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AI and Personality Rights: Legal Implications

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ABSTRACT

With the advent of generative Artificial Intelligence, there has been an advancement in the content creation industry, with AI's generating art such as Music, photographs, and even paintings. The possibilities of generative AI content and their results in recent years have been fascinating, with their ability to recreate any art form to near perfection, making it hard to differentiate between the original and AI-generated content. This advancement however has also brought in its fair share of controversies, with legal questions revolving around Intellectual property rights of such art forms being generated. One such recent controversy was on the issue of "Personality Rights". This article will be dealing with the issues arising between Personality rights and AI-generated content of such relevant persons.

Keywords: Artificial Intelligence, AI Generated Content, GenAI- Generative Artificial Intelligence, Intellectual Property Rights.

I. INTRODUCTION

The recent trend on the internet, especially in Social media platforms, is the emergence of AI-driven content and AI created media. From creation of artworks to recreation of songs and videos, the ability of AI's to generate any form of artwork has left internet users fascinated. But, the emergence of such content has opened a Pandora box of implications with legal questions ranging from the ownership of AI generated content to liability for infringement of Intellectual property rights. However, this paper will solely focus on AI-driven content and its effects on Personality rights.

Artificial Intelligence in layman terms can be explained as the simulation of human intelligence by computer systems. AI's primary function via similar human cognitive process such as the ability to learn, reason and the prima facie trait of all human beings, "**creativity**" through the process of Machine learning. It's the ability of a computer system to learn on its own without user input and solely based on experience, data available on the network.

The development and proliferation of AI generators such as DALL-E, ChatGPT and Wombo

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has significantly added to the trend of AI created media. The above-mentioned generators are currently the most popular AI Generators available for free on the internet. These generators have allowed users to create, recreate or even mimic any sort of artwork ranging from paintings to songs of famous artists based on the input style given by the user. This allows the users in most of the cases to lead the internet community to pass off such AI created media as the original work of the artist. The presence of AI created media on the internet, social media platforms particularly the imitation of voices of famous personalities or the usage of celebrity names, images by AI have created quite a stir. The usage/imitation of the voice, image, name of famous personalities violates the rights of such personalities.

Personality rights refer to the rights bestowed upon an individual to protect his/her personality as a virtue of privacy. These rights are often exercised by celebrities as their names, images, voices can be easily imitated and misused by the public for unfair monetary purposes. Several famous personalities over the years have approached the Judiciary to protect their personality rights from potential misuse. Personality rights consist of various traits that can be attributed to a celebrity, say their photograph, a signature poses², voice etc., and these rights can be protected under the common remedy of “passing off”. Passing off is a tort where a person misrepresents another person’s services/goods as his own. The right is also associated with right of publicity, which recognises the image, photograph, and other similar traits that are of such commercial value in a celebrity.

But, Generative AI (herein after referred to as “Gen AI”) even before the presence of these legal issues, has intrigued the internet community for a long time.

II. HOW AI HAS BEGUN TO REMODEL THE CREATIVE SPACE WORKS

AI has been generating content since 2010, but what made AI turn heads was with the introduction of ChatGPT in November 2022³. **ChatGPT** is based on a model where output is improved on significant learning from previous feedback given by users. This not only enhanced user experience, but also the ability to answer follow-up questions. With existing datasets and user input, ChatGPT took the internet by storm. It destroyed notions that technology cannot match the creative parallels of human beings by writing poems, coming up with lyrics upon user requests. ChatGPT could also generate content, collaborate stories and even write stories based on user prompts.

² Vikrant Rana, *Celebrity Rights: Body Movements And Signature Poses as Trade Marks*, SS Rana Celebrity Rights: Body Movements And Signature Poses As Trade Marks

³ OpenAI, Introducing ChatGPT (Nov. 30, 2022), <https://openai.com/blog/chatgpt>.

Another GenAI model is DALL-E⁴, which produces images by responding to text prompts given by users. It massively relies on user prompts to come up with such images, however there have been claims about redundancies in logic, especially in understanding the prompts.

