
ARTIFICIAL INTELLIGENCE AND THE LAW: SAFEGUARDING PERSONALITY RIGHTS IN THE DIGITAL AGE

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ABSTRACT

The advent of artificial intelligence (AI) has revolutionized content creation, enabling the replication of human voices, likenesses, and personas with unprecedented precision. AI can create near-perfect clones of celebrities and authors, as well as content that is difficult for customers to distinguish from endorsements or official appearances, with sufficient data and training. With the rise of artificial intelligence—especially as it progresses toward general and super-intelligent systems—the boundaries of personal rights are increasingly tested, raising concerns about the adequacy of current legal protections in this evolving landscape. While these advancements offer new opportunities, they also pose significant legal and ethical challenges, particularly concerning the unauthorized use of celebrity identities. The development of law with respect to the role of AI and the rights of individuals can be seen through some recent cases and events in the world as well as in India and the perspectives developed internationally in this regard. These events highlight the complexities of protecting personality rights and privacy rights in the digital age, where technology increasingly blurs the boundaries between creative expression and infringement. The present paper examines the impact of AI on content creation. It then explores the role of generative AI, addressing both the positive and negative responses to its rise. Next, it defines personality rights and discusses how AI influences these rights. Further, the international and Indian perspectives on the protection of personality rights will be seen, especially in light of the evolving digital landscape. Finally, it delves into the ethical implications of AI and proposes a path forward to navigate these complex and dynamic challenges. It argues that while existing laws provide a foundation for protecting personality rights, they are not fully equipped to address the challenges posed by AI. The conclusion advocates for targeted legal reforms to better protect individuals from the unauthorized use of their identity in all forms of media, ensuring the preservation of privacy and personal autonomy in an era of rapid technological advancement.

Keywords: artificial intelligence, AI, personality rights, AI-generated content, digital age.

1. Artificial Intelligence in Content Creation

In recent years, scientific breakthroughs have resulted in amazing but divisive results. The rapid development of generative artificial intelligence (AI) has significantly impacted the creative sector, transforming how content such as music and art is generated. Amid the ongoing debates over copyright ownership with respect to AI generated work, and ethical licensing, the issue of 'personality rights' has also emerged as a pressing concern.

AI models like DALL-E, MidJourney, and ChatGPT have made it possible to generate stunning visuals, hyper-realistic animations, and even music. For instance, music industry producers have embraced AI to generate compositions or to simulate the voice of well-known artists. This has extended to film production, where AI can recreate deceased actors or actors who are unavailable, seamlessly integrating their voices and appearances into new works. The sophistication of this technology has raised both excitement and concern, particularly as AI-generated likenesses become indistinguishable from real humans.

In the past year, AI has been used in remarkable and, at times, unsettling ways to precisely replicate the voices and appearances of well-known celebrities. Such use presents serious legal concerns, as it has triggered complex legal and ethical issues, particularly related to intellectual property. Unauthorized exploitation of well-reputed singer Arijit Singh's unique characteristics through AI tools and platforms, deepfake video of Bollywood actor Ranveer Singh criticizing a political party are some latest examples of a controversial result of technological advancement. *Deep fakes* are AI-generated synthetic content and its latest form is AI-assisted recreation or "clones" of real human voices, faces and other features.¹ Such capabilities of AI raise critical questions about consent and ethics. When AI is used to replicate human voices or appearances, especially those of celebrities, without authorization, it poses significant risks. The entertainment industry, in particular, is facing a growing tension between utilizing AI as a powerful creative tool and addressing its potential for misuse. As AI's generative power grows, so does the urgency for legal and ethical frameworks that can govern its use.

2. Artificial Intelligence and Gen AI

The origins of artificial intelligence can be traced to Alan Turing's 1950 publication *Computer*

¹ Sandhya Surendran, *Navigating Generative AI and Personality Rights: Legal Implication and Creative Innovation*, btgadvaya.com (Oct 5, 2023), <https://www.btgadvaya.com/post/navigating-generative-ai-and-personality-rights-legal-implications-and-creative-innovation>.

*Machinery and Intelligence*², which subsequently served as a means of quantifying computer intelligence. Subsequently, AI has been progressively advancing since 1952, when scientist Arthur Samuel wrote the first computer program to learn how to play checkers.³

AI encompasses a broad set of technologies aimed at mimicking human cognitive abilities, such as understanding, reasoning, and problem-solving. Generative AI or Gen AI is a specialized branch within AI that focuses on creating new, original content, such as text, images, or music, by learning from patterns in existing data. While traditional AI typically analyses data to make predictions or decisions, generative AI extends this capability by using learned patterns to generate creative outputs, thus bridging the gap between analysis and creation.⁴

Artificial intelligence or AI refers to the capability of a digital computer or a robot controlled by a computer to carry out tasks typically linked with intelligent beings. The term is often used in relation to efforts aimed at creating systems that possess cognitive processes similar to those of humans, such as reasoning, finding meaning, making generalizations, and learning from prior experiences.

