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Balancing Privacy and Intellectual Property: Personality Rights vs. Paparazzi Copyright in India and the United States

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ABSTRACT

In today's world, there is a growing conflict between two legal rights—one belongs to paparazzi photographers who hold the copyright of the pictures they take, and the other belongs to celebrities who want to control how their image is used. This paper looks at the legal and ethical issues that come up when celebrities are dragged in lawsuits for posting paparazzi photos of themselves on their social media handles. These photos are often taken without the celebrity's permission, but still, the law gives copyright protection to the photographer. To understand this issue better, the paper compares how the law works in India and the United States. It focuses on important ideas like fair use, moral rights, and the right to publicity. This paper looks at real cases involving celebrities like Dua Lipa, Gigi Hadid, and Emily Ratajkowski to understand how courts have been handling this issue and how the laws are still unclear. It proposes a balanced solution that includes limited fair use rights for celebrities and also respects the creative rights of photographers.

Keywords: *Personality Rights, Paparazzi Photography, Copyright Law, Privacy Rights*

I. INTRODUCTION

A paparazzo captures an unauthorised image of a famous personality and subsequently sells it to a media organisation, reaping a substantial financial gain. While this may seem unjust to the celebrity, it is crucial to acknowledge that most celebrities are fully cognizant of the prevailing legal framework, which permits paparazzi to commercialise photographs, even if they are unwanted. Under Copyright law, photographs are categorised as 'artistic work', thereby qualifying for legal protection.² Paparazzi shots and the rights of celebrities are like two sides of a coin. On one hand, photographers have the copyright for these pictures, while on the other, celebrities can protest against the unauthorised use of their images, claiming it infringes on their personal rights. Celebrities can control how their name, face, or any part of their identity is used for commercial purposes, preventing others from doing so without their permission.

¹ Author is an Advocate in India.

² Copyright Act, 1957, s. 2(c) (i), No. 14 Acts of Parliament, 1957; 17 U.S.C. § 101.

However, things can get complicated when a work features a celebrity but violates the copyright of the creator.

The idea of publicity rights can be linked to John Locke's Labour Theory, which suggests that celebrities deserve control over their reputation because they've put in effort and hard work to build it.³ When someone invests a lot of time and work in building a strong public image, they should be able to enjoy the benefits. However, in the case of paparazzi photos, it's the photographer or their authorised licensee who profits from the celebrity's reputation, while the celebrities themselves, who are trying to promote their image, and seem to be restricted by current copyright laws. This, we believe, goes against the idea of publicity rights. The right to publicity grants celebrities the authority to control the commercial use of their image, so it is only logical that this right should also allow them to use their own image for self-promotion. In today's world, social media serves as an effective platform for celebrities to enhance their visibility and market appeal due to its immediacy and broad reach.⁴

Not long ago, Dua Lipa, the British singer who's won a Grammy, found herself in the middle of a legal dispute. Integral Images took her to court for sharing a photo of herself that they had taken, demanding \$150,000 in damages plus legal costs, and even seeking an order to stop her from posting the image again.⁵ This situation left many people wondering: can someone really get sued for posting their own picture—especially one snapped without their permission? The surprising answer is yes. Dua Lipa isn't alone in this; other famous figures like Khloe Kardashian, Ariana Grande, and Justin Bieber have also faced similar accusations. But what makes it possible for these celebrities to be held liable over photos of themselves? And in today's age of direct fan connections through platforms like Instagram and Twitter, are those rules still the same?

This article explores reconciling a celebrity's right of publicity with photographers' copyright. In this legal battle, it is pertinent to determine where the balance of convenience truly lies: with the individual who is the subject of the photograph and has added significant value to it, or with the photographers who captured the image.

II. UNDERSTANDING PERSONALITY RIGHTS IN INDIA AND USA

The concept of personality rights, also known as the right of publicity, is not explicitly set out

³ JOHN LOCKE, *Two Treatises of Government*, Second Treatise, 287–88 (Peter Laslett ed., 3d ed. 1988).

⁴ ARYAN BHAT & YASHENDRA, *Whose Photo Is It, Really? Dichotomy of Rights and Copyrightability of Paparazzi Photographs*, **The RMLNLU L. Rev. Blog**, available at <https://rmlnlulawreview.com/2021/09/20/copyrightability-of-paparazzi-photographs/>.

