaluates the adequacy of existing Indian law in responding to those collisions, and closes with an argument for legislative reform.

LITERATURE REVIEW

The academic conversation around publicity rights and copyright has been most developed in the United States, partly because American law has been the most explicit in treating the right of publicity as a standalone legal concept. The field arguably begins with Melville Nimmer's 1954 article, in which he proposed recognising a "right of publicity" distinct from the existing right of privacy, a right concerned not with seclusion or emotional harm, but with the economic value of personal fame.[3] Nimmer's insight was prescient: he saw, even in the mid-twentieth century, that the commercial exploitation of identity was a real phenomenon that existing law was poorly equipped to address.

J. Thomas McCarthy's treatise on the rights of publicity and privacy remains the most exhaustive treatment of the subject in any jurisdiction.[4] McCarthy's central contribution is his insistence that the right of publicity is sui generis, it cannot be fully explained by, or absorbed into, either copyright doctrine or privacy law. This matters because it resists the temptation, which courts sometimes succumb to, of resolving publicity right disputes by simply asking whether the defendant had a copyright in the disputed material. Copyright in the image, McCarthy argues, does not answer the question of whether the subject of the image has been wronged.

Indian scholarship on personality rights has grown considerably over the past two decades, though it remains scattered across journal articles and case commentaries rather than consolidated in a single authoritative text. Pravin Anand and Eashan Ghosh have done important work in tracing the emergence of personality rights in Indian courts, noting that

[3] Nimmer, supra note 1, at 216.
[4] J. Thomas McCarthy, The Rights of Publicity and Privacy, vol. 1 (2d ed. 2000).

Indian judges have generally been willing to protect celebrities but have drawn on an eclectic mix of legal sources passing off, constitutional privacy, American right-of-publicity doctrine without always explaining how these fit together under Indian law.[5]

The Delhi High Court's 2003 decision in ICC Development (International) Ltd. v. Arvee Enterprises is widely cited as an early acknowledgment of the right of publicity in Indian jurisprudence.[6] The Court's observation that the right of publicity vests in an individual and flows from the right to privacy marked an important moment not because it resolved all the difficult questions, but because it gave future litigants a constitutional peg on which to hang their arguments. Subsequent courts have also drawn on the principle of unjust enrichment when celebrities succeed in such suits, recognising that the exploitation of a person's identity by a third party for commercial gain, without consent or compensation, produces a benefit that equity cannot permit.[7]

The Madras High Court's decision in *Shivaji Rao Gaikwad v. Varsha Productions* extended this reasoning in an interesting direction by protecting an actor's screen persona, the specific character and style associated with Rajinikanth as an aspect of his personality rights.[8] This raises a question that the existing literature has not fully explored: if an actor's screen persona can be protected as a personality right, and that same persona is also a creatively crafted character that might otherwise attract copyright protection, whose rights prevail? The actor's, or the producer's? The existing academic literature treats this question as interesting but largely open.

In the United Kingdom, the picture is different. English law has no right of publicity, and celebrities seeking protection from unauthorised commercial use of their image must navigate through passing off, the law of confidence, and increasingly, data protection legislation.[9] The English reluctance to recognise a dedicated publicity right has been noted and criticised by

[5] Pravin Anand & Eashan Ghosh, "Protection of Personality Rights in India," 2 Indian J. Intell. Prop. L. 1, 7–10 (2009).

[6] ICC Development (International) Ltd. v. Arvee Enterprises, (2003) 26 PTC 245 (Del. H.C.).
[7] D.M. Entertainment Pvt. Ltd. v. Baby Gift House, (2010) ILR 1 Del 74.
[8] Shivaji Rao Gaikwad v. Varsha Productions, (2015) 63 PTC 351 (Mad. H.C.).
[9] Irvine v. Talksport Ltd., [2002] EWHC 367 (Ch).

commentators who argue that it leaves a genuine gap in the protection of personality-based economic interests.[10]

What the existing literature makes clear, when surveyed together, is that the Indian position is somewhere between the American and English models more willing than England to protect personality rights, but less systematic than the United States in defining what those rights are and how they interact with copyright. That gap is what this paper directly addresses.

METHODOLOGY

The research methodology adopted in this paper is primarily doctrinal. This means that the analysis proceeds through a careful examination of primary legal sources, statutes, constitutional provisions, and judicial decisions with a view to identifying the rules and principles that currently govern the overlap between publicity rights and copyright, and assessing whether those rules are coherent and adequate.

Doctrinal research is well-suited to the question at hand because the core problem is legal in nature: what does Indian law currently say, and what should it say? The paper does not set out to measure how often publicity rights cases arise, or to survey celebrities about their experiences of image misuse. Those would be valuable empirical questions, but they are different ones. The question here is about the structure of legal doctrine, where the rules come from, how they fit together, and where they break down.