AI tools have also democratized creativity, enabling individuals with limited resources or skills to create professional-level content. Musicians, for instance, can now access AI tools to produce tracks that sound as though they were composed by seasoned artists. The same will be seen when the recent case of Arijit Singh v. Codible Ventures LLP will be discussed later in the article. Similarly, filmmakers on smaller budgets can use AI to create high-quality computer-generated imagery or CGI effects or generate digital actors without requiring massive post-production teams.

2.1 Embracing and Resisting AI

One of the most forward-thinking examples of embracing AI in content creation is seen in Canadian musician Grimes, who in 2023 announced a groundbreaking initiative allowing AI developers to use her voice to create music. Grimes welcomed this new creative frontier by providing an open platform for AI-generated songs using her voice, under the condition that revenue generated from these AI productions would be shared with her. This innovative model

² Alan Mathison Turing, *Computer Machinery and Intelligence*, Vol. 49, *Mind*, pp. 433-460, (1950).

³ Coursera Staff, *AI vs. Generative AI: Exploring the Artificial Intelligence Landscape*, coursera.org (Sep 17, 2024) <https://www.coursera.org/articles/ai-vs-generative-ai>.

⁴ *Ibid.*

positions her as one of the first mainstream artists to see AI as an ally rather than a threat, embracing the technology to expand her artistic reach while maintaining a sense of control through licensing agreements. Likewise, David Beckham consented to use synthesis technology to make him appear speaking nine languages for *Malaria No More Campaign*.⁵

In stark contrast, other celebrities have reacted with alarm to AI's ability to mimic their likeness without consent. Well-known Hollywood actress Scarlett Johansson has been vocal about her concerns regarding the unauthorized use of her image and voice through AI. She expressed shock and anger. She has been a victim of deepfake technology, where after OpenAI's GPT-4o used a voice similar to hers, resembling her role in the film *Her*. Johansson has expressed frustration over the lack of legal recourse for public figures whose images are exploited in this way, warning of the dangers deep fakes pose to privacy, reputation, and personal integrity.⁶ Another Hollywood celebrity Tom Hanks has also raised concerns about the misuse of AI-generated likenesses. In 2023, Hanks addressed his unease over AI-generated video that featured his image and voice in unauthorized content, such as commercials and promotional videos. He expressed fear over the possibility that deepfake technology could be used to exploit his persona long after he is no longer able to control his public image, emphasizing the need for stricter regulations on AI-generated likenesses.⁷

3. Importance of Personality Rights

Personality rights, also referred to as 'right of publicity,' are the legal rights that an individual has over the commercial use of their name, image, likeness, voice, or other aspects of their identity.⁸ These rights are particularly important for public figures such as actors, musicians, and athletes, whose persona often carries significant economic value. In simple terms, personality rights allow individuals to decide how their image and identity are used in public and commercial contexts. The two key components of personality rights are the 'right to privacy' and the 'right of publicity' where right to privacy allows individuals' right to be left

⁵ The Staff Reuters, *David Beckham appears to speak 9 languages in appeal to end malaria*, Globalnews.ca (April 9, 2019, 1:31 pm) <https://globalnews.ca/news/5146086/david-beckham-9-languages-malaria/>.

⁶ Sian Cain, *Scarlett Johansson says OpenAI's Sam Altman would make a good Marvel villain after voice dispute*, theguardian.com (July 18, 2024, 03:24 BST) [https://www.theguardian.com/film/article/2024/jul/18/scarlett-johansson-chatgpt-voice-openai-sam-](https://www.theguardian.com/film/article/2024/jul/18/scarlett-johansson-chatgpt-voice-openai-sam-altman#:~:text=Johansson%20went%20on%20to%20describe,have%20different%20legislation%20and%20rules.https://www.theguardian.com/film/article/2024/jul/18/scarlett-johansson-chatgpt-voice-openai-sam-)

⁷ Guardian Staff, *Tom Hanks says AI version of him used in dental plan ad without his consent*, theguardian.com (Oct 02, 2023, 02:17 BST) <https://www.theguardian.com/film/2023/oct/02/tom-hanks-dental-ad-ai-version-fake>.

