


Protection of Personality Rights in the Digital Era: Global IP Challenges and Emerging Legal Strategies

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Introduction

The evolution of technology has changed the significance of identity in modern society. In the age of artificial intelligence, social media, and digital economies, personal characteristics, including name, appearance, voice, and image, are no longer restricted to physical existence; rather, they can be duplicated, transferred, and even exploited online. This development has resulted in the increased recognition of personality rights, where people, as celebrities and individuals, are vulnerable to illegal exploitation and manipulation of their identities in the digital world.

Historically, the legal framework has always been dependent on IP laws like copyright and trademark laws for regulating matters relating to ownership and commercialisation. But these systems were not intended to safeguard the inherent connection between a person and their personality. The copyright system protects the creative expression and not the person, whereas the trademark system protects the commercial symbol and not the person. As a result of emerging digital practices such as deepfakes, voice cloning, and AI-generated personas, significant gaps in the existing legal architecture.

Legal approaches to these issues have varied by jurisdiction according to diverse paradigms. In India, for instance, the development of personality rights has been mainly judicial, especially as an elaboration on the constitutional rights to privacy and dignity.

The landmark decision of Justice K.S. Puttaswamy v. Union of India marked as a turning point by recognising privacy as a fundamental right, thereby providing a constitutional basis for protecting aspects of individual identity.

On the other hand, there is the doctrine of the public interest, which recognises that it is in an individual's rights to exploit his personality commercially. This is because this approach considers personality from the market point of view. The European Union establishes a regulatory regime based on data protection principles, especially the General Data Protection Regulation, that sees identity information as data that must be consented to before being processed.

These differing approaches highlight a broader global tension. The need for a more effective means of protecting personality rights becomes evident when it is recognised that such rights become ever more important in the current technological age. However, there is currently no universal legal mechanism that can handle the various aspects of personality rights.

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This paper argues that the protection of personality rights in the digital era requires a hybrid legal approach that integrates elements of privacy, publicity, and data protection. By comparative analysis of the legal regimes in India, the US, and the EU to determine some of the challenges inherent in global IP systems, this paper seeks to identify key challenges within global IP systems and examine emerging legal strategies capable of responding to the evolving nature of identity in the digital environment.

Personality Rights vs. Intellectual Property: A Conceptual and Legal Disconnect

The connection between personality rights and IP law has always been characterised by ambiguities of definition and doctrine. Although both legal regimes seek to control the exploitation of intangibles, there are key differences between the two that go beyond subject matter and include reasons for existence and extent of coverage. These differences acquire particular importance in light of our current information age, in which identity has taken on an independent value.

Intellectual Property law deals mainly with the protection of creative work, which includes literary works, artistic creations, inventions, and marks used in trade. An example of Intellectual Property law is copyright, which gives the author ownership rights over his work and trademark, which provides protection of marks in trade.

However, both regimes fail to protect the intrinsic link between a person and their personality characteristics, including his/her identity, voice, and appearance. All these aspects are not creations per se, since they are part and parcel of the individual's identity.

This is clearly seen when dealing with images or digital works. The photograph may fall within the ambit of the copyright laws, giving exclusive rights to the person who took the picture. However, the person whose image has been captured in the photograph would have very little remedy under the existing laws if his or her personality is violated. Similarly, there could be trademark law protection for names and likenesses that have become commercially distinctive, yet the law will depend on market recognition, and it will not cover the personal sphere of the individual.

In order to bridge this divide, there has been an attempt to establish the right of publicity by the United States. According to the right of publicity, one has the legal right over the commercial exploitation of their identity. As defined in the case of *Zacchini v. Scripps-Howard Broadcasting Co.*, this is a utilitarian approach in which one's personality becomes a kind of property that can be commercially exploited. There is no federal statute regarding this issue.

