

# Examining the Aspect of the Right of Publicity under Intellectual Property Law - An Attempt to Adopt a Better Standard of Protection

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**Abstract:** The right of publicity is about protecting a person's identity—like their name, image, or voice—from being used without their permission, especially for commercial purposes. This concept, which started as part of privacy rights, has grown into something more like a property right, where a person's identity has economic value. However, there are many challenges in balancing this right with freedom of speech, especially in creative fields like movies, video games, and news. Different countries and courts have different rules, which makes it confusing and inconsistent.

This study looks at how the right of publicity is treated in India and compares it with international practices. It also explores whether current intellectual property laws in India are enough to protect celebrities and their identities. Through surveys and interviews with celebrities, content creators, and the general public, the research highlights how people view publicity rights and the challenges celebrities face in controlling their image in the digital age. The study suggests that India needs more laws to protect these rights while ensuring that free speech and creativity are not harmed. A balanced approach is necessary to address the growing misuse of celebrity identities and to provide better protection under intellectual property law.

**Keywords:**

## INTRODUCTION

The right of publicity is a legal concept aimed at preventing the unauthorized use of a person's identity, including their name, likeness, or voice, often for commercial purposes. Rooted in privacy law, it was first conceptualized by Samuel Warren and Louis Brandeis in 1890 as the "right to be left alone." William Prosser later expanded this into four privacy torts, one of which—appropriation for commercial advantage—evolved into the right of publicity. Unlike the other privacy torts, this right is more akin to a property right, protecting the commercial value of a person's identity. Courts have generally recognized three core elements of the right of publicity: name, image, and likeness, though

broader characteristics like voice, clothing, and persona are also protected under common law.

The right of publicity, however, faces significant challenges. It often conflicts with freedom of speech, as it restricts what can be said, shown, or heard. Courts have struggled to balance these interests, leading to inconsistent rulings. For example, some jurisdictions limit the right to commercial contexts, while others extend it to personal injuries. Similarly, some require plaintiffs to prove the commercial value of their identity, while others do not. This inconsistency has created a "Wild West" of litigation, chilling free speech and leaving creators of expressive works—such as video games, movies, and news reports—without clear protections.

To address this confusion, scholars have proposed disaggregating the right of publicity into four distinct interests: the right of performance (control over performances), the right of commercial value (preserving identity's economic worth), the right of control (autonomy over one's persona), and the right of dignity (protection against harm to one's reputation). Each of these interests requires its own legal framework and First Amendment analysis. This article explores the origins, international treatment, and conflicts surrounding the right of publicity, with a focus on India's position. It aims to strike a balance between free speech, creative expression, and the protection of publicity rights, offering a framework for more consistent and predictable outcomes.

## OBJECTIVES

The objectives of the research are

1. To study the extent of protection of publicity rights of celebrity in intellectual property law in India
2. To understand the various common law remedies related to the protection of publicity rights of celebrity.

3. To specifically analyse the adequacy of the provision in existing intellectual property law related to publicity rights.
4. To understand the scope and necessity of recognising image rights in Ip sphere and the impact on the fair use of the celebrity image.

#### HYPOTHESIS

Given the growing importance of celebrities' public personas and their economic value, it is hypothesized that there exists a viable framework within existing intellectual property laws to accommodate and protect celebrity rights effectively. This hypothesis suggests that by extending the scope of intellectual property rights, particularly through the expansion of the right to publicity, celebrities' interests in controlling the commercial use of their likeness, name, and persona can be adequately addressed

#### RESEARCH METHODOLOGY

The research is of an empirical nature and adopts methods such as historical studies, case studies, surveys, and questionnaires. The primary data was collected by means of a questionnaire. The sample size was selected based on the random sampling method. The sample size is 50. The study uses various questions to study the awareness and need requirements. The method of analysis includes the use of averages, percentages, pie charts, and cross-tabulation. The questions involve both open-ended as well as close-ended questions to facilitate the researcher to collect more information and to make the research efficient. The researcher has also employed secondary sources like books, newspaper articles.