⁸ Estate of Presley v. Russen, 513 F Supp 1339, 1353 (DNJ 1981) (U.S.).

alone and on the other hand right of publicity gives individuals, especially public figures, control over the commercial use of their identity. It prevents third parties from profiting off someone's likeness or name without permission. As celebrities are the one who face the violation of right of personality most, the preceding stand of courts on this subject was different. When celebrities attempt to invoke their right to privacy, courts have ruled that their status as public figures mean they have effectively waived that right. Some courts even hold that aspects of a celebrity's private life, previously undisclosed, are not protected under privacy law.⁹

In 1954, in his article, *The Right of Publicity*, Melville B. Nimmer brought to light that celebrities required not just protection from invasions of privacy, but the ability to control the commercial use of their identity. This is where the concept of 'right of publicity' was introduced.¹⁰

While personality rights are most commonly associated with celebrities or public figures, they are increasingly relevant to everyday people as well, particularly in the digital age. With the rise of social media, influencer marketing, and digital content creation, personality rights have become more relevant than ever before. Unauthorized use of a person's image or voice can have severe consequences for their privacy, reputation, and even income. As media consumption moves largely to online platforms, and technology advances to replicate human likeness, personality rights have become a significant concern across industries. Technology has made it easier to manipulate images, voices, and other attributes of a person, often without their knowledge or consent. This has blurred the lines between what is private and what is public, creating an environment in which personal rights can be easily violated.

3.1 Vulnerability of Personality Rights in the Digital Era

As digital platforms and technologies continue to grow, personality rights are becoming increasingly vulnerable. Several factors contribute to this vulnerability, particularly with the advent of technologies like artificial intelligence (AI), deep fake software, and social media:

1. **AI and Deepfakes:** Deepfake technology, which uses AI to generate hyper-realistic videos and images, is a particularly troubling development. It allows individuals to digitally impose someone's face or voice onto another person's body or into entirely

⁹ Nimmer, *The Right of Publicity*, 19 LAW AND CONTEMPORARY PROBLEMS 203 (1954).

¹⁰ *Ibid.*

fabricated contexts. This technology can make it appear as though a person is saying or doing something they never did. Deep fakes have been used in malicious ways, from creating non-consensual pornographic content to disseminating political misinformation. Overall, 84% of social media influencers reportedly fell victim to deepfake pornography.¹¹

2. **Social Media and Data Mining:** The proliferation of social media platforms has made it easier for individuals and corporations to access and use personal data, often without users being fully aware. Privacy and autonomy of individuals is vulnerable to the digital data collection methods like automated scraping and Application Programming Interfaces or APIs.¹² The commercialization of user data by social media platforms has further complicated issues around consent and ownership of one's likeness.
3. **Digital Marketing and Virtual Influencers:** Companies may use virtual influencers as a cheaper alternative to hiring real people, but this could directly infringe upon the personality rights of those who are replicated. In some cases, virtual influencers can serve as digital stand-ins for actual celebrities, allowing brands to sidestep expensive endorsement deals while still benefiting from the persona or appearance of a famous individual. This further diminishes the control public figures have over their own identity in the digital marketplace.
4. **Global Nature of the Internet:** The internet is inherently global, but personality rights are governed by local laws. This creates jurisdictional challenges when a person's likeness is misused online. A celebrity might have robust personality rights in one jurisdiction but be left unprotected when their likeness is used in another country where these laws are weak or nonexistent. The global nature of digital platforms like YouTube or Facebook means that content can spread across borders in seconds, making it difficult to enforce personality rights or seek legal remedies.

¹¹ The Hindu Bureau, Today's Cache | *OpenAI pulls back its voice feature; Deepfakes are the biggest threat to female influencers; Microsoft's AI chatbot gets "recall" function*, thehindu.com (May 21, 2024 05:44 pm IST) <https://www.thehindu.com/sci-tech/technology/todays-cache-scarlett-johansson-is-unhappy-with-chatgpt-voice-deepfakes-as-the-biggest-threat-to-female-influencers-microsofts-ai-chatbot-gets-recall-function/article68199447.ece>.

¹² Infosys BPM, *Data Privacy And ethical consideration in web and social media analytics*, infosysbpm.com, <https://www.infosysbpm.com/blogs/web-social-analytics/data-privacy-and-ethical-considerations-in-web-and-social-media-analytics.html>.

Thus, it becomes essential to have demarcated personality rights to protect an individual's control over their identity, particularly in the digital era where AI and new technologies have amplified the risks of exploitation.

4. International Perspective on Personality Rights and AI

4.1 Framework Convention on Artificial Intelligence

In September 2024, the United States, the United Kingdom, the European Union, and other countries signed a legally binding treaty called *The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law*¹³ which is also a first-ever internationally legally binding treaty in the field of AI. This treaty establishes a legal framework for the entire lifecycle of AI systems to ensure they adhere to human rights, democracy, and the rule of law, as stated by the Council of Europe.

