

COURSE TITLE

Comparative Celebrity Laws: Personality, Publicity and Free Speech

Responsible Faculty Instructor:
Anupriya [anupriya@jgu.edu.in]
Lecturer

Credits: 4

Credits Type: Law

Cross-registration: No

Pre-requisites: **Completion of General IPR course and compulsory Constitutional Law [UG level]**

COURSE DESCRIPTION (COURSE VISION):

Celebrity today has become all pervasive. We are all fans. Celebrities rule our world – telling us what to eat, what to wear, what to read, where to travel and if famous enough to push social change – also tell us whom to vote for.

Today thus celebrity personality is understood widely today as a semiotic sign and thus brands endorsed by celebrities, and some celebrities in themselves are recognized to represent the values of a majoritarian public. A counter to encoded ideals may be then available by using the same signs in a “recoded” manner, and such use can therefore be categorized as “political speech,” protected by the Constitutional guarantee of freedom of speech and expression. What is the right the celebrity enjoys due to their personality? Are these rights enjoined to them because of his celebrity status absolute? It seems wrong to allow someone else to take pecuniary benefit of a celebrity’s unique personality traits. However, does that entitle them to legally preempt others from using similar voices/looks/mannerisms for any purpose whatsoever? While the law on copyright or trademarks may not allow a celebrity to preempt use of his voice or other personality traits, law recognises “personality rights” or “celebrity rights”. These rights have developed as an offshoot to ‘core’ intellectual property rights, as the celebrity personae, are important and expressive *economic* resources – they enhance the commercial values of commodities they are associated with, thus lending what has been described as the *economic associative value* of a celebrity persona - i.e. “*the perceived ability to confer value on that which might be associated with the celebrity*”.¹

This economic associative value is protected in law, under *the right of publicity*. The right of publicity, most simply put, protects any individual’s *marketable image or persona*. This formulation, however, has been most succinctly put forth by McCarthy in his seminal work as –

¹Sheldon W Halpern, *Publicity Rights, Trademark Rights and Property Rights*, in OVERLAPPING INTELLECTUAL PROPERTY RIGHTS 321-339, 325 (Neil Wilkof and Shammad Basheer, eds., 2012).

*“The right of publicity is **not merely a legal right of the “celebrity”, but is a right inherent to everyone** to control the commercial use of identity and persona and recover in court damages and the commercial value of an unpermitted taking.”²*

This course aims at asking and consequently answering, the above questions and more, both within the celebrity realm and otherwise, through a comparative law lens. It also aims to equip the students with a better understanding of how “personality” and “personality indicia” are “propertised” and therefore protected in law / open to protection in law.

TEACHING METHODOLOGY:

This course shall mostly be taught using classroom lecture and discussions, alongside using visual aid tools: slides, videos and audio [with audio descriptions of videos as applicable, best attempted to increase accessibility for any differently abled students]. Assessments shall also be used as teaching-learning tools.

INTENDED LEARNING OUTCOMES:

By the end of the course students should be able to:

- analyse and critically evaluate, key aspects of a modern entertainment industry with a focus on claims brought by celebrities and rights owners of well-known popular iconography in the United States, United Kingdom, and India
- critically examine and appreciate the production, circulation and consumption of the celebrity personality and iconic brands in contemporary society, and understand its economic value that calls for legal protection
- Recognise and distinguish, and thereby apply and [hypothetically] claim, the operation of the six prominent causes of action in the United States and the United Kingdom (mostly) along with comparisons in the Indian law, with *selected* references to other jurisdictions, brought by celebrities and rights owners in the entertainment industry: (i) copyright infringement; (ii) trademark infringement/dilution; (iii) passing off; (iv) right of privacy tort; (v) breach of confidence/ misuse of private information and other dignitary torts (defamation) (vi) right of publicity
- Identify the “personality rights” claims made in India e.g. by Anil Kapoor, Jackie Shroff, etc. and situate the same in the trademark and copyright law context versus the enunciation of the right of publicity tort and the tort arm of the right of privacy
- Identify which acts of “taking” of personality indicia amounts to “fair use” and appreciate the contours of the free speech guarantees protecting the consuming audience’s right to “re-code”.