#### RESEARCH PROBLEM

1. Whether common law remedy is adequate to combat the violation of right of publicity in the digital age.
2. whether the right of publicity comes under the ambit of intellectual property
3. Whether existing IP laws are sufficient to accommodate the right of publicity of the celebrity
4. whether the recognition of the right of publicity has an impact on free speech and the creation of new works on the celebrity image.

#### OVERVIEW OF THE RIGHT OF PUBLICITY

In today's commercial world, where consumers have countless choices, trademarks and advertisements

play a crucial role in distinguishing products. Celebrity endorsements, in particular, have become a powerful tool for brands as they lend authenticity and credibility to products, significantly boosting sales. This has made the use of celebrity images and personas a key concern for companies. A celebrity's goodwill and reputation directly influence the value of their image, making it essential to secure their consent before using their identity for endorsements. For instance, cricketer Sachin Tendulkar is synonymous with Boost, and actor Vijay is associated with Jos Alukkas.

Beyond companies, newspapers and TV channels also capitalize on celebrity images and personas to attract readers and viewers. Newspapers often dedicate special columns to movie celebrities, while TV shows use celebrity likenesses in political satires or comic sketches. Programs frequently feature mimicry artists imitating the voices and personas of stars like Rajinikanth or T. Rajendran, earning significant income from such performances. While some of these uses may fall under fair use or be protected by freedom of speech and expression, unauthorized exploitation of celebrity images, names, voices, and likenesses remains a concern.

These elements hold significant monetary value as they are built by celebrities through their time, energy, and creativity. However, there is no comprehensive legal framework to protect them. This highlights the need for stronger protection under intellectual property law, specifically through the recognition of the right of publicity, to safeguard the commercial and personal interests of celebrities.

#### INTERNATIONAL CONVENTIONS AND THE RIGHT TO PUBLICITY

To date, no international convention or treaty explicitly recognizes or protects publicity rights. This absence is largely due to the developmental stage of publicity rights in most countries and the complexities involved in defining and regulating them. Publicity rights often overlap with intellectual property (IP) and privacy rights, making it challenging to establish a unified framework. Additionally, the uneven structure of local IP laws further complicates the creation of a global standard for publicity rights.

However, elements of publicity rights can be inferred from the rights granted to "performers" under various international agreements. It is important to note that

performers are only a subset of celebrities, as one can achieve fame without being a performer. Despite this limitation, these agreements have influenced the development of local copyright and related rights laws, indirectly contributing to the recognition of publicity rights.

#### KEY INTERNATIONAL CONVENTIONS

##### ROME CONVENTION, 1961

The Rome Convention marked a significant step by recognizing "neighbouring rights," which include performers', phonogram makers', and broadcasters' rights. These rights provided performers with protection over their performances, but the scope was limited. Membership in the Rome Convention was restricted to United Nations member nations that were also part of the Berne Convention (1886), which excluded many countries from its benefits.

##### TRIPS AGREEMENT 1994:

Articles 9 to 14 of the TRIPS Agreement address copyright and related rights. Article 14 specifically protects the rights of phonogram makers, live performers, and broadcasters. These rights include fixation, reproduction, broadcasting, and public communication. While the TRIPS Agreement does not explicitly address publicity rights, its provisions have influenced the development of related rights in member countries. India, for instance, signed the TRIPS Agreement in 1994 and incorporated these protections into its copyright laws.

##### THE WIPO PERFORMANCES AND PHONOGRAMS TREATY (WPPT), 1996

The WPPT was introduced to address the gaps in protecting performers and phonogram manufacturers in the digital age. It recognized the fixation of performances on digital media and their dissemination to the public. Performers were granted economic rights, such as reproduction, distribution, and rental, as well as moral rights. However, the treaty only protected aural works, leaving visual performances unaddressed.

India signed the WPPT on July 4, 2018, although its copyright laws already provided similar protections. While these international conventions have laid the groundwork for protecting performers' rights, they fall short of explicitly addressing publicity rights. The focus remains on performers and their specific

works rather than the broader commercial and personal interests of celebrities. This gap highlights the need for further development in international law to address the unique challenges posed by publicity rights.

In conclusion, international conventions have indirectly influenced the recognition of publicity rights through their focus on performers' rights. However, the absence of explicit provisions for publicity rights underscores the fragmented and underdeveloped nature of this area of law on a global scale.