The Convention is the result of nearly two years of intensive negotiations led by the Committee on AI (CAI). The European Union brought together experts from academia, industry, governments and the civil society to participate in these negotiations and the agreement as it stands is aligned with the principles of the European Union Artificial Intelligence Act, 2024¹⁴ (EU AI Act), reinforcing a human-centric approach to AI development.

It requires signatories to implement or maintain measures to enforce its provisions, scaling these measures based on the potential severity and likelihood of AI's negative impacts. Transparency in AI-generated content, rigorous risk management, documentation obligations for high-risk AI systems, and the protection of human rights are some key areas addressed in the Convention. Innovative regulatory mechanisms, such as the concept of 'regulatory sandboxes' to promote safe AI experimentation are introduced to ensure setting of global standards for accountability, safety, and fairness in AI.¹⁵ Importantly, the Convention acknowledges the necessity of a risk-based framework, ensuring that AI systems posing a threat to fundamental rights undergo rigorous scrutiny. Countries must also ensure that AI models do

¹³ Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, Sep 5, 2024, 4-6, CETS 225 <https://rm.coe.int/1680afae3c> <https://www.coe.int/en/web/artificial-intelligence/the-framework-convention-on-artificial-intelligence>.

¹⁴ Artificial Intelligence Act, Regulation (EU) 2024/1689 of the European Parliament and of the council, 2024 (L EN)

¹⁵ Press and information team of the Delegation to the COUNCIL OF EUROPE in Strasbourg, *The European Commission signs historic Council of Europe Framework Convention on Artificial Intelligence and Human Rights*, [eeas.europa.eu](https://www.eeas.europa.eu/delegations/council-europe/european-commission-signs-historic-council-europe-framework-convention-artificial-intelligence-and_en?s=51) (Sept. 10, 2024), https://www.eeas.europa.eu/delegations/council-europe/european-commission-signs-historic-council-europe-framework-convention-artificial-intelligence-and_en?s=51.

not compromise the integrity, independence, and effectiveness of democratic systems, including the separation of powers, judicial independence, and access to justice. This treaty meets the need of the hour as it strikes a crucial balance between promoting AI innovation and mitigating risks to human rights. It outlines general principles that signatories must apply to artificial intelligence systems in alignment with their national legal frameworks which includes maintaining human dignity and individual autonomy in relation to activities within the lifecycle of an AI system and protecting the privacy rights of individuals and their personal data.

Additionally, the Global Partnership on Artificial Intelligence (GPAI), launched in 2020, plays a key role in guiding the responsible development and use of AI. India, too, joined this initiative on June 15, 2020 as one of the founding members.¹⁶ GPAI supports AI-driven social and economic advancements, such as climate change, healthcare, and educational innovation.

In light of these global collaborations, the scope of harnessing the potential of AI while safeguarding fundamental rights and ensuring responsible governance is evident. The Council of Europe's landmark treaty, combined with initiatives like the GPAI, and efforts taken by the United Nations and other developed countries sets the stage for a unified international approach to AI governance, embracing innovation with a human-centric approach. The United States, the European Union, the United Kingdom, and India have all taken distinct paths in shaping their AI policies and strategies, while also aligning themselves to global standards.

4.2 U.S. Law: The Right of Publicity

In the United States, while the statute and common law recognise the right of publicity, the constitutional interest in protection of freedom of speech and expression limits the use of this right.¹⁷ The Right of Publicity is not considered a standalone right like copyright or patent. Instead, it safeguards the economic interest tied to the associative value of a person's identity. It attaches to something beyond just the persona itself. For example, a television show that merely presents information about an athlete's accomplishments would not violate the right of publicity. However, if that information is used in a commercial context, such as an advertisement that links the athlete to a product or brand, the right of publicity would be implicated. The liability arises not simply from using the athlete's name, but from doing so in

¹⁶ Ministry of Electronics & IT, *GPAI 2023 begins in New Delhi from tomorrow*, pib.gov.in (Dec. 11, 2023, 6:29PM),

<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1985143#:~:text=Today%2C%20GPAI's%2029%20members%20are,the%20United%20Kingdom%2C%20the%20United>.

¹⁷ Sheldon W. Halpern, *Overlapping Intellectual Property Rights* 329 (Neil Wilkof & Shamnad Basheer ed., 2012).

a way that connects the athlete to the advertiser's message. As a result, the right of publicity is viewed as appurtenant or attached to the associative value of a persona rather than as an absolute right.¹⁸

The right of publicity stems from the right to privacy, initially articulated by Samuel Warren and Louis Brandeis in their 1890 article, *The Right to Privacy*. They emphasized the need to shield individuals from privacy invasions in light of advancing technologies.¹⁹ However, Melville B. Nimmer's 1954 article, was pivotal in recognizing the commercial value of a person's identity.²⁰

Landmark cases have shaped the U.S. right of publicity. In *Zacchini v. Scripps-Howard Broadcasting Co.* (1977)²¹, the Supreme Court upheld a performer's right to prevent the unauthorized broadcast of his entire act, recognizing it as a violation of his right of publicity. Similarly, in *White v. Samsung Electronics America, Inc.* (1992)²², the Ninth Circuit Court ruled in favour of Vanna White, holding that a commercial featuring a robot resembling her infringed her right of publicity. These cases illustrate the U.S. legal system's recognition of the economic value of an individual's identity and its protection against unauthorized use.

