



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Unravelling the Misuse of Artificial Technology in Celebrities’ Intellectual Property Rights

Ansh Shreeganesh Abhyankar^a

^aMaharashtra National Law University, Nagpur, India

Received 03 October 2023; *Accepted* 31 October 2023; *Published* 03 November 2023

This paper focuses on modern technology i.e. artificial intelligence, and how it harms the right to publicity and, the right to privacy of an individual. It also discusses how people use AI and deepfakes to impersonate famous personalities and use the same for commercials, endorsements, advertisements, etc. There is a stark difference in using technology for making voice lines, and images of a celebrity by taking his/her consent and using AI to create false content by using their voice, etc. The paper also discusses the intersection of AI and copyright law. The law is new to advancements in technology. Issues arising out of artificial intelligence are new and are developing day by day. The law needs some regulations to keep the original content protected and to prevent the exploitation of celebrities. The paper also discusses the liability that can be imposed for impersonating a person's voice, or image without his consent. Overall, the paper revolves around how AI can be misused and used to harm famous people's reputations if the legislation does not pass proper laws.

Keywords: *copyright law, celebrities, consent.*

INTRODUCTION

The term artificial intelligence is popularly known as ‘AI’ and popping into our minds almost every day. Law is developing, so it takes time to understand the nuances of ‘technology’, the

development of artificial intelligence raises difficult and intriguing legal challenges. Every day there is something related to AI and its advancements and how it can be useful in our lives. We have moved on from simply googling our problems to getting answers or generating content to specific questions by using AI powered chatbots. On one hand, we can say that A. I have simplified things for us but similarly, it poses a threat to the very basic rights of humans. There are various difficulties at the point where copyright law and artificial intelligence collide that are still in the dark. It has become very easy to replicate a celebrity's image, voice, and work and modify their interactions according to their own needs. Due to this development, the Screen Actors Guild and the American Federation of Television and Radio Artists (SAGAFTRA) in the USA are on strike. Background performers, many of whom find a little role in a big cast to be a career break, find the idea of being replaced by a computerized duplicate, particularly terrifying. The right to publicity is one frequently disregarded area of intellectual property where AI is ready to have a significant effect. The problem with generative AI is that it makes it quite simple to produce a convincing imitation of a celebrity. Finding a genuine individual who could speak like a celebrity or dress like a celebrity would have been necessary in the past for this. Users may skip this step thanks to generative AI. There have been similar instances to famous singers like Drake and the Weeknd where an anonymous creator uploaded a song by using AI to imitate their voice and earn millions of dollars when the song was uploaded and streamed on social media apps like TikTok, Spotify and YouTube. Soon the content was removed by Universal Music Group which manages both the artists. Although no legal action was taken in this instance for violating Drake and The Weeknd's right to publicity¹, this may not always be the case in the future, especially as technology advances and its output gets more sophisticated. If a user gives the AI platform a sample of 60 seconds of Taylor Swift audio, the platform may utilize this to train itself to 'speak' as Taylor Swift, enabling the user to have 'her' say whatever they want.²

¹ Joe Coscarelli, 'An A.I. Hit of Fake 'Drake' and 'The Weeknd' Rattles the Music World' (*The New York Times*, 24 April 2023) <<https://www.nytimes.com/2023/04/19/arts/music/ai-drake-the-weeknd-fake.html>> accessed 25 September 2023

² Belinda Scrimenti, 'Using AI to replicate the voice of a celebrity - Watch out for Legal issues Including Violating the Right of Publicity' (*Broadcast Law Blog*, 04 April 2023) <<https://www.broadcastlawblog.com/2023/04/articles/using-ai-to-replicate-the-voice-of-a-celebrity-watch-out-for-legal-issues-including-violating-the-right-of-publicity/#page=1>> accessed 24 September 2023

WHAT IS THE RIGHT OF PUBLICITY?

The legal right that an individual possesses to protect the amount of commercial use of his/her name, image, or anything which resembles them and is exclusive to them is referred to as the 'right of publicity'. These right grants the user to authorize or prohibit the use of their identity for commercial purposes such as advertisements, TV commercials, merchandise, etc. State law governs the right to publicity because federal law neither controls nor formally recognizes it.

As a result, although some countries have acknowledged it as a common law right, others have done so by-laws.³ The main purpose of this right is to protect the uniqueness of an artist and to prevent their exploitation. This helps prevent false endorsements or commercials in the name of the artist. The state of California in the United States of America recognizes the right of publicity to such an extent that it lasts beyond an individual's lifetime (called a post-mortem right) which is transferrable to their legal heirs and third parties. This right entitles the beneficiary to protect, control, and profit from his/her image, name, or likeness.⁴

PUBLICITY RIGHTS IN INDIA

The right of publicity in India is mostly covered under the ambit of Intellectual Property Rights. It became more important after the 2017, Puttaswamy judgement⁵. Therefore, there has been very little development of the right of publicity under the facet of the right to privacy in India. The Delhi High Court in *D.M Enterprises (P) Ltd. v Baby Gift House*⁶ highlighted the fact that the right to publicity is at the very core of an individual's persona. The high court said that “*The right of publicity can, in a jurisprudential sense, be located with the individual's right and autonomy to permit or not permit the commercial exploitation of his likeness or some attributes of his personality*”. Further the Madras High Court in *Shivaji Rao Gaikwad v Varsha Production*⁷ propounded, ‘If any

³ Perry Jackson, ‘Hey, That’s My Voice! – The Significance of the Right of Publicity in the Age of Generative AI’ (*Public Knowledge*, 14 August 2023) <<https://publicknowledge.org/hey-thats-my-voice/#:~:text=%E2%80%93%20The%20Significance%20of%20the%20Right,AI%20could%20make%20more%20difficult>> accessed 25 September 2023

⁴ *Estate of Presley v Russen* 513 F Supp 1339

⁵ *K S Puttaswamy v Union of India* (2017) 10 SCC 1

⁶ *D M Enterprises (P) Ltd. v Baby Gift House* [MANU/DE/2043/2010]

⁷ *Shivaji Rao Gaikwad v Varsha Production* (2015) SCC OnLine Mad 158

person uses the name of a celebrity, without his or her permission, the celebrity is entitled to an injunction if the said celebrity could be easily identified by the use of his name by others.'