These models barely scratch the surface when it comes to the usage of GenAI in the creative space, especially in the entertainment sector. In Hollywood, GenAI are currently one of the most sought after tools for producing backdrop images and videos. One such GenAI is *Cuebric*⁵, which is the first AI tool to be developed for producing, editing images for TV shows and volumes. *Cuebric* is one step ahead when compared to other models as it relies on specific prompts which are used to produce cinematic images, with the prompts describing what kind of shot, background, props are needed for that particular image. With specific inputs, the output given by *Cuebric* does ultimately produce excellent Hollywood level shots. In addition to producing or editing images, *Cuebric* has the ability to upscale and even animate images.

Recently, a new GenAI model called SHOW-1⁶ was released by a group named “The Simulation”. This model focuses on generating high quality episodic content for TV shows by producing episodes from scratch. It begins with generating premises, devise story plots, develop character sketches, all of these based on users inputs. Once all of these has been given as input, SHOW-1 generates an entire TV show episode screenplay.

If producing scripts weren't enough, GenAI models are able to imitate celebrities too. For example: Bruce Willis, the Hollywood actor known for his action films such as Die Hard, retired in 2022. However, a few months back, he appeared in a commercial for a company, where his image was recreated by using Deepfake technology by a firm named DeepCake⁷.

It didn't stop with Hollywood, GenAI has gone till the Oscars. The 2022 Best Picture Winner at Oscars, “*Everything Everywhere All at Once*” used GenAI for their VFX shots. The makers of the film relied on GenAI tools for creating, cutting certain VFX shots in the film⁸.

GenAI models are still going strong, with a strong foothold in the music industry. Making songs is more than just a job, it involves a lot of creative work, like writing, producing, performing

⁴ OpenAI, Introducing DALL-E (Mar 25, 2022), <https://openai.com/dall-e-2>

⁵ Tom Davenport, *Cuebric: Generative AI Comes To Hollywood*, Forbes, Mar 13, 2023, <https://www.forbes.com/sites/tomdavenport/2023/03/13/cuebric-generative-ai-comes-to-hollywood/?sh=53cbeeba174b>

⁶ SHOW-1, The Simulation SHOW-1 | The Simulation

⁷ Audrey Schomer, *Avatars as Actors: Will AI Unleash Celebrity 'Simulation Rights*, Variety, April 28, 2023, *Avatars as Actors: Will AI Unleash Celebrity 'Simulation Rights?*

⁸ Jazz Tangcay, *Hollywood 2.0': How the Rise of AI Tools Like Runway Are Changing Filmmaking*, Variety, Feb 22, 2023, *How the Rise of AI Tools Like Runway Are Changing Filmmaking*

and perfecting the tune, and GenAI is changing that as well. LANDR⁹ and Loudly are two such models that are being used to generate, produce, master or re-master music. The traditional way of working with music would usually be in a room with selective acoustics, where the engineer would hear it and work on the issues. The usage of GenAI models has led to an instantaneous process of creating music. *LANDR* is one of the few GenAI models that are used to master and re master music in the current scenario. Despite the composition of music still massively being relied on singers, experts believe AI can overcome it in the future.

Sound engineers aren't the only ones invested in GenAI models for creating music, The legendary music band "Beatles" have decided to "come together" for one last time to create their final song. The catch? Paul McCartney, the lead of the band, has revealed that they have decided to rely on AI to recreate the voice of the former lead singer of the band John Lennon. He quoted, "*We were able to take John's voice and get it pure through this AI so that we could mix the record as you would normally do.*"¹⁰ He also clarified that the AI won't be replicating the voice but rather enhance it from the original material, leading to a cleaner and crisper version. The Beatles previously tried this on their documentary "Get Back" and now are using it to produce one final song.

III. JURISPRUDENCE IN INDIA

Personality rights refer to the rights that an individual can exercise to protect his individuality, personality, or the traits associating to such persona. They are usually associated with celebrities whose public persona are usually much available to the society than public.