² J. Thomas McCarthy, Rights of Publicity and Privacy § 1:3 (2nd ed).

READING LIST (upto 10 select readings):

1. David Tan, The Commercial Appropriation of Fame (Cambridge Intellectual Property and Information Law) (Cambridge University Press, Kindle Edition, 2017). [read full chapters 1 and 2]
2. Huw Beverley-Smith, The Commercial Appropriation of Personality (2002) pg.1-24
3. Leslie A. Kurtz, Fictional Characters and Real People, 51 U. Louisville L. Rev. 435 (2013)
4. Ronald J. Krotoszynski Jr., Reconciling Privacy and Speech in the Era of Big Data: A Comparative Legal Analysis, 56 Wm. & Mary L. Rev. 1279 (2015)
5. Aakanksha Kumar, Celebrity Domain Name Arbitration: Enforcing The Right of Publicity Through Private Dispute Resolution in India". [2022] Vol. 11, No.2 NTUT J. of Intell. Prop. L. & Mgmt
6. Character copyright USA cases such as Nichols v. Universal Pictures Corporation, 45 F.2d 119 (2d Cir. 1930); Character copyright India cases such as V.T Thomas v Malayala Manorama; AIR 1989 Ker 49, Star India Private Limited v. Leo Burnett (India) Private Limited (2003) 27 PTC 81etc.
7. Indian case laws relating to trademark and celebrity names such as Arun Jaitley v Network Solution (Delhi HC Cyber Squatting case), Tata v. Greenpeace (Delhi High Court (IA 9089/2010 in CS(OS) 1407/2010), Single Judge, Justice Ravindra Bhat, order of 28 January, 2013
8. Breach of confidence claims by Celebrities cases such as Von Hannover v Germany (2005) 40 EHRR 1, Reklos and Davourlis v. Greece (Application No. 1234/05, ECtHR Judgment of 15 Jan 2009) etc.
9. Right of Publicity cases from US such as Abdul-Jabbar v General Motors Corporation, 85 F 3d 407 (9th Cir, 1996) and Right of Publicity related cases in India such as D.M. Entertainment Pvt. Ltd. v Baby Gift House and Ors, CS(OS) 893/2002, Delhi HC Decision of April 29, 2010, Titan Industries Ltd.v M/s Ramkumar Jewellers, CS(OS) No.2662/2011 Delhi HC Decision of April 26, 2012
10. Latest deepfake related Indian cases such as Dr Devi Prasad Shetty & Anr. v. Medicine Me & Ors. [Case No. CS(COMM) 1053/2024], Global Health Limited & Anr v John Doe & Ors, CS(COMM) 6/2025)

WEEKLY READING PLAN (WEEKLY OUTLINE):

A weekly plan is provided below³:

Week	Topics
1	MODULE 1- THE ENTERTAINMENT INDUSTRY: CELEBRITY AS A BRAND AND VALUE SYMBOL

³ Note: Reading list does not include a complete set of readings at this stage.

	<p>Readings:</p> <ul style="list-style-type: none"> David Tan, The Commercial Appropriation of Fame (Cambridge Intellectual Property and Information Law) (Cambridge University Press, Kindle Edition, 2017). [Read Full Chapters 1 and 2] Patricia Loughlan, Barbara McDonald, Robert Van Krieken, Celebrity and the Law (The Federation Press, New South Wales, 2010) [Read Chapter 1 – Relevant Scanned Pages Provided]
1-2	<p>MODULE 2 - INTRODUCTION TO ISSUES IN ENTERTAINMENT INDUSTRY IN INDIA</p> <p>Readings:</p> <ul style="list-style-type: none"> Kroll, Celebrity Brand Valuation Report 2023 – Brands, Business and Bollywood [Released June 2024] - [Discussion of 2024 report]
2	<p>MODULE 3 - SCOPE OF CELEBRITY LAWS COURSE</p> <p>Readings:</p> <ul style="list-style-type: none"> Huw Beverley-Smith, The Commercial Appropriation of Personality (2002) 1-24
3-4	<p>MODULE 4 - INTRODUCTION TO COPYRIGHT IN THE ENTERTAINMENT INDUSTRY AND COPYRIGHT OVER PERSONALITY TRAITS</p> <p>Readings:</p> <ul style="list-style-type: none"> Leslie A. Kurtz, Fictional Characters and Real People, 51 U. Louisville L. Rev. 435 (2013). Character Copyright – USA and Indian Cases: <ul style="list-style-type: none"> USA Cases such as: <ul style="list-style-type: none"> Nichols v. Universal Pictures Corporation, 45 F.2d 119 (2d Cir. 1930) Warner Bros Pictures Inc v Columbia Broadcasting System Inc, 216 F 2d 945, 950-51 (9th Cir, 1954) ('Sam Spade case') DC Comics v Mark Towle Indian Cases such as: <ul style="list-style-type: none"> V.T Thomas v Malayala Manorama; AIR 1989 Ker 49 Star India Private Limited v. Leo Burnett (India) Private Limited (2003) 27 PTC 81