#### THE RIGHT TO PUBLICITY: A SUBSET OF PRIVACY RIGHTS

*"Civilization is the progress towards a society of privacy. The savage's whole existence is public, ruled by the laws of his tribe. Civilization is the process of setting man free from men." - Ayn Rand*

The right to publicity, as a subset of the right to privacy, has seen limited development in India, with most precedents being set by High Courts. The controversy surrounding the right to privacy itself was only resolved in 2017, leaving the right to publicity in a nascent stage.

##### Phoolan Devi v. Shekhar Kapoor (1995)<sup>1</sup>

In this case, the Delhi High Court addressed Phoolan Devi's plea to stop the release of the film *Bandit Queen*, which depicted her life. She objected to a scene portraying her rape, claiming it was a misleading account of facts. Her arguments were based on three points:

1. The portrayal violated her right to privacy under Article 21 of the Constitution.
2. The depiction was not authorized by her.
3. The portrayal was covered under copyright law.

The defendants argued that public figures like Phoolan Devi had no right to privacy due to their public life. However, the Court held that even public figures have a right to privacy, especially concerning intimate details of their personal lives, such as family, marriage, and motherhood. The Court banned the film's release, stating that the plaintiff had not consented to the portrayal of her sexual abuse. This

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<sup>1</sup> 57(1995)DLT154, 1995(32)DRJ142

case indirectly acknowledged the right to publicity as part of the right to privacy.

The Court also outlined exceptions to the right to privacy:

1. The information must be of legitimate public interest.
2. It must not relate to the personal life of a celebrity.
3. There must be no commercial interest in using the information.

ICC Development (International) Ltd. v. Arvee Enterprises (2003)<sup>2</sup>

This case explicitly addressed the right to publicity. The Delhi High Court ruled that the right to publicity stems from the right to privacy and applies only to an individual's personality traits, such as their name, signature, or voice. The Court emphasized that publicity rights belong solely to individuals and cannot be transferred to event organizers or corporations. Any attempt to do so would violate Articles 19 and 21 of the Constitution. This decision was the first to explicitly recognize the right to publicity in India.

Manisha Koirala v. Shashikala Nair

In this case, actress Manisha Koirala sought an injunction against a film that depicted her in a nude state using a body double. She initially consented to the plot but later opposed it, claiming defamation and violation of her privacy. Although the case did not directly invoke the Copyright Act, it raised concerns about the misuse of a celebrity's image and reputation.

D.M. Entertainment (P) Ltd. v. Baby Gift House<sup>3</sup>

This case involved the misuse of singer Daler Mehndi's trademark and his right to publicity. The Delhi High Court ruled that the right to publicity is tied to an individual's autonomy to control the commercial use of their likeness or personality traits. This broadened the scope of publicity rights to include not just a person's body but also their likeness and personality.

Titan Industries Ltd. v. Ramkumar Jewellers<sup>4</sup>

The Court further elaborated on the right to publicity, stating that infringement requires:

1. Validity: The plaintiff must have an enforceable right in their identity or persona.
2. Identifiability: The celebrity must be clearly identifiable.

The Court defined the right to publicity narrowly as the right to control the commercial use of one's identity.

Selvi J. Jayalalithaa v. Penguin Books India<sup>5</sup>

In this case, the Madras High Court granted an injunction against the publication of an unauthorized biography of Jayalalithaa. The Court held that private information unrelated to public activities could not be published without consent, reinforcing the right to privacy.

Shivaji Rao Gaikwad v. Varsha Productions<sup>6</sup>

The Madras High Court granted an injunction against the use of actor Rajnikanth's name in the film Main Hoon Rajnikanth. The Court held that using a celebrity's name without consent violates their right to publicity, especially if the name is easily identifiable with the celebrity.

Puttaswamy Judgment (2017)

The landmark Puttaswamy ruling recognized the right to privacy as a fundamental right under the Indian Constitution. Justice Sanjay Kishan Kaul, in his concurring opinion, linked the right to publicity with the right to privacy. He stated that individuals have the right to control the commercial use of their identity and protect their reputation from harm, even if the information is true. He emphasized that not all true information is of public interest and that privacy must be preserved to protect personal dignity and autonomy.