The recent Hollywood strikes by the Writers Guild of America (WGA) and the Screen Actors Guild–American Federation of Television and Radio Artists (SAG-AFTRA) highlighted the industry's concern over the use of AI to generate scripts and performances without the consent of the original artists, reflecting the ongoing struggle to balance technological advancements with legal protections. More examples were seen in the 'embracing and resisting AI' section of this article.

In the *Clarkson v. OpenAI*²³ case before the U.S. California Northern District Court, the court dived into evils of deep fakes and observed that these technologies were not only generating convincing deep fakes but were also being used to spread misinformation, extort victims, and gain access to classified information. This has made it increasingly difficult for both humans

¹⁸ S.W. Halpern, *supra*, note 17.

¹⁹ Samarth Krishan Luthra & Vasundhara Bakhru, *Publicity Rights and the Right to Privacy in India*, 31 NAT'L L. SCH. INDIA REV. 125 (2019).

²⁰ Nimmer, *supra*, note 9.

²¹ *Zacchini v. Scripps-Howard Broadcasting Co.* 433 U.S. 562, 573 [1977]

²² *White v. Samsung Electronics America, Inc.*, 971 F.2d 1395 (9th Cir. 1992)

²³ *PM et al v OpenAI LP.*, 3:23-cv-03199 (US District Court, N.D. Cal. 2023)

and AI systems to accurately identify and verify information.²⁴

In response to these challenges, U.S. legislators introduced the *No Artificial Intelligence Fake Replicas and Unauthorized Duplications (No AI FRAUD) Bill*²⁵. This proposed legislation aims to protect individuals from the unauthorized replication of their likeness or voice through AI technology. The Bill creates intellectual property rights for a person's likeness or voice, even extending these rights for up to 10 years posthumously, allowing heirs to control digital depictions. However, the Bill has faced criticism for being overly broad and vague, potentially restricting parodies, artistic expression, and even benign uses of digital technology.

4.3 European Data Protection Framework

To combat deep fakes, the European Union has legislated the EU's EU AI Act²⁶. It defines 'deep fake' in Article 3(60) as synthetic or manipulated image, audio, or video content, which would deceptively seem to be truthful or authentic, and that resembles existing individuals, places, objects or other events or entities. The act has emphasized transparency through Article 50(2) mandating providers of general-purpose AI tools to label AI-generated content and highlight any manipulations, helping users more easily interpret the information. However, this requirement does not extend to routine editing tasks, such as minor adjustments, or when AI is used for authorized activities in law enforcement, like crime detection or prosecution.

The EU AI Act addresses the rising issue of deepfakes by obligating that their creators inform the public about the artificial nature of their content. According to Article 50(4), individuals using AI to produce deepfakes—whether they are creators, artists, or others—must disclose this information to the public.

An individual's face, voice, and likeness are classified as protected sensitive personal data under the law since they can all be used to identify them. As the data subject, individuals have the right under the law to agree to the collection and processing of their personal data, as well as the right to have their personal data erased from other people's records. The *General Data*

²⁴ Ibid., at 219.

²⁵ No AI Fraud Bill, H.R. 6943, 118th Cong. (2024)

²⁶ Felipe Romero Moreno, Generative AI and deepfakes: a human rights approach to tackling harmful content, *International Review of Law, Computer & Technology*, 1-30, 15 (2024).

*Protection Regulation*²⁷ (EU GDPR) in the EU ensures these rights.

4.4 Legal Framework in United Kingdom

In the United Kingdom, personality rights or aspects of an individual's personality such as privacy, image, and reputation are protected through various legal frameworks and laws. While the right of publicity is not explicitly recognized under English law, various legal mechanisms such as copyright, passing off, trademark registration collectively protect an individual's image and personality. These rights are protected under the *Copyright, Designs and Patents Act, 1988*²⁸. Under this Act, even performers have exclusive rights over the content they create and performances they give ensuring that individuals retain control over their performances, which can be crucial in cases where AI is used to replicate or manipulate performances without permission. The *UK General Data Protection Regulation (UK GDPR)*²⁹ allows individuals to prevent the processing of personal data, including photographs or films of themselves. It also provides individuals with the right to consent to the collection and processing of personal data, including sensitive data such as facial recognition and voice samples. Additionally, individuals have the right to request the erasure of their personal data if it has been collected or processed without consent or a valid legal basis. This applies not only to UK-based entities but also to international websites or platforms targeting UK or EU markets. The UK's Advertising Standards Authority (ASA) has established codes to regulate the use of images and quotes from individuals in advertising, providing a layer of protection against unauthorized commercial use.