⁵ Mark Savage, *Dua Lipa Sued for Putting Paparazzi Photo of Herself on Instagram*, BBC News (July 9, 2021), available at <https://www.bbc.com/news/entertainment-arts-57775670>

in a single law in India. Instead, these rights are protected through a combination of constitutional provisions, intellectual property laws, and common law principles.

At the constitutional level, Article 21 of the Indian Constitution guarantees the right to life and personal liberty.⁶ The courts in India have interpreted this broadly to include the right to live with dignity, which covers the protection of a person's identity and reputation. This interpretation forms the basic constitutional support for personality rights in India.

In intellectual property law, personality plays an important role because it adds value to creative works. Therefore, Indian laws provide some protection to maintain the connection between a person and their creation. For example, Section 57 of the Copyright Act, 1957, grants moral rights to authors and performers, allowing them to claim ownership and object to any changes or distortions that might harm their honour or reputation.⁷ This reflects the idea that creators should keep a personal link to their work, even after selling economic rights.

Similarly, the Trade Marks Act, 1999, prevents trademarks that wrongly suggest a connection with a living person without their permission. Section 14 of this Act also stops the unauthorized use of a person's name, strengthening their control over the commercial use of their identity.⁸

In addition, Indian common law, especially tort law, provides remedies against unauthorized use or false representation of a person's identity. Legal actions such as defamation, passing off, and misappropriation are used to protect personality rights.

Court rulings have further clarified personality rights in India. In *Titan Industries Ltd. v. Ramkumar Jewellers*,⁹ the Delhi High Court recognized that celebrities have the right to control the commercial use of their identity. The Court described a celebrity as someone well-known to the public and whose name has commercial value, confirming their right to publicity as long as they give permission for how and when their identity is used. Similarly, in *ICC Development (International) Ltd. v. Arvee Enterprises*,¹⁰ the Court held that the right of publicity applies not only to celebrities but also to any person identifiable through the commercial use of their identity.

By contrast, the United States has a more developed legal system for personality rights, mostly at the state level. There is no federal law on this issue, but several states have passed specific statutes, and others recognize the right through court decisions. For example, California's Civil

⁶ India Const. art.21.

⁷ Copyright Act, 1957, s.57, No. 14 Acts of Parliament, 1957

⁸ The Trade Marks Act, 1999, S. 14, No. 47, Acts of Parliament, 1999.

⁹ 2012 (50) PTC 486 (Del).

¹⁰ 2003 (26) PTC 245.

Code § 3344 protects against the unauthorized commercial use of a person's name, voice, signature, photograph, or likeness.¹¹

Important court decisions have highlighted the value of personality rights in the U.S. In *Zacchini v. Scripps-Howard Broadcasting Co.*,¹² the Supreme Court ruled that airing an entire performance without permission violated the performer's right of publicity, even considering freedom of speech protections. Likewise, in *White v. Samsung Electronics America, Inc.*,¹³ the Ninth Circuit allowed a claim when a robot resembling TV personality Vanna White was used in an ad, recognizing that even indirect use of a person's identity can be a violation.

Some states, like Indiana and Tennessee, also protect personality rights after a person's death, allowing their estates to control the commercial use of their image for many years. This is important for things like merchandise, endorsements, and biographical projects.

However, in the U.S., personality rights are balanced with First Amendment freedoms. Courts often use tests such as the "transformative use" standard to decide if a creative work unlawfully infringes on someone's publicity rights. This test determines whether the new work has significantly modified the original copyrighted material's form or character. Although being transformative does not ensure a successful fair use defense, it serves as a strong factor in favour of the defendant in an infringement lawsuit.¹⁴

To sum up, while India's approach to personality rights is still developing and depends on a mix of constitutional law, statutes, and court decisions, the U.S. has a clearer and more established framework through state laws and case law. Both countries recognize the growing need to protect personality rights in today's digital world, where personal identity has increasing commercial value.