But in the case of the EU, the issue is addressed in a very different manner. For instance, whereas the personality in U.S. legislation is understood as property-related, in EU law, the personality traits are regarded as personal data. According to the General Data Protection Regulation, there are some features that are included in the scope of protection, including face images, biometrics, and social media accounts. The approach in this model emphasises informational self-determination instead of the proprietary model of ownership, and it is therefore much broader and regulated instead of proprietary. While India already has a statutory framework in place for the protection of personal information through the enactment of the Digital Personal Data Protection Act, 2023, the coverage is limited because the act addresses only the question of personal data and not personality rights generally, particularly in situations involving issues relating to the exploitation and misuse of one's digital identity. In contrast to the more developed data protection regime created by GDPR, India is still at its initial stages and requires further development of legislation concerning newer problems such as deepfakes and misuse of artificially generated persona. As a result, it can be said that India is a developing country, which falls in the middle category of countries. The concept of personality rights has not been recognized formally or expressly under Indian statutes; however, the courts have held that there is a right to protect one's personality on the basis of Article 21 of the Indian Constitution.

Technology usage also aggravates the problem. The application of sophisticated technologies such as artificial intelligence and machine learning makes it possible to create lifelike digital images of individuals. In such cases, the protection of intellectual property law cannot be helpful because no violation of any intellectual property occurs; rather, it is a matter of using one's personality.

Thus, while there is some degree of protection for personality through IP law, it fails since it does not address the underlying problem in question, which concerns maintaining personal autonomy, dignity, and control over oneself. It therefore follows that the existence of a personality right concept in law becomes essential.

Digital Era Challenges: Deepfakes, AI, and Identity Misuse

With the emergence of the digital age, the way threats to personality rights have been perceived has undergone a drastic transformation, allowing for a massive misappropriation of an individual's identity expeditiously and covertly. With innovations in the field of artificial intelligence, machine learning, and image processing software, the replication and manipulation of personal traits such as physical appearance, voice, and demeanour have become highly sophisticated.

Deepfake technology is one of the biggest risks to society in today's world. By employing artificial intelligence, deepfake technology can generate audiovisual content that seems real but is false. People might have participated in events or spoken about things they didn't do because of deepfake technology. Such cases are not restricted to celebrities alone; rather, common people have become increasingly vulnerable to slander, harassment, and impersonation. The issue with criminalising the use of such deepfakes is that it might not necessarily be an infringement on the copyrights involved in the creation of the images, as the act itself need not involve any copyrighted material at all.

The other critical problem is the replication of identity through AI. It is possible to replicate a person's voice and create their digital avatar using only a little bit of information. Such technologies find extensive applications within the fields of entertainment, video games, and virtual reality systems; however, the abuse of these technologies creates several problems related to issues of consent, autonomy, and economic exploitation. For example, the unapproved usage of the voice of a famous individual within an advertisement constitutes an issue related to personality rights.

The social media sites make these risks worse by enabling fast dissemination of identity-based content on a cross-border scale. The moment that this content is uploaded, it is shared, duplicated, and commercialised across the globe instantly, making legal enforcement very hard. This results in a legal dilemma in the sense that even though the harm may occur within the borders of one nation, the information may have originated or been published from another nation altogether.

Responses to these issues have been varied depending on the jurisdictions. For instance, in the US, protection against these issues is provided in the form of the right of publicity that allows people to sue for the commercial exploitation of their identity. Nevertheless, such legal provisions cannot be relied on for solving reputation-related issues resulting from deepfakes. In contrast, the European Union has a more complete regulatory system in place, which views biometric and identifying information as sensitive personal information and thus demands consent for its use. This allows for broader protection, including against non-commercial misuse.

India is still in its infancy regarding the issues surrounding the use of technology in this matter. Although the courts have established the existence of personality rights as part of the right to privacy and dignity within the Constitution of India, there exists no law specific to deepfake technology and other methods of identity theft through artificial intelligence.

These examples demonstrate a significant mismatch between technology and law. In the new world of the Internet, identity is something that can be manipulated and is of considerable economic value, but the law still struggles with tools created to deal with situations far simpler than what we face today. Consequently, people find themselves vulnerable to harm that defies classification, regulation, and correction.