There are several statutes across various jurisdictions around the world that explicitly protect personality rights (For example: Spain (Article 7.6 of Ley Orgánica 1/1982)¹¹, and California (§3344, California Civil Code)¹². However, personality rights aren't mentioned explicitly in any Indian statute, however they are protected and enforced under various statutes by the Judiciary.

The Copyright Act, 1957 grants rights to performers known as Performers rights. The term Performer under "Performers rights" is defined in Section 2(qq)¹³ which states "*performer*" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

⁹ LANDR, <https://www.landr.com/>

¹⁰ Hugh McIntyre, *The Beatles Are Using AI To Release One Last Song—Why Aren't More Musicians Doing The Same?*, Forbes, Oct 9, 2023, <https://www.forbes.com/sites/hughmcintyre/2023/10/09/the-beatles-are-using-ai-to-release-one-last-songwhy-arent-more-musicians-doing-the-same/?sh=18b08fee29b2>

¹¹ The Organic Law, Art 7.6, (B.O.E.1986, 11196) (Spain)

¹² Code of Civil Procedure, Section 3344, California

¹³ The Copyright Act, 1957, Section 2(qq), No. 14, Acts of Parliament, 1957

Thus, going by the term “Performer” as defined, **a celebrity** can be called as a performer under the Copyright Act, 1957.

Section 38¹⁴ of the Copyright Act, 1957 also talks about Performer’s right for their performances in literary works, movies, and songs and says that such right shall be available to the performer for a time period of 50 years from the calendar year in which such performance was made. Section 38A¹⁵ provides the Performer with the crucial right of prohibiting anyone from making an audio/video recording of such performance, broadcasting or communicating the performance to the public without the express consent of the performer.

Barring the rights given under Section 38, 38A, there are also rights conferred on a performer under the Section 17¹⁶ which states that first owner of the copyright in terms of literary, dramatic or artistic work made by the author barring exceptions shall belong to the author.

Similarly, Section 17 prohibits unauthorised usage of an author’s work/image without prior authorisation, even if consent is granted in exhibiting such work by the mode of advertisement.

Section 39¹⁷ and Section 52¹⁸ state about acts that do not infringe copyright and performer’s rights by listing out exceptions such as fair use, reporting of current events, private use including research.

The Trademarks Act of 1999, grants a different sort of relief under Personality rights. It protects the “*name*” which constitutes a mark under the said act. The integral part of a celebrity’s status in the society is their name which brings in a lot of goodwill, value, and recognition which is what makes them a celebrity. By misuse of such name or by fraudulently representing such name of a celebrity, it could affect their personality rights.

Section 2(m)¹⁹ has included the term “name” in its definition of the term “mark” hence confirming that a name can also constitute a mark under the Trademarks Act.

Section 14²⁰ of the Trademark Act restricts the claims which use of the name of a living person or recently deceased person (provided such death took place within 20 years prior to application)

Section 35²¹ provides for the bona fide usage of a name by a person of his own name or that of

¹⁴ The Copyright Act, 1957, Section 38, No. 14, Acts of Parliament, 1957

¹⁵ The Copyright Act, 1957, Section 38A, No. 14, Acts of Parliament, 1957

¹⁶ The Copyright Act, 1957, Section 17, No. 14, Acts of Parliament, 1957

¹⁷ The Copyright Act, 1957, Section 39, No. 14, Acts of Parliament, 1957

¹⁸ The Copyright Act, 1957, Section 52, No. 14, Acts of Parliament, 1957

¹⁹ The Trade Marks Act, 1991 Section 2(m), No.47, Acts of Parliament, 1999

²⁰ The Trade Marks Act, 1991 Section 14, No.47, Acts of Parliament, 1999

²¹ The Trade Marks Act, 1991 Section 35, No.47, Acts of Parliament, 1999

his place of business or the name of his place of business. The Supreme Court in the case of *Precious Jewels & Anr Vs Varun Gems* held that Section 35 of the Trademarks Act allows anyone to conduct their business in their own name in a bona fide manner.