The comparative dimension of the analysis draws on the law of the United States and the United Kingdom. This choice reflects the fact that both systems have significant jurisprudence on the topics under discussion, and that Indian courts have historically drawn on both. The comparison is used critically rather than prescriptively: the aim is not to suggest that India should adopt the American or English model wholesale, but to understand what choices those systems have made and what lessons positive and cautionary those choices offer.

[10] Passing Off: Reckitt & Colman Products Ltd. v. Borden Inc., [1990] 1 WLR 491 (HL).

Primary sources consulted include the Copyright Act, 1957, the Constitution of India (particularly Article 21), and decisions of the Supreme Court and the High Courts. Secondary sources include peer-reviewed academic articles, monographs on intellectual property law, and publicly available reports of the Copyright Office of India.[11] The paper does not rely on empirical data, surveys, or interviews.

THE RIGHT OF PUBLICITY IN INDIAN LAW: A RIGHT WITHOUT A STATUTE

The right of publicity, as an idea, entered Indian judicial consciousness somewhat gradually. Courts did not arrive at it through a single landmark ruling but accumulated it over time, through decisions that each added something to the picture without ever completing it.

The constitutional foundation is now reasonably clear. Following the Supreme Court's ruling in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the right to privacy is firmly established as a fundamental right under Article 21 of the Constitution.[12] The Court's judgment was notable for its breadth: it recognised that privacy encompasses not just freedom from surveillance or intrusion, but autonomy over one's own identity and the choices one makes about how one presents oneself to the world. For publicity rights, this is significant. If a person has a constitutionally protected interest in controlling their own identity, then the unauthorised commercial exploitation of that identity using someone's face to sell a product they have not endorsed is not just a civil wrong. It is, at least in principle, a constitutional one.

The Delhi High Court gave practical content to this framework in *Titan Industries Ltd. v. Ramkumar Jewellers,* where it held that a person's right of publicity is violated when their image is used for commercial endorsement without consent, regardless of whether the use causes reputational harm.[13] This is a meaningful departure from defamation and passing-off doctrine, both of which typically require some form of actual damage. Publicity rights, as articulated in Titan, are about consent and economic entitlement not just reputation protection. It is also worth noting that the protections afforded by the Digital Personal Data

[11] Copyright Office of India, Annual Report (2022–23), available at https://copyright.gov.in (last visited Mar. 10, 2026).

[12] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

[13] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

Protection Act, 2023 provide an additional, albeit distinct, statutory basis for objecting to the processing of a person's biometric and facial data without consent — a provision that will increasingly intersect with the right of publicity as AI-generated imagery becomes more prevalent.[14]

The Madras High Court's Rajinikanth decision pushed the doctrine further by extending protection to the actor's screen persona, the distinctive style, mannerisms, and character associated with him as a public entertainer.[15] This is where things get genuinely complicated. A screen persona is not simply a person's face or name. It is a constructed public identity, built partly through the actor's own choices and partly through the creative work of directors, writers, and producers. It sits in a legal grey zone between personal identity and artistic creation. More recently, the Delhi High Court in Anil Kapoor v. Simply Life India went further still, issuing a broad injunction that protected the actor's voice, image, name, and persona against AI-based uses, a significant development that signals the willingness of Indian courts to extend the doctrine to new technological frontiers.[16]

COPYRIGHT AND PERSONA: WHAT THE ACT COVERS AND WHAT IT MISSES

The Copyright Act, 1957 is a carefully structured piece of legislation, but it was written with a particular vision of creative authorship in mind, one that centres on the person who makes a work, not the person who appears in it.

Under Section 13, copyright subsists in original artistic works, literary works, cinematographic films, and sound recordings, among other categories.[17] A photograph of a celebrity is an artistic work, and the copyright in it vests in the photographer under Section 17.[18] A film featuring an actor is a cinematographic work, and the copyright vests in the producer. The Act says nothing about any rights that the subject of the photograph, or the actor in the film, might have in those works.

[14] Digital Personal Data Protection Act, 2023 (India).

[15] Shivaji Rao Gaikwad v. Varsha Productions, supra note 7.
[16] Anil Kapoor v. Simply Life India & Ors., CS(COMM) 652/2023 (Del. H.C., 2023).
[17] Copyright Act, 1957, § 13 (India), as amended
[18] Copyright Act, 1957, § 17 (India).

This architecture reflects a historically reasonable judgment: copyright exists to incentivise and reward creative labour, and the photographer's creative labour consists in choosing the frame, the light, and the moment. The celebrity in the photograph did not make those choices. But what this analysis ignores and what has become increasingly hard to ignore is that the celebrity's labour is also economically significant. Their fame, their public persona, their years of work building an identity that people recognise and respond to, is precisely what makes the photograph commercially valuable. Without the celebrity's identity, the photograph is not worth licensing to an advertiser. Copyright law captures none of this value for the person whose identity generates it.