III. PAPARAZZI COPYRIGHT AND CONFLICT OF OWNERSHIP

Initial Copyright Ownership

In the United States, the definition of an author for copyright purposes is somewhat ambiguous, primarily stating that creators own the copyright in their work unless they transfer it in writing, excluding employee-created work. In contrast, India provides a clearer definition in Section 2(d)¹⁵ of the Copyright Act, where the author of a photograph is explicitly defined as "the person taking the photograph." In both the US and India, the copyright initially belongs to the

¹¹ CA Civ Code § 3344 (2024).

¹² 5 Ohio Op. 3d 215 (U.S. June 28, 1977).

¹³ 26 U.S.P.Q.2D (BNA) 1362.

¹⁴ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

¹⁵ Copyright Act, 1957, s.2 (d), No. 14 Acts of Parliament, 1957.

person who created the work like an author who writes a book or a photographer who takes a photo unless they decide to transfer those rights to someone else. This is explained in Section 201 of the US Copyright Code¹⁶ and by reading Sections 2(d)¹⁷ and 17¹⁸ of the Indian Copyright Act, 1957 together.

Fair Use in the USA (S. 107 U.S.C.) & in India (S. 52, Copyright Act, 1957)

Celebrities often find themselves at the center of legal disputes over the unauthorized use of paparazzi photographs. To defend themselves in such cases, they frequently rely on the concept of "fair use," a legal principle outlined in copyright laws like Section 52 of the Indian Copyright Act, 1957,¹⁹ and Section 107²⁰ of the U.S. Copyright Act.

In the United States, fair use is determined by evaluating four key factors: the purpose and nature of the use, the type of copyrighted work involved, the portion of the work used, and the potential impact on the market. These factors help courts decide whether a celebrity's use of an image falls within legal boundaries or infringes on the photographer's rights.²¹

Indian copyright law approaches fair use somewhat differently. Instead of evaluating broad factors, it specifies particular scenarios where fair use is permitted. For example, copyrighted material can be used for educational purposes, criticism, or review. In some cases, celebrities might argue that their use of paparazzi photos falls under "private use," a category mentioned in Section 52(1) (a) of the Indian Copyright Act, 1957. However, defining "private use" can be especially challenging for celebrities, as their lives are highly public, and their social media activity plays a significant role in maintaining their fame and career.

Ultimately, fair use provides a possible defense for celebrities facing copyright lawsuits, but its interpretation varies based on legal systems and specific circumstances. Whether a celebrity's use of a paparazzi photo qualifies as fair use remains a matter of legal debate and depends on how courts weigh different factors.

The Challenge of Defining "Fair Use" for Celebrities

In the case of *Garware Plastics and Polyester v. Telelink*,²² the issue of whether a famous person can claim fair use in the context of copyrighted photos was discussed. The court ruled that no celebrity could use fair use or fair dealing as a defence under Section 52 of the Copyright

¹⁶ 17 U.S.C. § 201.

¹⁷ Id.

¹⁸ Copyright Act, 1957, s.17, No. 14 Acts of Parliament, 1957.

¹⁹ Copyright Act, 1957, s.52, No. 14 Acts of Parliament, 1957.

²⁰ 17 U.S.C. § 107.

²¹ Id.

²² AIR 1989 Bom 331.

Act when it comes to copyrighted photos. This is because even though the Act allows for "private and personal use," sharing a photo on a public account goes beyond private communication and has a clear commercial aspect. Communication is only considered private when it's shared with a limited audience. Posts on social media can't be called private communication when they're on a public account. Since the copyright owner has the exclusive right to communicate the photo to the public, posting such a photo is seen as "public communication," and a celebrity's claim of fair use in this situation wouldn't be a valid defence.

As already discussed, under US laws the defence of fair use will only be considered if it fulfils the four criteria- the purpose behind the use, nature of work, and totality in which it is used, and finally, financial value. This case-by-case basis approach calls for continuous re-evaluation of the existing boundaries.

IV. JUDICIAL TRENDS: AN ANALYSIS OF LEGAL CASES

In the context of legal history in India, there haven't been any previous cases like this. In the United States, even though some of these disagreements were resolved without going to court, Gigi Hadid presented some intriguing arguments to support her fair use.