However, Justice Kaul's opinion was not the lead judgment, meaning it does not have binding value. As a result, the right to publicity remains underdeveloped and undefined in India.

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<sup>2</sup> 2003 (26) PTC 245 Del

<sup>3</sup> MANU/DE/2043/2010

<sup>4</sup> CS (OS) No. 2662/2011

<sup>5</sup> (2013) 54 PTC 327 (Mad)

<sup>6</sup> 2003 (26) PTC 245. [2]2012 (50) PTC 486 (Del).

## LACUNA IN THE EXISTING INTELLECTUAL PROPERTY LAW

### Trademark Laws

The primary function of trademark law is to identify the origin of goods and services, ensuring consumers associate a product's quality and attributes with its source. Celebrities often register their names, nicknames, or likenesses as trademarks to protect their image and capitalize on their publicity. For instance, actress Mallika Sherawat registered her name as a trademark, and other public figures like Baba Ramdev, Sanjeev Kapoor, and Kajol have followed suit. This protection allows celebrities to control the use of their identity in marketing and merchandise.

A notable case is *Sourav Ganguly v. Tata Tea Ltd.*, where the cricketer objected to the unauthorized use of his name and image in a promotional campaign. Despite being a brand ambassador, Ganguly had not consented to the use of his persona for this specific purpose. Similarly, actor Rajnikanth sought to protect his screen persona from being imitated for commercial gain, while Amitabh Bachchan and Sunny Deol have sought protection against the misuse of their voices.

However, the Trademarks Act, 1999 offers limited protection for publicity rights. While Section 2(m) includes names under the definition of a "mark," it does not explicitly address image or publicity rights. Celebrities often rely on the common law remedy of "passing off" to protect their reputation. To succeed in such cases, they must prove their reputation, misrepresentation, and resulting damage. Section 14 of the Act restricts the use of personal names in trademarks if it falsely suggests an association with a living person or someone deceased within 20 years.

Despite these provisions, the law lacks clarity on assigning and licensing publicity rights. For example, a celebrity can protect their name from being used in a domain name through trademark infringement or passing off actions. Under the Uniform Domain Name Dispute Resolution Policy (UDRP), celebrities can file complaints if their name is misused for commercial purposes. In *Arun Jaitley v. Network Solutions Private Limited*, the politician successfully obtained an injunction to prevent the misuse of the domain name "arunjaitley.com."

The primary issue with trademark law is its limited scope. It protects only names and signatures,

requiring them to be distinctive and not in the public domain. This makes it difficult for celebrities to protect their names, as they are already widely known. Additionally, trademark law requires graphical representation, leaving elements like voice, likeness, and persona unprotected.

### THE AREAS OF THE CONFLICT BETWEEN THE RIGHT OF PUBLICITY AND THE FAIR USE:

The conflict between the right of publicity and fair use arises at the intersection of personal rights and free speech. Publicity rights grant individuals' control over the commercial use of their identity, allowing them to permit or deny its use. On the other hand, free speech, especially in public discourse, often enhances a person's fame and financial value, as seen in the case of Narendra Modi, whose publicity value has grown due to extensive media coverage and discussions surrounding the 2024 elections.

Publicity rights create tension by introducing the possibility of liability for using someone's persona, which can impact public discourse. However, the law must strike a balance between protecting these rights and ensuring freedom of speech. Without this balance, privacy rights could unduly limit speech, while unrestricted speech could undermine privacy.

In the U.S., free speech is protected under the First Amendment, which often takes precedence over state-level publicity rights. However, not all speech is protected, and courts have developed tests to determine when free speech outweighs publicity rights. Similar to the fair use doctrine in copyright law, which prevents copyright owners from monopolizing their work and encourages new creations, these tests aim to balance the right of publicity with the need for free expression. This ensures that neither right is compromised entirely.