The 1994 amendments to the Copyright Act introduced performers' rights under Section 38, giving performers some control over their live performances including rights to record and broadcast them.[19] This was a meaningful step, but it is a limited one. Performers' rights as defined in the Act do not extend to the commercial use of a performer's image or likeness outside the specific performance context. They do not, for instance, prevent a broadcaster from using a clip of a performance to advertise an unrelated product. And they say nothing about AI-generated reproductions of a performer's voice or appearance, a gap that the Ninth Circuit's decision in *Midler v. Ford Motor Co.* illustrated in the American context, where the court was called upon to protect a singer's distinctive voice from commercial exploitation in the absence of any direct copyright claim.[20]

THREE ZONES WHERE THE TWO RIGHTS COLLIDE

It is useful to be specific about the situations in which copyright and publicity rights actually come into conflict, rather than speaking about the overlap in abstract terms. Three contexts are particularly important.

- **Celebrity Photographs:** This is the most familiar zone of conflict, and in some ways the most straightforward. A photographer takes a picture of a public figure, owns the copyright, and proposes to license it commercially. The subject has not consented. The photographer's copyright and the subject's publicity right point in opposite directions. In the United States, courts have generally held that copyright in a

[19] Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866 (2d Cir. 1953).
[20] Midler v. Ford Motor Co., 849 F.2d 460 (9th Cir. 1988).

photograph does not override a subject's publicity rights when the photograph is used for commercial endorsement purposes.[21] Indian courts have not yet directly addressed this specific conflict in a definitive ruling, which leaves it uncomfortably open.The closest analogy in American law is the foundational decision in Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc., which first articulated that a person possesses a property right in the commercial use of their own likeness that is separate from, and not extinguishable by, a third party's copyright in an image.[22]

- **AI-Generated Likenesses:** This is the newest and most complex zone of conflict. Generative AI can now produce a photorealistic image of a living person complete with their distinctive facial features, skin tone, and expression without any underlying photograph. The AI developer might claim copyright in the resulting image as an original artistic work. The person whose likeness has been reproduced has had no input in the creation of the image and gave no consent. Indian law currently has nothing to say about either of these claims specifically. The Copyright Act's provisions on authorship were not designed with AI in mind. The right of publicity, as developed in Indian courts, has not yet been tested against synthetic likenesses in a fully reasoned judgment, though the Anil Kapoor decision provides an important early signal.[23] The American experience is instructive: in *White v. Samsung Electronics America, Inc.,* the Ninth Circuit held that even a robot designed to evoke a celebrity without using her name, photograph, or voice could violate her right of publicity. The result in Indian law remains a legal vacuum that will need to be filled.

- **Fan Art, Satire, and Creative Works:** Not all uses of a celebrity's likeness are purely commercial. Artists make paintings, cartoonists draw satirical images, and fan communities create derivative works that engage with public figures in creative ways. These uses sit at the intersection of publicity rights, copyright, and the freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India.[24] The California Supreme Court, in *Comedy III Productions v. Gary Saderup*, developed a "transformative use" test that asks whether the artist has added meaningful creative

[21] Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866 (2d Cir. 1953).

[22] Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866 (2d Cir. 1953).
[23] White v. Samsung Electronics America, Inc., 971 F.2d 1395 (9th Cir. 1992).
[24] Shreya Singhal v. Union of India, (2015) 5 SCC 1.

content beyond a mere reproduction of the celebrity's appearance.[25] Works that do add such transformation are protected; works that simply reproduce the likeness to make money are not. This principle was further elaborated in No Doubt v. Activision Publishing, where the Court found that digital replication of musicians within a video game, without meaningful creative addition, was not sufficiently transformative.[26] India has no equivalent doctrine, and the tension between creative expression and personal protection is resolved, to the extent it is resolved at all, through constitutional free speech principles that have not been systematically applied to this context. Academic commentary has begun to advocate for the adoption of a similar transformativeness inquiry by Indian courts, drawing on Jacqueline Lipton's argument that any adequate publicity rights framework must build in robust protections for speech-adjacent uses.[27]

THE DEEPER PROBLEM: AUTHORSHIP VERSUS IDENTITY

Behind all of these specific conflicts lies a more fundamental conceptual difficulty. Copyright is built on the idea of authorship, the law rewards the person whose creative choices give form to a work. Publicity rights are built on the idea of identity; the law protects the person whose existence, persona, and accumulated fame is being commercially exploited. These are genuinely different foundations, and they produce genuinely different answers to the question of who has a legitimate claim over persona-related works.