Gigi Hadid's Arguments

In the Gigi Hadid case,²³ she argued that because she posed for the photo and had control over her appearance, she should be considered a joint author of the picture. When it comes to photos, the person being photographed can have some say in the rights. However, in this case, Gigi Hadid won not because the judge agreed with the co-authorship argument but because the paparazzi agency didn't have a copyright for the photo when they filed the lawsuit, even though they had applied for it.

What surprised many people was that the court's decision was based on a Supreme Court ruling in *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*,²⁴ that came out after the lawsuit was filed! This Supreme Court case said that having a copyright registration is a requirement for proving copyright infringement, which is different from how it works in India and other countries that follow the Berne Convention. So, the court didn't decide if celebrities like Gigi Hadid can be considered co-authors or if their use of such photos falls under fair use.

However, the arguments put forward by counsel of Gigi Hadid are noteworthy:

- It was contended that she shared the photo for personal reasons, not for making money,

²³ *Xclusive-Lee, Inc. v. Hadid*, 19-CV-520 (PKC) (CLP).

²⁴ *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*, 586 U.S. ____ (2019)

so it shouldn't break copyright rules.

- The photo was taken candidly on the streets, which means it was a factual shot, not a carefully planned one.
- Hadid only used part of the picture, not the whole thing (it was cropped to focus on her), so it didn't use a big portion of the work.
- Also, she used the photo after it had already been published, so it didn't really hurt the photo's economic value.

O'Neil v. Emily Ratajkowski case

The Gigi case was dismissed on a technicality, but in the case of O'Neil v. Emily Ratajkowski,²⁵ the photograph was registered, and the fair use arguments became twisted, leading to the case proceeding to trial. Interestingly, there was no claim of personality right infringement because Emily's face was not visible in the photograph. Ratajkowski, known for her criticism of paparazzi culture and the commodification of women, published her first book, "My Body," on November 9, 2023.

In 2019, celebrity photographer Robert O'Neil took a photograph of Ratajkowski outside a Manhattan flower shop, where she held a vase of flowers over her face and upper body. Ratajkowski posted the photograph on her Instagram Stories with the caption "mood forever." O'Neil sued Ratajkowski for violating his protected interest in the photograph, while Ratajkowski claimed fair use, stating that she posted it to express her relationship with the paparazzi. Her attorneys argue that the addition of "MOOD FOREVER" transformed the purpose and character of the use, serving as commentary and criticism of the paparazzi's constant harassment of Ratajkowski, even when she's buying flowers for a friend.

The Court held that Emily Ratajkowski infringed Robert O'Neil's valid copyright by posting his photo on Instagram. However, it left the question of fair use and the amount of statutory damages to be decided at trial.

Not long ago, Virat Kohli, the former Indian cricket captain, was in Leicester, England, participating in a test match series. During his time there, a photographer named John Mallet, working for Leicestershire and the ECB, captured some photos of him. Virat later posted these pictures on his official social media accounts. Upon seeing this, the photographer was pleasantly surprised and quickly responded. *"Hugely humbled that one of the world's greatest players chose to use some of my images from the game with @leicsccc on his personal media*

²⁵ 563 F.Supp.3d 112.

*accounts. A privilege to have been able to capture these shots. Thanks to VK & everyone @BCCI for your support”.*²⁶

In this case, the photographer responded well, but looking at examples like Gigi Hadid's, we can see that paparazzi might claim the rights to photos they took, even if the celebrity shared them willingly. They might not care about giving credit, getting permission, or having a license for using someone else's copyrighted stuff in their pictures.

V. ETHICAL AND POLICY CONSIDERATIONS IN THE PAPARAZZI INDUSTRY

The Right to Privacy is now recognized as a fundamental right under Article 21 of the Constitution.²⁷ While copyright is a statutory commercial right, it plays an important role in securing the livelihood and dignity of creators. In this sense, it complements the objectives of the fundamental right to life by enabling individuals to sustain a meaningful and dignified existence through their creative efforts. The interaction between celebrity privacy rights and photographers complicates matters. This means a photographer may own a celebrity's image but cannot publish it publicly without their consent, affecting the photographer's livelihood. Currently, there are no clear precedents for these complex issues, and they are unlikely to be discussed in constitutional courts due to their intricate nature and limited scale.