Global IP Challenges in Protecting Personality Rights

The issue of protecting personality rights in the area of intellectual property law becomes problematic, especially in light of the rapid development of technologies that do not know any geographical borders. While intellectual property law has proven very successful in protecting the creative or commercial interests of individuals, in many cases, the existing regimes fail to tackle violations caused by the abuse of someone's personal characteristics. Such an inability is inherent in the very structure of intellectual property law, which creates a conflict between its goals and principles.

The first problem that arises is related to the lack of proprietary aspects of identity. The concept of intellectual property presupposes a form of protection of something which can be characterised as a creation or commercial trademark, while personality rights are aimed at protecting certain personal attributes. Thus, certain personal elements like one's face, voice or mannerisms cannot be considered as "property." This creates a legal vacuum, particularly in cases where identity is digitally replicated without copying any specific protected work.

Another problem associated with personality rights is that of fragmented legal protection. In the U.S., for example, there are publicity statutes at the state level that determine the extent of personality rights protection. States may afford comprehensive protection, even extending to posthumous rights, but other states have only partial protection or none at all. However, the EU applies a coordinated regulation of personal data protection under the General Data Protection Regulation, but it cannot cover the entire scope of the business exploitation of identity because of its emphasis on data protection.

The territoriality of IP law adds another layer of difficulty when enforcing such laws in the digital age. IP law is normally limited within the geographical borders where the IP was issued, but digital content does not have geographical limitations. For example, a deep fake generated and distributed in one nation might create damage to the reputation or economic well-being of a person located elsewhere, thereby posing serious challenges in determining jurisdiction, applicable laws, and methods of enforcement. The current state of intellectual property legislation is not flexible enough to resolve the abovementioned problems.

In addition, another important issue relates to the clash between personality rights and freedom of expression, where courts are required to strike a balance between the right of publicity and the First Amendment. This leads to a very restricted interpretation of personality rights where artistic, satirical, or information-related elements are at play. Though this is important in a democratic society, it could mean that some types of digital abuse could remain unchecked, especially where parody or transformation is involved.

The issue becomes even more complex in light of the non-existence of a statutory scheme in India. While courts have accepted the right to personality as a part of the right to privacy and dignity under the Constitution of India, implementation is often sporadic and depends upon the discretion of judges.

In conclusion, technology is always developing faster than any attempts at legislation can keep up with it. Artificial intelligence systems can produce completely fake identifications that do not belong to an actual person, but which could still be used to deceive others. These situations pose serious doubts regarding the existence of the concept of personality rights itself, since the issue arises as to whether legal recognition should be extended not only to actual individuals but also to their virtual counterparts.

Overall, there are several problems associated with the current global IP system in its ability to provide effective protection of personality rights: theoretical problems, jurisdictional problems, enforcement problems, and normative problems.

Emerging Legal Strategies and Way Forward

Due to the inefficiency of conventional systems in dealing with identity-related violations, there have been many new legal approaches developed by different jurisdictions around the world. The new systems highlight the understanding that it is not possible to protect personality rights using a single doctrine but rather through a multi-faceted system that takes into account both privacy laws, property laws, and data management.

In the United States, there has been continued development of the right of publicity as the central doctrine used in protecting personality rights. This doctrine acknowledges the value of identity in economic terms and extends to include characteristics such as voice, likeness, and performances.

Nevertheless, recent trends show that there is an increasing requirement for the modification of publicity rights in line with technological advancements such as deepfakes and artificial intelligence content. Several states have already started making moves towards legislation regarding digital representations and posthumous personalities.

The EU, however, has opted for an alternative approach based on regulation and rights, whereby data protection is key. This is provided under the General Data Protection Regulation, which ensures proper control of processing personal data, which may include biometric or identity data. Informed consent, purpose limitation, and the right to be forgotten, among other principles, help ensure full protection from any unauthorised use of identity through the digital realm. But the weakness of this approach is that it lacks an effective means to deal with the problem of personality exploitation in the realm of commerce, which can be better dealt with through the publicity perspective approach.

