

Commercial Exploitation of Personality Rights in the Digital Era

There has been a significant rise and attention in the domain of Intellectual property rights with special reference to personality rights in the last few years in India. Personality rights are something that protects an individual's persona from unauthorized commercial exploitation. Indian courts have increasingly recognized and reinforced the protection of personality rights through several landmark decisions. The Copyright Act of 1957 deals with '**Performer's Rights**' under section 38, which protects the **artist's work** for 50 years after the performance. In 2012, this amendment was made to protect the artists and to ensure that they receive royalties for their work. The judiciary has played a crucial role in protecting and safeguarding the interests of the artists through the use of copyright, passing off and privacy laws. However, if we similarly compare the concept in foreign jurisdictions like The United States of America, the concept of Name, Image and Likeness (NIL) has also gained significant attention, particularly in the context of the National Collegiate Athletics Association, which allows individuals to monetize their personal brand without compromising their amateur status. This concept has broader implications for personality rights, which protect an individual's persona from unauthorized commercial exploitation.

The rise of digital technology, including AI, chatbots and deep fakes necessitates the protection of personality rights in the digital age as the risk of having their identity misused could harm their reputation and privacy. The adaptation of the NIL concept could provide a structured approach for individuals to license their rights for commercial use and would also help them adequately get compensated for the use in the same manner as the young athletes in the USA. The complexities of personal rights in the Indian context have been brought to light by the instances involving Amitabh Bachchan, Jackie Shroff, Anil Kapoor and Rajat Sharma. These cases have highlighted the rights of an individual to regulate the commercial exploitation of their identity and how these infringed rights are being recognized by the law. These rulings have highlighted a critical point i.e., celebrities have a right to control their image, voice and other unique traits that are exploited commercially. However, the question of 'performance rights' is a topic of debate as when it comes to AI-generated performance it is not copied from traditional performance.

Also, it is pertinent to note that in the case of **Anil Kapoor**, the Hon'ble Court has taken a proactive approach while safeguarding personality rights and has broadened its view by including name, voice, photograph/image/likeness, manner of speaking and dialogue delivery, gestures and signatures, etc. in the purview of an individual's persona. The court stated that the 'Plaintiff's name, likeness, image, persona, etc., deserve to be protected not only for Plaintiff's own sake but also for the sake of his family and friends who would not like to see his image, name and other elements being misused, especially for such tarnishing and negative use'. This view not only protects the rights of the performer in the instant case but also raises a question as to the need for updating the current legal framework in India.

The proactive approach of protecting public figures from unauthorized commercial exploitation in the digital age is widely supported by celebrities and their advocates. This approach is crucial for safeguarding the personality rights of performers and athletes. It would not only enable individuals to protect their image but also provide them with the opportunity to license their rights for commercial use, allowing them to benefit from royalties, similar to how amateur athletes in the USA are compensated.



The concept of NIL from the USA offers a valuable model for India, particularly in recognizing and protecting the commercial rights of individuals over their name, image and likeness. As India's sports, entertainment and digital sectors continue to grow, it is the need of the hour for a clear and comprehensive legal framework to address and protect personality rights by recognizing them as a distinctive form of Intellectual Property. However, by adopting the principles from the US System and tailoring them to the Indian context, the Indian framework could ensure that its citizens are protected and would also help them to capitalize on their personal brand.



Authors: Mr. Rahul Vats, Associate – Corporate Practice Division