### SUBJECT MATTER PROTECTED UNDER PUBLICITY RIGHTS:

Though there is no specific legislation protecting the right of publicity, courts in India have addressed such cases through common law remedies and by applying principles of trademark and copyright law. From various judgments, it is evident that courts have attempted to protect elements such as a celebrity's name, voice, signature, image, and persona under the right of publicity. For instance, in *Arun Jaitley v. Network Solutions (P) Ltd.*, the Delhi High Court upheld Arun Jaitley's right to stop the misuse of the domain name [www.arunjaitley.com](http://www.arunjaitley.com). The court ruled

that a celebrity's name, when used as a trademark, is protected under trademark law and affirmed that unauthorized use of a celebrity's name for commercial purposes violates their publicity rights. Similarly, in *Rajat Sharma v. Ashok Venkatramani*<sup>7</sup>, the Delhi High Court recognized Rajat Sharma's publicity rights as the host of *Aap Ki Aadaat* and restrained Zee Media from using his name in advertisements, as it amounted to false advertising. The court acknowledged Sharma's unassailable right to his public persona and identity.

In another significant case, Anil Kapoor sought protection for his name, voice, signature, and image, arguing that their unauthorized use for commercial purposes violated his rights. The Delhi High Court ruled that while free speech, including parody and satire, is protected, the misuse of a celebrity's persona for profit is illegal. The court barred the use of Kapoor's name, likeness, or voice for merchandise, ringtones, or AI-generated content without his consent. Similarly, in the *Auto Shankar* case, the Supreme Court emphasized that unauthorized commercial use of a celebrity's persona, including their name or voice, is impermissible, noting that a celebrity's right of endorsement is a key source of livelihood and must be protected.

These cases highlight that courts have recognized the subject matter of publicity rights to include a celebrity's name, voice, signature, image, and persona. However, the lack of specific legislation leaves these rights vulnerable and dependent on judicial discretion, as seen in cases like *Anil Kapoor's*. Without statutory recognition, the right of publicity remains inconsistently enforced, leaving celebrities without comprehensive protection.

#### ANALYSIS OF THE STUDY

The researcher has contacted celebrities and content creators as a part of this non-doctrinal research. The researcher has collected information from them. The interview was conducted with 3 YouTube celebrities (micro-celebrities),<sup>1</sup> standup comedian, and 2 content creators. Their responses are examined and recommendations are made. Besides this, the questions posed to the general participants, their responses, and the researcher's interpretations of the responses are listed below:

Psychological aspects:

The psychological aspect of asking age in surveys can be quite significant. Each age group in a survey can depict different generational perspectives, life stages, and consumer behaviours. The current topic has a significant impact on consumers and the content creator who intends to make an IP work out of the celebrity image, the age plays a vital role in finding the mindset of the audience on the right of publicity.

For example, • Young Adults (18-25) are often associated with trends in technology use, education, and early career development.

- Adults (26-34): Typically, in the midst of establishing their careers, starting families, and making significant life decisions.
- Middle-Aged Adults (35-64): This wide range can include individuals experiencing peak career moments, family growth, and beginning to plan for retirement.
- Seniors (65 and older): Often retired or planning for retirement, this group's concerns may focus on healthcare, leisure activities, and financial security

The current study separated the age groups between 18-25, 25-30, 30-35 and 35 & above. The reason for grouping in such a way is to analyze the impact of media on the age group, Since celebrity status has mostly been acquired recently through popularity on the internet. Nearly 71.2% audience between the age group of 18 – 25 participated in the study.

Question: 1

Are you aware of intellectual property rights?

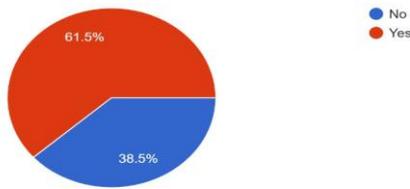
While interviewing the celebrities, standup comedians, and content creators all answered affirmatively that they were aware of intellectual property rights. Some enjoy copyright protection for their work. While asking the general public whether they know about intellectual property law.

Intellectual property law protects the creator by granting exclusive rights for a certain period, giving such protection will incentivize the creator to produce more work. The protection will prevent third parties from making unauthorized use of the IP-protected work.

