



Ayana Legal

THE BUZZ

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K-Pop Effect on Celebrity Rights

In a suit filed against unauthorized sale of images of Korean boyband BTS, the Supreme Court of South Korea has held that personality rights of celebrities and K-pop idols belong to the celebrities themselves and their management companies due to the considerable time and money invested in building and maintaining the the reputation and value of the celebrities under their management.

Further, in lieu of the judgement the Unfair Competition Prevention and Trade Secret Protection Act (UCPA) was revised. An "act of unfair competition" now includes using a celebrity's portrait, name, voice, signature, or other identifiable signs for profit without prior consent and authorization.

PERSONALITY RIGHTS

While no legislation defines Personality Rights yet, the concept has gained much traction especially with the ever-increasing perforation of online platforms and AI technology into normal life. Personality Rights are but an extension of the right to life. While the right to life by itself is a fundamental right available to all persons, personality and publicity rights are currently only available to celebrities or those who have garnered a significant reputation or influence over the public.

Laws That Protect Personality Rights

Issues pertaining to personality rights can be broadly divided into two aspects, one, the right to publicity or commercial exploitation of the person, image, name or characteristics of an individual and the other being the right to privacy.

While there is no specific law, one could seek refuge under the following: i) Article 21 of the Constitution of India- i.e. right to life, privacy ii) Performer's rights under Section 38 of the Copyright Act iii) Moral rights under Copyright law which includes the right to paternity to be known as the author of a copyrightable work and right to integrity of the work that is to prevent any kind of damage to the work iv) Section 14 of the Trade Marks Act, 1999 - which prohibits usage of the name or any representations of living or recently deceased persons as trademarks without such person's consent v) Passing off - a common law remedy which prohibits one person from misrepresenting to the public that certain goods and services belong to another person.

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AI Celebrities

Besides deep fakes and generative AI threatening personality rights, another conundrum comes in the form of AI celebrities. While still in nascent stages, certain Korean talent management companies have started debuting completely virtual/AI celebrities, with a few pop groups consisting entirely of AI personalities. The creation of virtual celebrities leads us back to the initial question of whether AI should be given 'personhood' and who would be the holder of such rights associated with the AI.

Thank You

We at Ayana Legal thank you for your continued support and patronage to our newsletter and capsules. We look forward to being back with our next edition soon.

Disclaimer

This newsletter is solely for the purpose of providing information and the content provided is not and should not be construed as legal advice.

Recent Developments

While dealing with the question of personality rights of late actor Sushant Singh Rajput, the Delhi High Court has clarified that that reputation, personality, and privacy rights of the actor are not heritable, and they died with the death of Sushant Singh Rajput.

While more conventional forms of infringement are more capable of being effectively tackled, the use of online platforms and AI technologies are a wall that has yet to be scaled when looking at protection of personality rights. While dynamic injunctions have become a widely sought remedy in cases of online infringement and have even led the development of dynamic injunctions that prevent future infringement, there has not been much said regarding AI regulation.

Deep fake technologies have the capacity to create hyper-realistic fake videos and images. Generative AI has now the ability to clone voices from just a small input of one's voice, putting at risk singers and performers rights. The threat of misuse of such technologies looms large especially with little to no regulation. Recently, the Hon'ble Delhi High Court has while granting relief to actor Anil Kapoor protected his name, image, personality, voice and other aspects of his persona from misuse by AI technologies including deep fakes and machine learning. The Court was clear in stating that personality rights form a part of the right to livelihood and in turn the right to dignity and life. Though how such an order would be implemented is still not clear.

There are certain provisions of the Information Technology Act, 2000 which may provide reliefs against misuse by such technologies. For example, Section 66C which provides punishment for identity theft. Section 66 D i.e. Punishment for cheating by personation by using computer resource. Section 66E which provides punishment for violation of privacy. Section 67 and 67A punishment for publishing or transmitting obscene material in electronic form and punishment for publishing or transmitting of material containing sexually explicit act, in electronic form.