The absence of codified laws on this issue creates an imbalance between ownership and privacy rights, wherein people can be photographed without their consent and, despite that, lack the right to use their own image. A uniform and comprehensive legislation is needed to strike a balance between protecting the artistic freedom of photographers and safeguarding the privacy and publicity rights of celebrities. Such a step would allow celebrities to use their images in specific cases or include explicit exemptions in fair use clauses.

In light of these complexities and after carefully identifying the gaps in the existing legal framework, the following legislative amendments are recommended:

1. Explicit Recognition and Statutory Codification of the Right of Publicity

India currently lacks a dedicated statutory right of publicity, leading to fragmented protection of personality rights. It is recommended to introduce a specific chapter within the Copyright Act, 1957, or enact a standalone Personality Rights Act, explicitly recognizing the Right of Publicity as an independent intellectual property right. This right should grant individuals exclusive control over commercial use of their name, image, likeness, and other identifiable

²⁶ <https://www.republicworld.com/sports/cricket/virat-kohli-posts-pics-from-ind-vs-lei-warm-up-match-photographer-humbled-by-gesture-articleshow>

²⁷ 2019 (1) SCC 1

attributes, including digital and social media contexts, with clear licensing and enforcement mechanisms against unauthorized exploitation.

2. Clarify Fair Use / Fair Dealing Exceptions for Celebrity Use of Their Own Images

Amend Section 52 of the Copyright Act to carve out an exemption permitting celebrities to post images of themselves (e.g., paparazzi photos) on digital platforms for non-commercial self-promotion, under reasonable conditions such as no alteration and mandatory attribution. This amendment should explicitly exclude commercial resale, thus balancing the interests of celebrities and photographers.

3. Recognize Joint Authorship or Co-Ownership in Collaborative Photographs

Amend the definition of “author” under Section 2(d) or add a new provision recognizing joint authorship/co-ownership rights when photographed individuals actively contribute creatively (e.g., posing, styling). This reflects the collaborative nature of such works, reduces disputes, and aligns Indian law more closely with evolving global practices.

4. Mandatory Copyright Registration for Photographs with a Simplified Process

Introduce a mandatory copyright registration requirement for photographs prior to infringement litigation to enhance legal clarity. Implement a streamlined, fast-track, low-cost registration system tailored for photographers, particularly those handling digital and paparazzi images, to facilitate enforcement without undue burden.

5. Amend Moral Rights (Section 57) to Balance Attribution and Editing Rights Clarify moral rights by mandating attribution to photographers whenever images are publicly shared by celebrities or third parties, while permitting limited cropping or minor edits to suit self-promotional use without distortion. This balances photographers’ moral rights with celebrities’ promotional needs.

6. Introduce a “Transformative Use” Test in Fair Dealing Exceptions

Incorporate a “transformative use” standard into Section 52, allowing uses that add new expression, meaning, or message—such as commentary, criticism, or creative reinterpretation—to qualify as fair dealing. This amendment would modernize Indian copyright law, enhancing judicial flexibility and protecting both rights holders and creative users.

7. Establish a Statutory Licensing and Revenue Sharing Framework for Paparazzi Photography

Create compulsory licensing provisions enabling celebrities to negotiate licenses for using paparazzi images for self-promotion, with reasonable royalty payments to photographers. This

statutory framework would promote fairness, reduce litigation, and foster coexistence between photographers and celebrity rights in the digital age.

VI. CONCLUSION

The tug-of-war between paparazzi copyright and celebrities' personality rights is more than a mere legal skirmish. It's a mirror reflecting the evolving challenges of law in a digital, image-driven world. As photographers assert ownership over their creative work, and celebrities fight to protect the commercial and personal integrity of their likeness, the current legal frameworks reveal their limitations and inconsistencies, especially across jurisdictions like India and the U.S.

This study underscores the urgent need for a nuanced, forward-thinking legal architecture—one that clearly defines the right of publicity as an independent intellectual property right, recognizes fair use tailored to modern celebrity engagement, and embraces joint authorship where innovation intersects with identity. Only then can law truly mediate between artistic freedom and personal dignity, safeguarding the interests of both creators and public figures.

Looking ahead, as social media blurs boundaries and image economies grow ever more complex, the legal system must not merely react but evolve—crafting solutions that respect creativity, empower individuals, and anticipate the future of fame in an interconnected world.