The introduction of AI technologies complicates personality rights further. AI systems may generate content, such as deepfakes or AI-replicated likenesses, that involve personal data. Under the UK GDPR, personal data including biometric data such as a person's face or voice cannot be processed without proper consent. AI-driven profiling and automated decision-making are also regulated to ensure individuals are not subjected to decisions that could have significant effects without appropriate safeguards.

Individuals can also invoke defamation laws if AI-generated content misrepresents them in a way that damages their reputation. Although no AI-specific laws currently exist in the UK, the

²⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119) 1.

²⁸ Copyright, Designs and Patents Act 1988, c. 48 (UK).

²⁹ Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019, SI 2019/419 (UK GDPR).

application of existing defamation law can provide recourse when harmful or misleading content is created and distributed by AI. Platforms and websites are legally required to remove content that infringes intellectual property rights within a reasonable timeframe once they receive notice. Furthermore, if personal data is used without consent, individuals can request that the content be deleted. These regulations ensure that even platforms outside the UK or EU must comply when their services are directed toward these regions.

5. Indian Legal Framework on Personality Rights

Personality rights, though not explicitly recognized under Indian statutory law, find protection through landmark developments in the legal sphere, especially with the advent of artificial intelligence (AI). The Delhi High Court, in *Anil Kapoor v. Simply Life India & Others*³⁰, issued an injunction preventing the unauthorized use of Mr. Kapoor's persona. This case, one of the first to address AI's role in the entertainment industry, highlights how such technology can infringe on personality rights. Similarly, the court, in *Amitabh Bachchan v. Rajat Negi & Others*³¹, ruled that a celebrity's image cannot be used for monetary gain by third parties without their permission. However, these cases lack clarity on the statutory basis for such protection.

The misuse of AI, particularly in creating deepfake videos, has further complicated the legal landscape. Deepfakes, which manipulate videos and images to appear authentic, have been weaponized in both political and commercial arenas. During the recent Lok Sabha elections, viral deepfake videos of Bollywood actors, like Ranveer Singh and Aamir Khan, showcased the technology's potential to deceive and cause reputational harm. Beyond politics, AI-generated content is used to depict celebrities endorsing products or services without their consent, which amounts to a clear violation of their personality rights. Deepfake videos can even be explicit or lewd, further complicating issues of privacy and moral rights.

India's current legal framework, including the *Information Technology (IT) Act of 2000*³², addresses some privacy concerns through sections 66 and 67 of the IT Act, alongside guidelines from the Ministry of Electronics and Information Technology. However, this protection is restrained. The fraudulent use of AI-generated voice to impersonate or misrepresent an

³⁰ *Anil Kapoor v. Simply Life India & Ors.*, (2023) SCC OnLine Del 6914 (Ind.)

³¹ *Amitabh Bachchan v. Rajat Nagi*, (2022) 6 HCC (Del) 641 (Ind.)

³² Information Technology Act, No. 21 of 2000 (Ind.)

individual would fall under Sections 66D and 66E of the IT Act, 2000³³. Section 66D outlines the punishment for cheating by impersonation through the use of computer resources or communication devices, which would encompass offences where an AI-generated likeness of a person's voice or image is misused. If AI is used to alter or morph images to create obscene content involving someone's likeness, Section 66E would apply, addressing the punishment for privacy violations involving the electronic transmission or publication of images of a person's private areas. Additionally, the *IT (Intermediary Guidelines and Digital Media Ethics) Rules*³⁴ hold Social Media Intermediaries responsible for ensuring that prohibited content is neither published nor circulated on their platforms.

Further, when AI is used to manipulate content in unauthorized ways, intellectual property laws such as the *Copyright Act*³⁵ and the *Trade Marks Act*³⁶ offer some remedies as well. The Copyright Act may apply if the morphed content derives from an original copyrighted video. In cases involving AI's unauthorized use of a performer's likeness, the Copyright Act provides certain protections, especially for performers. These include moral rights, performance royalties, and control over the use of their performances. Whereas, Trademark law could come into play if a name or likeness has been trademarked or misused under the principle of passing off. The tort of passing off³⁷ may also offer protection against the unauthorized use of a celebrity's identity through AI. This tort prevents deception of the public by implying a false association with a well-known individual. Moreover, courts have embraced the concept of unjust enrichment, which can apply when a person's likeness is commercially exploited without authorization. This principle is also captured under the guidelines issued by the Advertising Standards Council of India (ASCI) and is applicable to the advertising & marketing industry.