	<ul style="list-style-type: none"> ○ Arbaaz Khan Production Private Limited v. Northstar Entertainment Private Limited and Ors., 2016 SCC OnLine Bom 1812 • Copyright in life-story? <ul style="list-style-type: none"> ○ Telangana High Court, M/S Super Cassettes Industries Private Limited V. Nandi Chinni Kumar And Ors – 19 Oct 2020 - Approved By The Supreme Court In Slp No. 12886-87/2020. – Special Leave Petition Dismissed Without Notice • Performers’ Rights and Singers’ Rights in India: cases for potentially protecting “Voice”? <ul style="list-style-type: none"> ○ Neha Bhasin v. Anand Raj Anand And Anr ..[Delhi HC 20 April, 2006]
5	<p>MODULE 5 - FAIR USE DOCTRINE IN COPYRIGHT</p> <p>Readings:</p> <p>Statutory Provisions:</p> <ul style="list-style-type: none"> • Copyright Act (USA) 17 USC § 107 • Copyright Act, India – S. 52. Copyright Amendment Act 2012 (selected provisions). <p>Case Law:</p> <ul style="list-style-type: none"> • USA De Minimis Rule <ul style="list-style-type: none"> ○ Sandoval v. New Line Cinema Corp., 147 F.3d 215 (2d Cir. 1998) • De Minimis Rule: India, Copyright Act : S.52(1)(u) <ul style="list-style-type: none"> ○ India Tv Independent News Service v. Yashraj Films Pvt. Ltd. [Delhi HC, 21 August, 2012] – 2 cases appealed before Delhi HC DB. <p>USA and India Fair Use Case Law</p> <ul style="list-style-type: none"> ○ Campbell v Acuff-Rose Music Inc, 510 US 569 (1994); Blackwood And Sons Ltd. And Ors. vs A.N. Parasuraman And Ors. AIR 1959 Mad 410
5 and 6	<p>MODULE 6 – TRADEMARK PROTECTION IN ENTERTAINMENT INDUSTRY AND TRADE-MARK OVER PERSONALITY TRAITS</p> <p>Readings:</p> <ul style="list-style-type: none"> • US Lanham Act, §43(a), 15 USC §1125(a) • India Trademark Act, Section 28. • Mattel v Sussane Pitt • Mattel Inc v MCA Records Inc, 296 F 3d 894 (9th Cir, 2002)
7 and 8	<p>MODULE 7 – TRADEMARK INFRINGEMENT, DILUTION AND TRADEMARK FAIR USE</p>