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<sup>7</sup> 1997(40)DRJ791

Do you know intellectual property law  
52 responses



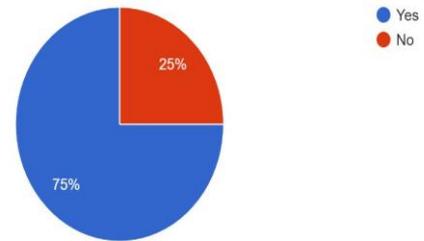
Nearly 61.5% of the general public answered that they know about intellectual property law, the object behind the protection, and the subject matter that is intended to be protected under the intellectual property law, and 38.5% answered that they were unaware of the law.

Question: 2

Are you aware of publicity rights?

The question was put forth to the content creators and the YouTube celebrities that whether they were aware of the right of publicity and how they have come to know about such right. Some have answered that they heard only in the news through the enforcement of such rights by some celebrities. but they were unaware of the whole intention of the right of publicity. In their viewpoint, the right of publicity is merely a right of privacy.

Are you aware of publicity rights?  
52 responses



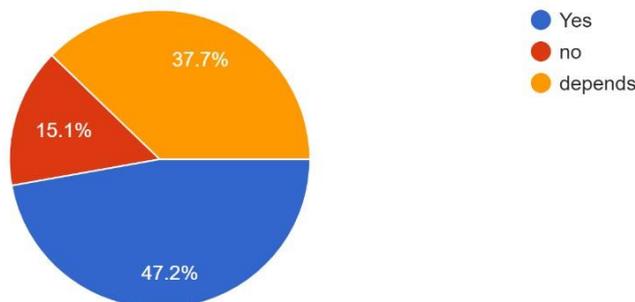
On the other hand, when the question was posed to the general audience through Google Forms. Most of them(75% percent ) of the participants affirmed that they were aware of the rights

Question: 3

Do you think celebrities' endorsement of products/services determines your buying power?

This question was framed especially for the general public. The core intention of bringing the right of publicity is to give full control over one's images. Most of the celebrity's images have been used in relation to goods and services as a part of an advertisement and the right to publicity prevents the usage of images without authorization. So, it becomes a matter of importance to know whether the buyer has any influence from the celebrity before buying a product or using a service.

Do you think celebrities endorsement on product/service determines your buying power  
53 responses

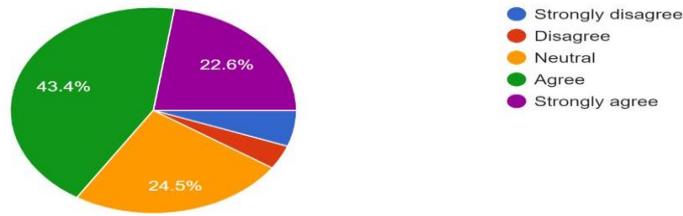


Nearly 47. 2% general public has responded that they get influenced by the celebrity before buying a product or service. And 37.7% of participants stated that the influence depends on the celebrity who's been endorsing the goods or service. Only 15.1% of participants answered negatively that they are not influenced by celebrity endorsement.

Question: 4

Do you agree there is an increase in the misappropriation of celebrities' image/likeness in the modern digital age?

Do you agree there is a increase in the misappropriation of celebrities image/likeness in the modern digital age  
53 responses



When the above question was posted to the YouTube celebrities, they answered affirmatively. One celebrity stated that in this digital age, no one has control over the image, we have limited right to control it. They stated that when a celebrity has posted a picture or video of themselves it was thought by the public or content creator or news channel that it is a public property like they have all the right to use the image without authorisation. Quoting the recent WhatsApp privacy guideline, they said even a common man doesn't have a privacy or control over their chats/image. so, it is quite an irony to expect a control on image for a celebrity. Since it is a digital era where everyone has access to everything there is a quite harder scope for the celebrities to take control or action against this misappropriation or misuse.

in the misappropriation of celebrity's image. and 24.5% has strongly agreed and 22.4% has a neutral stand over the misappropriation in the digital age.

Question: 5

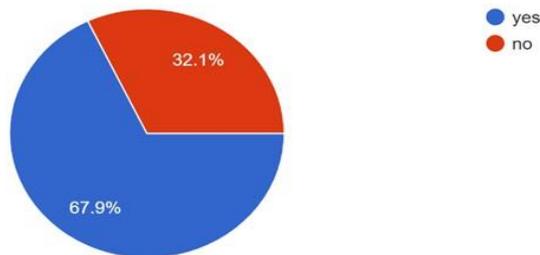
Have you heard any news that celebrity images, voices, or likenesses have been misused or misappropriated recently?