For a celebrity, any infringement or misuse of their personality affects their public image, which is central to their goodwill and reputation. The same has been acknowledged and carefully considered by the Bombay High Court in the recent case of *Arijit Singh v. Codible Ventures LLP and Others*³⁸. Arijit Singh, one of India's most celebrated singers, sought legal

³³ ITA 2000, § 66D-66E (Ind.)

³⁴ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2024, The Gazette of India, Rule 4 (Apr 6, 2023)

³⁵ The Copyright Act, No. 14 of 1957 (Ind.)

³⁶ Trade Marks Act, No. 47 of 1999 (Ind.)

³⁷ TMA 1999, § 27 (Ind.)

³⁸ *Arijit Singh v. Codible Ventures LLP*, (2024) SCC OnLine Bom 2445 (Ind.)

protection for his personality rights, which encompass his name, voice, manner of singing, likeness, image, and other personal attributes. The artist claimed that these elements of his persona were being commercially exploited without his authorization, infringing upon his rights under the tort of dilution, specifically tarnishment. He also pointed to the violation of his moral rights under the Copyright Act, 1957, particularly Section 38B³⁹, which protects performers from unauthorized modifications or distortions of their performances that could harm their reputation.

The defendants in this case employed AI algorithms to reproduce various aspects of Arijit Singh's persona, including his voice and image. They used unauthorized data sets of 456 songs from his repertoire to create AI-generated versions of his performances. One model allowed users to convert audio files or YouTube links into a version mimicking Singh's voice. Another model advertised virtual reality events, misleading users into believing that the artist would be performing, thus falsely associating him with the event. Additionally, his image, name, and likeness were used on various e-commerce platforms to sell merchandise such as posters, mugs, clothing, and other items without his consent.

Judge R.I. Chagla of the Bombay High Court recognized Arijit Singh's immense contributions to the music industry, his global reputation as a cultural icon, and his decision to refrain from endorsing brands or commercializing his persona. The court held that the artist's name, voice, image, and other personality traits are protectable under personality and publicity rights.

“This form of technological exploitation not only infringes upon the individual's right to control and protect their own likeness and voice but also undermines their ability to prevent commercial and deceptive uses of their identity... These Defendants are attracting visitors / drawing traffic to their websites and/or AI platforms by capitalizing on the Plaintiff's popularity and reputation, thereby subjecting the Plaintiff personality rights to potential abuse. These Defendants are emboldening internet users to create counterfeit sound recordings and videos that misuse the Plaintiff's character and identity.”⁴⁰

Judge Chagla drew on previous rulings, including *Karan Johar v. Indian Pride Advisory Pvt. Ltd.*⁴¹, and the Anil Kapoor case, to assert that celebrity's right of endorsement would in fact be a major source of livelihood for the celebrity, and unauthorized use of their name or likeness

³⁹ TCA 1957, § 38-39 (Ind.)

⁴⁰ Arijit Singh v. Codible Ventures LLP, (2024) SCC OnLine Bom 2445 Para 18-19 (Ind.)

⁴¹ Karan Johar v. Indian Pride Advisory (P) ..., (2024) SCC OnLine Bom 2444 (Ind.)

amounts to a violation of their personality and publicity rights. The judgment also underscored that while freedom of speech allows for critique and commentary, it does not permit the exploitation of a celebrity's persona for commercial gain. The court cited the following from the Anil Kapoor case:

“The technological tools that are now freely available make it possible for any illegal and unauthorised user to use, produce or imitate any celebrity's persona, by using any tools including Artificial Intelligence. The celebrity enjoys the right of privacy, and does not wish that his or her image, voice, likeness is portrayed in a dark or grim manner, as portrayed on the porn websites. Moreover, the Plaintiff's image is being morphed along with other actresses in videos and images generated in a manner, which are not merely offensive or derogatory to the Plaintiff, but also to such other third-party celebrities and actresses.”⁴²

In contrast to the developments seen in other jurisdictions, like the proposed No AI Fraud Bill⁴³ in the United States, Indian courts do not extend personality rights beyond a person's lifetime. This was evident in the lawsuit filed by the late actor Sushant Singh Rajput's father, where he sought to prevent the making of films based on his son's life. The Delhi High Court ruled that personality rights cease upon an individual's death, reinforcing that these rights stem from the right to privacy rather than property rights, which can be inherited.⁴⁴ The Court asserted that such rights are inherently personal and do not survive beyond the individual's life.