The Advertising and Standards Council of India released a code following the 2021 Tokyo Olympics as several companies had begun to use the image of athletes without their due consent. Chapter 4 of the Code of Self Regulation in Advertising in India mentions the unjustifiable use of name of firm, company or take unfair advantage of the goodwill attached to the trademark or symbol of another firm or its product through an advertising campaign.

IV. WHETHER AI EXPLOITS PERSONALITY RIGHTS?

GenAI has been in the creative field for the last decade and has constantly improved its ability to create content for that matter. For example, in the year 2022, the GenAI industry raised \$1.3 billion via venture funding alone²². This seems like a good start, but the legal implications are beginning to surround GenAI models regarding their operations and the churning of copyrighted content.

GenAI as discussed not only has the ability to create content but also imitate or recreate any artist's work, which adversely affects the personality rights of the artist. For example, a regular user of DALL-E²³ can input a prompt stating "A Post apocalypse painting of the world like Vincent van Gogh" and get an output of the same. The problem here begins, if the user, he/she decides to post it on the internet or post it for sale stating it's an artwork of Vincent van Gogh and profits from the same. This inadvertently influences the personality rights and copyrighted content of the Van Gogh Foundation, as the user has passed off a GenAI model work as Vincent van Gogh.

This is the issue that the creative industry is currently facing, GenAI models gaining precedence over human artists and the ability of any user to falsely claim an AI generated artwork as someone else's work. The user not only profits on using the GenAI model by making it imitate something else, but also on the reputation of a personality whose style/work has been imitated here and unjustly enriched from such reputation.

Polish Artist Greg Rutkowski²⁴, who has collaborated with Sony, Ubisoft for designing artwork

²² Kyle Wiggers, *The Current legal cases against generative AI are just the beginning*, Tech Crunch, Jan 27 2023, The current legal cases against generative AI are just the beginning | TechCrunch

²³ Supra,3

²⁴ Melisa Heikkila, *This artist is dominating AI-generated art. And he's not happy about it*, Technology Review, September 16, 2022, This artist is dominating AI-generated art. And he's not happy about it. | MIT Technology Review

for their games, found his work style being imitated by GenAI art generator Stable Diffusion to create paintings. Greg's work includes using classical painting styles to create fantasy landscapes and this work has often been used by Sony, Ubisoft and when he found his work style and his name as a prompt was used more than 90000 times, he was surprised. Nevertheless, after a certain period, he discovered that a piece he had contributed to was published, prompting him to take action.

The Writers Guild of America or commonly known as WGA were recently on global news for protesting against unfair treatment being meted out to WGA members. WGA is a labour union consisting of writers who work in films, TV shows, radio etc. One of their grounds for protest were on the regulation of usage of AI generated material being used as source material or using AI to rewrite literary works. The writers feel that the use of AI in television productions discredit their works and production houses will soon use AI to re-edit their scripts, hampering the possibility of the writer taking credit for their work.

Similarly, SAG-AFTRA, (Screen Actors Guild–American Federation of Television and Radio Artists) have been demanding safeguards against AI usage from the Alliance of Motion Picture and Television Producers²⁵. SAG-AFTRA in their statement had emphasized on the need to protect human made work and on consent before altering the voice, performance, likeliness of an actor. The voices of several famous actors such as Samuel Jackson, Mark Hamill have been utilised by producers through AI for voiceovers in TV shows.

With issues ranging from deepfakes to passing off, GenAI content have problems steeped in legal frameworks. The present pace at which AI is beginning to ensnare the creative industry is undoubtedly generating a multitude of legal concerns, and a variety of courts around the world have taken different approaches to ascertain whether AI based content could potentially infringe the Personality rights and Performers rights of the parties.