The conflict between these two foundations is sharpest in the context of photographs, but it runs through the other zones of conflict as well. In the AI context, there may be no human author at all, the generative model produces the image, and the person who prompted it may or may not have made sufficiently creative choices to claim authorship. In that scenario, copyright doctrine may produce no clear rights-holder, while the publicity rights of the person depicted are clearly engaged. The law needs tools to navigate this situation, and it currently lacks them. Indian courts have begun to grapple with the voice dimension of this problem notably in the context of AI voice cloning in proceedings before the Madras High

[25] Comedy III Productions, Inc. v. Gary Saderup, Inc., 25 Cal. 4th 387 (2001).
[26] No Doubt v. Activision Publishing, Inc., 192 Cal. App. 4th 1018 (2011).
[27] Jacqueline Lipton, "Fame, Fortune and Privacy: The Right of Publicity Revisited," 51 B.C. L. Rev. 1 (2010).

Court, which recognised that a performer's voice is a protectable attribute of their personality.[28]

DISCUSSION

Reading through the case law and the statutory provisions together, a fairly honest diagnosis of the current state of Indian law is this: the courts have their hearts in the right place, but the doctrine is not yet doing what it needs to do.

Indian judges have consistently shown a willingness to protect individuals particularly celebrities from egregious commercial misappropriation of their identity. That instinct is sound. But the legal reasoning that supports those outcomes is often more assertive than it is rigorous. Courts invoke the Constitution, borrow from American cases, and apply passing-off principles without always explaining how these different threads connect or which one does the actual work in the case before them. The result is outcomes that feel fair in individual cases but that offer little guidance for the next one. Scholars have argued that this eclecticism, while understandable in a developing area of law, creates systemic risks: litigants cannot predict outcomes, businesses cannot structure their affairs with confidence, and judges are left to exercise wide discretion in ways that may not always be exercised consistently.[29]

The most straightforward response to this problem would be a dedicated statute on the right of publicity. Such a statute could do several things that case law cannot easily accomplish on its own. It could define the scope of the right precisely what uses require consent, which categories of works engage it, and how long it lasts after a person's death. It could specify how the right of publicity interacts with copyright, establishing, for instance, that a copyright in a photograph does not include the right to use that photograph in commercial advertising without the subject's consent. And it could address the AI problem directly, by specifying whether and how publicity rights apply to synthetic likenesses.

The comparative models are instructive here, though not necessarily prescriptive. California's right of publicity statute is comprehensive but has also generated significant litigation over its

[28] Madras High Court in Diljit Dosanjh v. Saregama India Ltd. & Ors., O.A. No. 383 of 2023 (Mad. H.C., 2023).
[29] Mark A. Lemley & Eugene Volokh, "Freedom of Speech and Injunctions in Intellectual Property Cases," 48 Duke L.J. 147 (1998).

scope, particularly in relation to video games and creative works.[16] The UK's absence of a right of publicity is increasingly seen as a gap rather than a virtue, with celebrities forced to rely on an assortment of indirect legal tools that were not designed with personality rights in mind. India has the opportunity to learn from both experiences and to craft something that is both clear and calibrated.

The AI dimension deserves special emphasis. It is not enough to develop better doctrine for the conflicts that courts have already encountered. The law needs to be prospective as well as reactive. As AI-generated media becomes more sophisticated and more widespread, the potential for harm in the form of synthetic endorsements, deepfakes, and commercially exploited likenesses will only grow. Addressing this through ad hoc litigation is neither efficient nor just.

CONCLUSION

This paper has argued that the overlap between publicity rights and copyright law in India is not a marginal or academic concern. It is a real and growing problem that touches on some of the most economically significant areas of the creative economy, and that implicates values of human dignity, autonomy, creative freedom, and fair economic reward that deserve serious legal attention.

The core of the problem is structural. Copyright law, as currently framed, does not account for the economic interests of the people whose identities make creative works commercially valuable. The right of publicity, as currently developed in Indian case law, is genuine but unsystematic a collection of sympathetic decisions rather than a coherent doctrine. When the two regimes come into contact, which they do with increasing frequency, the results depend too much on which court hears the case and which legal tradition it happens to draw on.

Solving this requires legislative action. The right of publicity needs to be given statutory form in India defined, bounded, and explicitly related to other bodies of intellectual property law. That statute should address copyright head-on, clarifying what copyright owners can and cannot do with persona-related works. And it should grapple with AI, because the

technological capacity to replicate human identity without consent is no longer a distant possibility. It is here.

The deeper point is this: intellectual property law has always been, at its core, about questions of ownership and entitlement. The question of who owns a person's own identity and whether that ownership can be overridden by a photographer's copyright or an AI developer's claim of authorship is one of the more urgent ownership questions that contemporary law faces. India's legal system has shown that it cares about the answer. What it now needs is the legislative architecture to give that concern durable and principled form.