6. The Way Forward: Addressing the Darker Side of AI

The emergence of Artificial Intelligence (AI) is inevitable, and its impact on human lives is undeniable. Furthermore, substantial investments have been poured into AI startups, while established tech giants like Amazon, Facebook, and Microsoft have launched dedicated research labs. In today's digital landscape, it would be fair to say that software is increasingly synonymous with artificial intelligence.⁴⁵ However, as we marvel at AI's capabilities, we must not ignore the darker side of its deployment. As Peter Norvig, the director of research at Google, pointed out that the key issue in working with the data-driven AI technique which is

⁴² Anil Kapoor v. Simply Life India & Ors., (2023) SCC OnLine Del 6914 Para 42 (Ind.)

⁴³ No AI Fraud Bill, supra, note 25.

⁴⁴ Akansha Dutta, *Protecting Human Likeness and Voices in the AI Era*, esyacentre.org (Apr. 10, 2024), <https://www.esyacentre.org/perspectives/2024/4/10/protecting-human-likenesses-and-voices-in-the-ai-era>.

⁴⁵ Bryan Lufkin, *Why the biggest challenge facing AI is an ethical one*, bbc.com (March 7, 2017), <https://bbc.com/future/article/20170307-the-ethical-challenge-facing-artificial-intelligence>.

behind so many of its recent successes is finding a way to ensure that society as a whole is benefited from these systems and not just the ones controlling it.⁴⁶

The increasing use of AI mechanisms has raised concerns about the infringement of basic human rights. In Indian legal framework these rights are protected under the Constitution of India which provides fundamental rights to citizens and in some events to non-citizens as well. However, it is worth mentioning that fundamental rights, as enshrined in Constitution, are enforceable only against the state and its instrumentalities. Therefore, private entities, which cause violation of fundamental rights by deployment of AI systems, cannot be held accountable under the Constitutional mechanism.

The complexity of AI systems demands scrutiny, and the industry must establish standards for testing and implementing these technologies. To effectively govern AI systems, it is essential to firstly define what constitutes AI. Such a statutory definition of AI should be based on its functions, such as learning, perceiving, and decision-making, rather than its technological mechanisms. The Ministry of Electronics and Information Technology (MEITY) through the 'Committee D' on Cyber Security, Safety, Legal and Ethical Issues has proposed sectoral governance of AI systems, which is a step in the right direction.

AI systems' ability to generate ideas and create original works has rendered the Indian legal framework relating to intellectual property rights partially obsolete. To maintain coherence, it is recommended that legislations distinguish between AI-assisted and AI-generated intellectual properties. Clear criteria should be established to differentiate between works *assisted* by AI and those *generated* by AI systems. Moreover, the law relating to trademarks must address the issue of counterfeited products created by AI tools deployed by digital intermediaries. Such conduct should be considered trademark infringement, and intermediary regulation must also address this issue.

To maintain the balance as we go forward, it should also be considered that data is the fuel that drives AI systems, and without it AI cannot generate outputs. It is thus suggested that Indian legislation, like the EU, exempt training and data mining of AI systems with copyrighted data from copyright infringement claims, provided the purpose is non-expressive. This will ensure that legislature is conscious to support technological advancements.

⁴⁶ Ibid.

Protection with respect to AI should require the implementation of a structured synthetic data for the detection of deepfakes. This specific type of data is designed to enhance the capabilities of AI systems, enabling them to more effectively recognize and report manipulative content. By doing so, we can safeguard fundamental rights and improve overall security measures against deceptive practices. Additionally, AI technologies used to create deepfake content for purposes such as electoral disinformation, extortion, and sexual exploitation should be classified as "high-risk" AI. This classification would necessitate more stringent regulatory oversight and controls, acknowledging the serious potential for harm and the infringement of rights associated with these malicious uses of AI.

India, despite being a global champion, faces unique challenges like digital illiteracy, digital divide, and lack of digital infrastructure. The emergence of AI in India may aggravate these problems. Therefore, policymakers must prioritize not only procuring AI benefits but also ensuring that these benefits are accessible to all sections of society without discrimination or unjust classification. A safe regulatory environment is crucial to make India a responsible AI leader.

In conclusion, the way forward for AI requires a multifaceted approach. We must establish a braintrust of ethicists, technologists, and corporate leaders to develop industry and ethical standards. The governments must demonstrate a willingness to create a safe regulatory environment for all stakeholders, and policymakers must prioritize ensuring that AI benefits are accessible to all. By addressing the darker side of AI, we can harness its potential to make humans better at what we do best. Acknowledging and mitigating the risks associated with AI can help us unlock its full potential, driving innovation and progress while ensuring that the benefits of technological advancements are equitably distributed and responsibly managed.

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