Answering this question, celebrities have stated that though they are micro celebrities, Even their videos and photos have been misused without their permission. They have also faced misappropriation in some goods/services, though not at a higher level. Their videos have been used as fake endorsements for some trivial products that they don't want them to name.

The same question was posted to the general public, nearly 43.4% has agreed that there has been increase

Have you heard of any news that celebrity images, voices, or likenesses have been misused or misappropriated recently?

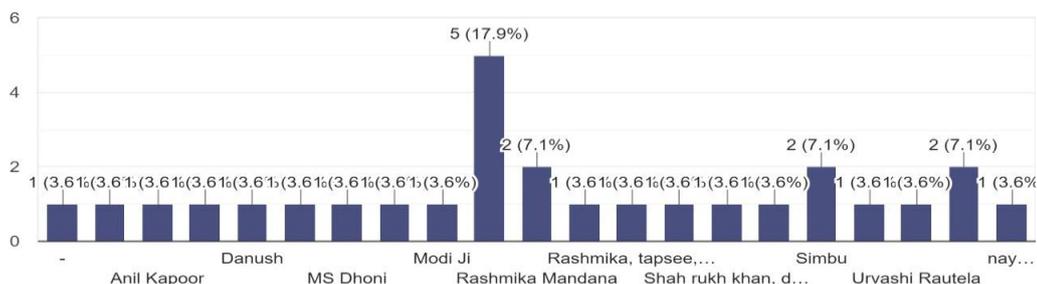
53 responses



The 67.9 % of general public has responded that they have heard about the news of celebrities image have been misused. They have also named some of the celebrities they know, like PM Narendra Modi, if yes, name one celebrity.

Rashmika Mandana, Anil Kapoor, Shahrukh Khan, Urvashi Rantala, Nayanthara, Dhanush, MS Dhoni, and Tapsee.

28 responses

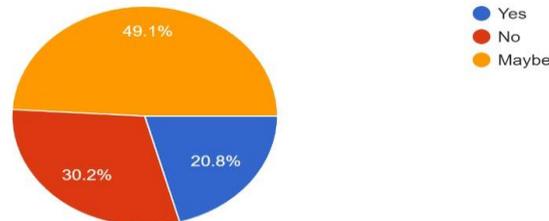


Question: 6

Do you think the celebrities right of privacy are adequately protected under existing law?

49.1% of general participants has stated that the rights of privacy of celebrities are adequately protected under existing law and 30.2% of participants stated that there is no sufficient protection, and 20.8% showed their neutrality to the protection issue.

Do you think the celebrities' right of privacy are adequately protected under existing law  
53 responses



Answering the above question, the celebrities stated that they don't have sufficient protection for their privacy under the existing law. Though they have a fundamental right but they have been treated as a second-degree citizen. As they're public figures people forget that they're also an individual who needs privacy, stated the celebrities.

they mostly resort to them personally to take down the infringing work. whether they had faced market loss.

What sort of remedy have you resorted to when the image has been misused?

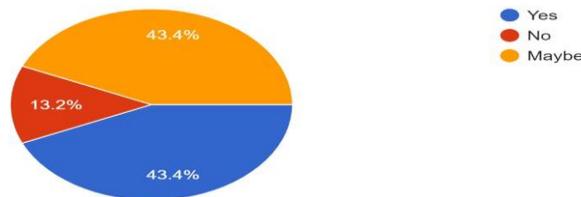
Most celebrities answered negatively, except one, who said that he has faced a market loss like viewers loss though not for a longer period. During that period, people stopped watching their videos, which led to the fall of sponsorship for his videos. People had a bad image of that celebrity; his reputation was harmed because of the unauthorized use of his image. After so many months, he regained through his hard work and effort, stated one celebrity.

The celebrities responded that they did not have enough knowledge about the rights of publicity. they took an action of copyright strike down. Since their appropriation has happened mostly with their copyrighted work, they take an action of infringement. When it is scandalous and obscene,

Question: 7

Do you think extending the protection of the right of publicity to intellectual property efficiently prevents the celebrities' image from being misappropriation?