COPYRIGHT LAW AND ITS INTERSECTION WITH AI

The existing Copyright Law 1957 does not currently suffice the adequate need for the protection of content from AI. The reason for this is that the copyright law does not explicitly recognize AI as an author. For a copyright to be owned, there must be an ownership of that content. Therefore, the content produced by AI has multiple authors due to which there is a significant question as to who is the author and who owns the copyright. The Parliamentary Standing Committee in its 161st report⁸ had taken up the issue of AI. In the same view, they recommended creating an altogether separate right for AI and its related inventions and solutions that can be better suited for the protection of intellectual property rights. It further recommended that the legislation should make adequate amendments in the existing 'Patents Act 1970' and 'Copyright Act 1957' to incorporate the new inventions in AI which would further help to expand the protection of such inventions in India. Rajeev Chandrasekhar, the state minister for electronics and information technology, announced in June that the government wants to modulate artificial intelligence (AI) to protect 'digital citizens'. For any copyright to be valid the law requires it to be original and creative. Section 13 of the Indian Copyright Act⁹ states that there is copyright protection for 'original literary, dramatic, musical and artistic works'. Since AI-generated material is based on data provided to the program during its training as well as data from a variety of internet resources that are already in existence, it may not fit the standards for originality or creativity. In India, the Copyright Act was revised in 1994 to encompass computer-generated works, such as musical compositions, theatrical plays, or visual arts. The authorship of such works was defined in Section 2(d) of the copyright act says that 'the person who causes the work to be created' which means that an authorship can only be assigned to a real person and that copyright cannot be asserted without proof of individual involvement in the creation of such copyright'.

⁸ 161st Report of the Parliamentary Standing Committee on 'Review of the Intellectual Property Rights in India'

⁹ Indian Copyright Act 1957, s 13

To determine the liability of a person using AI which infringes the copyright of the original person is complex. It will involve taking into consideration the role of the developers, and users of the AI. One main contention is that AI is not a ‘legal’ personality that can be sued. In such circumstances, it becomes difficult to decide the liability of infringement. The Court of Justice of the European Union in its landmark decision in *Infopaq International A/S v Danske Dagblades Forening*¹⁰ propounded that the copyright only applied to original works that reflect an ‘author’s intellectual creation’. The legal concept of fair use, which was brought from the United States, allows for the limited unauthorized use of copyrighted content under specific circumstances. When determining whether an AI-generated work satisfies the rules of fair use, factors including purpose, type, volume, and effect must be taken into account. In fair use analysis, transformative usage – which gives a copyrighted work new meaning or expression – is typically a key factor.¹¹

EXPLOITATION OF CELEBRITIES BY AI

Recently, the Delhi High Court in *Anil Kapoor v Simply Life India & Ors*¹² passed an order that restrained the use of the voice of Anil Kapoor on social media channels, e-commerce websites, and advertisements. The plaintiff had approached the court seeking protection against the misuse of his personality rights without his consent. The imposters used AI, deepfakes, GIFs, etc. to imitate his voice. According to the court, Anil Kapoor has asserted personality rights in his voice, image, and related works, as well as common law rights including the right to be shielded from impersonation, dilution, and unfair competition. The judge further opined “Using his names, photographs on posters. Selling suits under the name Anil Kapoor. Providing forged autographs and photographs. Creating images and videos of Anil Kapoor in a morphed manner using AI to produce images and videos which are **extremely derogatory** not only to the plaintiff but also to actresses whose videos are being used to morph the plaintiff’s videos.” The court also highlighted that the right to endorsement is one of the major sources of income for a celebrity. It can be harmed by the use of AI. As technology advances it can very well be a scenario that the face of a famous personality is used in

¹⁰ *Infopaq International A/S v Danske Dagblades Forening* [2009] EU:C:2009:465

¹¹ Neha Raj and Mehda Banta, ‘India: Legal Implications of AI- Created Works in India’ (*Mondaq*, 28 July 2023) <<https://www.mondaq.com/india/copyright/1348418/legal-implications-of-ai-created-works-in-india>> accessed 27 September 2023

¹² *Anil Kapoor v Simply Life India & Ors* CS (COMM) 652/2023

some illegitimate obscene scenes and then the celebrity can either be blackmailed for extortion of money or the perpetrator can also leak the obscene photos/videos on the social media. An artist masters his artisanship over the years, but AI threatens the very core of this. Years of hard work can be done in a single click. Especially the young and new artists who try to make their imprint in the industry can struggle with the emergence of AI.

CONCLUSION

Significant intellectual property issues are brought up by the development and acceptance of ChatGPT and demand consideration. To meet the particular difficulties presented by AI technology changes to copyright rules may be required. Until more concrete regulations are created, the legal ramifications of utilizing such technologies may continue to be complicated and ambiguous. As we move forward there should be a proper framework for the use of AI to protect and prevent not only celebrities but also the common person. While AI might be threatening, if used properly it can prove to be a boon for humanity. There can be also regulations for the companies that create and train AI. If the problem is dealt with at the grassroots level, then it will be a win-win for both sides.