	<p>Readings:</p> <ul style="list-style-type: none"> • Trademarks and Celebrity Names (Indian Law) : <ul style="list-style-type: none"> ○ Aakanksha Kumar, Celebrity Domain Name Arbitration: Enforcing The Right of Publicity Through Private Dispute Resolution in India". [2022] Vol. 11, No.2 NTUT J. of Intell. Prop. L. & Mgmt ○ Arun Jaitley v Network Solution (Delhi HC Cyber Squatting case) ○ Kenneth Cole Productions Inc v. Viswas Info media ○ G.A. Modefine S.A. v. Naveen Tiwari trading as MKHOJ ○ WIPO Arbitration And Mediation Centeradministrative Panel Decisionms. Barkha Dutt V. Easyticket, Kapavarapu, Vascase No.D2009-1247 ○ Tata v. Greenpeace (Delhi High Court (IA 9089/2010 in CS(OS) 1407/2010), Single Judge, Justice Ravindra Bhat, order of 28 January, 2013
9 to 11	<p>MODULE 8 - PASSING OFF, THE RIGHT TO PRIVACY AND BREACH OF CONFIDENCE</p> <p>Readings:</p> <ul style="list-style-type: none"> • Passing off <ul style="list-style-type: none"> ○ Henderson v Radio Corp (NSW SC, 1960) – reported in 1969 RPC ○ Irvine v Talksport Ltd [2002] 2 All ER 414; [2002] 1 WLR 2355, 2358-2368 • Privacy: <ul style="list-style-type: none"> ○ Galella v Onassis, 487 F 2d 986 (2nd Cir, 1973) ○ Michaels v Internet Entertainment Group Inc, 5 F Supp 2d 823 (CD Cal, 1998) • Breach of Confidence - claims by celebrities <ul style="list-style-type: none"> ○ A v B plc [2002] 2 All ER 545; [2003] QB 195 ○ Campbell v MGN Ltd [2004] 2 All ER 995; [2004] 2 AC 457 ○ Von Hannover v Germany (2005) 40 EHRR 1 ○ Reklos and Davourlis v. Greece (Application No. 1234/05, ECtHR Judgment of 15 Jan 2009) ○ Von Hannover (No.2 - von Hannover v. Germany (no. 2), Grand Chamber judgment of 7 February 2012,) ○ Axel Springer Ag Versus. Germany, Ecthr 7 Feb 2012 [Same Day As Von Hannover 2] ○ Von Hannover V Germany (No. 3) Reference: Application No.8772/10 Ecthr Sept 2013 • Ronald J. Krotoszynski Jr., Reconciling Privacy and Speech in the Era of Big Data: A Comparative Legal Analysis, 56 Wm. & Mary L. Rev. 1279 (2015)

11 to 13	<p>MODULE 9 - THE RIGHT OF PUBLICITY [USA AND INDIA CENTRIC]</p> <p>Readings:</p> <p>US</p> <ul style="list-style-type: none"> • Haelan Laboratories Inc v Topps Chewing Gum Inc, 202 F 2d 866 (2nd Cir, 1953) • Eastwood v Superior Court for Los Angeles County, 149 Cal App 3d 409 (1983) • Abdul-Jabbar v General Motors Corporation, 85 F 3d 407 (9th Cir, 1996) • Onassis v Christian Dior (NY Sup Ct, 1984) • Midler v Ford Motor Company, 849 F 2d 460 (9th Cir, 1988) • White v Samsung Electronics America Inc, 971 F 2d 1395 (9th Cir, 1992) • Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562, USSC <p>India</p> <ul style="list-style-type: none"> • R. Rajagopal v State of Tamil Nadu, (1994) 6 SCC 632 • D.M. Entertainment Pvt. Ltd. v Baby Gift House and Ors, CS(OS) 893/2002, Delhi HC Decision of April 29, 2010 • Titan Industries Ltd.v M/s Ramkumar Jewellers, CS(OS) No.2662/2011, Delhi HC Decision of April 26, 2012 • Post-Mortem Right of Publicity Case: Chitra Jagjit Singh v Panache Media, Notice of Motion (L) 499 of 2016 in Suit (L) 111 of 2016) 2016, Bombay HC • Newer cases such as Anil Kapoor v. Simply Life Media and ors. [Justice Pratibha Singh, Delhi HC, 20 Sept 2023] • Jaikishan Kakubhai Saraf Alias Jackie Shroff v The Peppy Store & Ors (CS(COMM) 389/2024), Delhi HC Order of May 15, 2024; 2024 SCC OnLine Del 3664
13	<p>MODULE 10 - NEW TECHNOLOGY AND CHALLENGES FOR PERSONALITY RIGHTS</p> <p>Readings:</p> <ul style="list-style-type: none"> • Dr Devi Prasad Shetty & Anr. v. Medicine Me & Ors. [Case No. CS(COMM) 1053/2024] • Global Health Limited & Anr v John Doe & Ors, CS(COMM) 6/2025) • Devinder Singh Kalra vs Meta Platforms Inc. & Ors [CRM No. 1680/2025], [Stay by P&H HC]
14	Revision Week