Do you think extending the protection of right of publicity to intellectual property efficiently prevents the celebrities' image from misappropriation  
53 responses



From the above, it can be inferred that nearly 43.4% have opted for the expansion of IP by including the right of publicity, and only 13.2% have thought of it in another way.

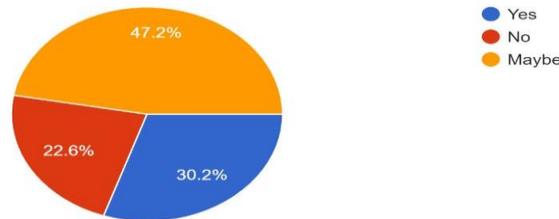
under IP laws benefits most celebrities, as they have a market revolving around them, so it is justifiable to protect their image from misappropriation by the news agency or any other media, and company for their ads.

The same question was asked to the celebrities, have stated that they even have no idea whether they could come under the ambit of celebrities. As they are micro-celebrities, they all showed a little hesitance to call themselves celebrities. but they have answered that though they couldn't claim such a right. but the idea of expanding the protection of rights of publicity

Question: 8

Do you believe that content produced on celebrities (such as memes, parodies, news and mimics) gets impacted by laws safeguarding their publicity under intellectual property law?

Do you believe that content produced on celebrities (such as memes, parodies, news, and mimics) is impacted by laws safeguarding their publicity & personality under intellectual property law?  
53 responses



To answer this question, the researcher has used new participants as a sample. The opinion was asked from the standup comedian and the content creator, as well as from the YouTube celebrities who are also a content creator. They all have stated that though recognizing the right to control the celebrities is a good move, it has a backlash on them, they stated. Even a standup comedian uses the personas of a celebrity, which the celebrity might use for misappropriation of their image. One standup comedian whom the researcher interviewed has stated that they received a backlash for imitating one celebrity (a famous actor) though not directly from them. So, this made him restrict his content and this has affected his free speech. Quoting the copyright issue in YouTube, they stated that even they cannot hum a copyrighted song on YouTube if they have sung their content might be struck down for infringement. So, the right of publicity also has such an impact on the content creator, the participants. While asking the general public, nearly 47.2% of participants have responded neutral view to the question. And the next highest, 30.2% have agreed that there could be an impact on free speech.

#### CONCLUSION AND SUGGESTIONS

By clearly distinguishing the specific interests that the right of publicity seeks to protect, this study has attempted to resolve the jurisprudential challenges courts face when applying this right. The analysis clarifies why, in some cases, the right is limited to commercial contexts, while in others, it extends to all forms of speech; why some plaintiffs must prove the commercial value of their identity, while others can enforce the right regardless; and why the right sometimes focuses on market damages, while in other cases, it addresses emotional distress.

The study reveals that most people are unaware of publicity rights, even though they acknowledge the intrusion of celebrities' privacy and the misappropriation of their image, voice, and name. Celebrities often lack control over their identity,

leaving them unprotected. While common law remedies may provide damages for such misappropriation, they are insufficient as they do not grant individuals the right to control their image. In today's digital age, where controlling one's image is nearly impossible, this lack of protection is particularly troubling for celebrities.

To address this, the right of publicity should be codified as a separate intellectual property right. Beyond privacy violations, celebrities have a commercial interest in their image, voice, name, and personality, which are the result of their labour and effort. While these elements share similarities with copyright and trademark law, they do not fit neatly within their frameworks. Therefore, a sui generis law is necessary to protect these rights.

Importantly, anyone with a commercial interest in their identity and sufficient public attention—such as Instagram influencers, lawyers, or politicians—should be able to claim celebrity status. However, granting such protection must not stifle the creation of new works or restrict free speech. Publicity rights grant celebrities' exclusive control over their image, but unfettered rights could harm creative expression and transformative works.

To strike a balance, the test for fair dealing can be applied to ensure harmony between free speech and publicity rights. Legislators could also refer to the doctrines established by U.S. courts in publicity rights cases while addressing ambiguities in those laws. Ultimately, the right of publicity should be legislated in a way that protects both the individual's rights and the freedom of expression, ensuring that neither is compromised.

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