India finds itself at a crossroads where it could take a middle way and combine the best aspects of both approaches. The recognition of personality rights as an extension of privacy rights by the judiciary, through cases like Justice K.S. Puttaswamy v. Union of India, serves as a sound constitutional basis for this purpose. At the same time, Indian courts have demonstrated a willingness to recognise the commercial dimension of personality, particularly in cases involving unauthorised endorsements and misuse of celebrity identity.

In the future, the development of legislation in the field of personality rights in India can help clarify such issues as:

- defining the attributes that will be protected (e.g., name, image, voice, and likeness),
- distinguishing commercial uses from non-commercial ones, and
- providing remedies against their digital infringement (ex- injunctions, compensation, removal of unlawful material).

On a wider scale, the advent of digital technology requires international collaboration and harmonization. As far as online content is involved, national laws are sometimes insufficient to address concerns raised by AI technologies.

The international organization called World Intellectual Property Organization (WIPO) has started discussing the connection between AI and intellectual property, yet further international action is needed in respect of personality rights. Moreover, technical interventions should be supplemented by legislative interventions. Rules around platform regulations, algorithmic accountability, and AI transparency can help significantly in mitigating any form of abuse that may happen at its source itself. For example, the introduction of labels on the use of artificial intelligence and strict content moderation rules can help mitigate the problem of harmful digital clones.

Finally, in view of the challenges faced by the protection of personality rights in the modern digital age, there needs to be a move away from piecemeal legislation to a more unified approach to the same. The adoption of a hybrid system incorporating the best aspects of the United States publicity right law, the European Union data protection laws, and Indian jurisprudence represents the ideal way forward.

Conclusion

The quick adoption of technologies in daily life has changed the essence of the concept of identity from a purely individualistic notion to one that is easily reproducible through digital means and commercially lucrative. It can be observed that in such a scenario, personality rights play an extremely important role as a legal right, although their protection is often grossly inadequate. The analysis presented in this paper makes clear that intellectual property laws, although good for protecting creativity and commercial gain, cannot adequately address the challenges of identity-based harm.

The comparison between the laws of personality in India, the USA, and the EU illustrates the different approach adopted by each jurisdiction to personality rights through the use of a different legal perspective. In the USA, the personality right is approached from a commercial point of view as per the right of publicity. The European Union, through the General Data Protection Regulation, prioritises individual autonomy and consent. It is also framing personality as an aspect of personal data, and also providing a broader regulatory shield against misuse. However, India remains engaged

in building its own jurisprudence by constitutional interpretation on the basis of the Constitution of India, considering the Justice K.S. Puttaswamy

v. Union of India case law, but has yet to formulate comprehensive legislative measures for

addressing new digital issues. The legal system of India is characterised by an imperfect blend of models in which the combination of constitutional rights guaranteed by the Constitution of India and legislative measures established through the Digital Personal Data Protection Act, 2023, offers piecemeal protection of personality rights, unlike the systematic approach found in the US and EU systems.

This contrast between the two strategies demonstrates that one of the most important lessons to be learned from the discussion on protecting personality rights is that no one-size-fits-all model can address adequately the issues in modern times. The emergence of deep fakes, AI, and international dissemination of information has made many shortcomings of current regulations apparent. Intellectual property law in its current form remains an incomplete tool for addressing these challenges as it fails to capture the intrinsic and personal nature of identity.

Accordingly, the future of personality rights should be shaped by an evolving and flexible legal system, one that combines the business-oriented approach of publicity rights in the United States, the data-oriented focus of EU law, as well as the constitutionally guaranteed principle of respect for privacy and dignity that characterizes Indian law. On the other hand, legal reforms need to be combined with technology and regulation through AI governance, platform responsibility, and international cooperation. The problem of protecting the right to personality in the era of digitalization goes far beyond the classification of the phenomenon as a matter of legislation since it is, in essence, the question of the protection of human dignity and self-determination in the increasingly digitalised world. Technology evolves, and so should the legislation, enabling individuals to manage their identities virtually.

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