V. JUDICIAL PRECEDENTS

In the USA, a case has been filed against Stable Diffusion AI²⁶, where the plaintiffs had alleged that the defendants (Stable Diffusion AI) had used their images to train their Open AI models without due consent. As explained previously, users could prompt the AI to develop/create an image in the style of a certain artist and the plaintiffs here allege the same as the AI model and the user could be unjustly enriched if he/she decides to commercially exploit such AI generated

²⁵ Andrew Dalton, *AI is the wild card in Hollywood's strikes. Here's an explanation of its unsettling role*, AP News, July 22, 2023, AI is the wild card in Hollywood's strikes. Here's an explanation of its unsettling role | AP News

²⁶ 23-cv-00201-WHO" Andersen v. Stability AI Ltd., 23-cv-00201-WHO, (N.D. Cal. Oct. 30, 2023)

output. The plaintiff's claims were initially dismissed. The court held that the defendants had trained its model on more than five million images, and it's impossible to find whether the plaintiff's and defendant's images were similar. However, the court did order the defendants to give due credits when the output was imitated on plaintiff's style.

There have been several cases in India over the period of time when the Judiciary has enforced Personality rights such as the Rajinikanth case²⁷ where the Madras High court held that the unauthorised usage of the name "Rajinikanth", led people to believe that the actor was associated with the brand the defendants were endorsing.

The Delhi High court, in the case of Anil Kapoor Vs. Simply Life and Ors²⁸, had issued an injunction restraining the defendants from passing off the plaintiff Anil Kapoor's name, image, likeliness, and attributes. One of the defendants had incorrectly portrayed the Plaintiff as a motivational speaker and had profited off the same. The rest of them had morphed off the image, provided forged autographs, photographs, using AI to produce images and videos that are extremely derogatory, selling merchandise of the plaintiff. The Delhi High court held the following

***"There can be no doubt that free speech in respect of a well-known person is protected in the form of right to information, news, satire, parody that is authentic, and also genuine criticism. However, when the same crosses a line, and results in tarnishment, blackening or jeopardises the individual's personality, or attributes associated with the said individual, it would be illegal. 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*²⁹".**

Similarly, the Delhi High court had also re-enforced the personality rights of Amitabh Bachchan³⁰, against the Defendants who had been using the plaintiff's celebrity status for promoting their own activities without due consent or authorisation. The court had relied on a previous judgment in the case of Titan Industries Vs. M/s Ramkumar Jewellers³¹, where it had previously protected the voice, image, any trait which was capable of being attributed to the

²⁷ Shivaji Rao Gaikwad v. Varsha Productions, 2015 SCC ONLINE MAD 158

²⁸ Anil Kapoor Vs. Simply Life & Ors, CS COMM 652/2023

²⁹ Supra, Note 28

³⁰ Amitabh Bachchan Vs. Rajat Negi, 2022 SCC ONLINE DEL 4110

³¹ Titan Industries vs. M/s Ramkumar Jewellers, 2012 SCC OnLine Del 2382

actor and restrain anyone who would commercially benefit of such trait.

There are limited judgments currently in the Indian Jurisprudence which enforce Personality rights against GenAI/users who commercially profit of the same. There are limitations, as several users who utilise these models usually post such content for social media trends and likes. However, as laws and GenAI models evolve to the point where they can be conveniently used in creative industries, we might see the Judiciary taking up more cases.

VI. SUGGESTIONS AND CONCLUSION

*“AI is currently not compatible nor well-equipped to facilitate ownership, inventorship and authorship under the Copyright Act, 1957 and Patents Act, 1970”.*³² This statement is from the 161st Parliamentary Committee Report’s ***Review on Intellectual Property Regime in India***. As the IPR regime in India moves forward, the convergence of Generative AI and IPR, especially Personality Rights, will take place at one point. These two combined present both challenges and opportunities in the creative industry, it’s pertinent that there should be a balance between the two as legal questions and challenges arise, and the key to it is that the Parliament and Judiciary find an ideal solution for the problem.

³² Review on Intellectual Property Regime in India, 23 July 2021, review of IPR in india.pdf (indiaenvironmentportal.org.in)