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INFLUENCER IP – OWNERSHIP OF ONLINE PERSONA & BRAND IDENTITY¹

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ABSTRACT

The rise of social media has transformed digital self-presentation into a valuable economic asset, giving birth to a global influencer economy where individuals monetise their image, personality, online behaviour, and following. This shift has blurred the lines between personal identity, commercial branding, and intellectual property. As influencers build recognisable personas often consisting of catchphrases, aesthetics, tone, likeness, style, and curated content the legal question arises: who owns this online persona? While traditional IP laws protect trademarks, copyrights, passing-off, celebrity rights, and publicity rights, they do not neatly fit the fluid, hybrid identity of modern influencers. The absence of a dedicated legal framework complicates disputes involving talent agencies, platforms, advertisers, and brands, especially concerning ownership of user-generated content, licensing of personality traits, brand identity theft, deepfake misuse, and contractual control over digital reputation. This paper examines the IP dimensions of influencer identity, analyses the nature of the online persona as a protectable asset, and evaluates Indian jurisprudence alongside comparative global developments. The paper also applies doctrinal, comparative, and case-based methodology to argue that influencer personas constitute a unique category of intangible property deserving explicit legal recognition.

KEYWORDS

Influencer IP; Brand Identity; Publicity Right; Online Persona; Digital Reputation; Social Media Law; Passing-Off; Trademark Law; Copyright; Endorsement Contracts; Creator Economy.

¹ Authored by Shreya Ormalia & Nupoor Sonkar

INTRODUCTION

The rise of social media influencers represents a radical shift in the economics of reputation. Historically, only celebrities with traditional media visibility actors, sportspersons, models possessed commercially valuable publicity rights. Today, however, individuals with large digital followings on platforms like Instagram, YouTube, and TikTok command immense economic influence. Their persona a combination of style, voice, image, behaviour, and curated content becomes a commercial asset capable of generating advertising revenue, sponsorship deals, merchandise sales, and long-term brand collaborations. This evolution raises important questions regarding ownership, control, and transferability of such online identities.

Influencer identity is shaped by creative labour, personal traits, and digital engagement metrics. Brands pay for the authenticity associated with the influencer's public personality, which extends beyond mere content creation to include intangible emotional resonance with followers. As a result, influencers' personas increasingly resemble commercial trademarks and copyrighted works, yet they do not fall neatly into either classification. Additionally, problems emerge when agencies claim partial ownership of branding strategies, when platforms restrict content monetisation, or when impersonators exploit influencer likeness through deepfakes, fake accounts, or non-consensual endorsements.

The Indian legal system lacks a comprehensive framework regulating influencer persona rights. While the right to publicity is recognised under Article 21 and tort principles, its application to non-traditional celebrities remains unsettled. Trademark and copyright law protect specific elements but not the holistic identity. The Advertising Standards Council of India (ASCI) issues guidelines for influencer endorsements, but these do not address IP ownership. As the influencer economy expands, legal recognition of online persona as property becomes essential to ensuring fair commercial practices and protecting digital identity from exploitation.

PROBLEM STATEMENT

The influencer economy has transformed personal identity into an exploitable commercial asset. However, Indian law does not clearly define who owns the influencer's online persona, especially when multiple stakeholders contribute to its creation content creators, agencies, platforms, photographers, editors, and advertisers. The lack of legal clarity leads to disputes over rights to images, brand identity, content, merchandising, and endorsement value. India

also lacks statutory remedies for misuse of influencer persona such as deepfakes, impersonation, AI-generated clones, unauthorised merchandise, and fraudulent endorsements resulting in reputational harm and economic loss. Without explicit IP or statutory protection, influencer identity remains vulnerable to exploitation.

OBJECTIVES

The primary objectives of this research are:

1. To analyse how influencer personas function as commercial IP assets.
2. To examine whether Indian law adequately protects online persona and brand identity.
3. To study contractual, statutory, and judicial mechanisms governing influencer reputation.
4. To compare India's legal position with US, UK, and EU publicity-right frameworks.
5. To suggest reforms for recognising influencer persona as a unique category of protectable IP.

HYPOTHESIS

The central hypothesis of this research is that an influencer's online persona constitutes a distinct form of intellectual property, combining elements of publicity rights, trademark identity, copyrightable expression, and commercial reputation. Existing Indian legal frameworks are insufficiently equipped to regulate ownership and exploitation of this hybrid identity, necessitating a codified statutory regime.

RESEARCH QUESTIONS

This paper seeks to address the following questions:

1. Does current Indian law recognise influencer persona as a form of protectable intellectual property?
2. How do contracts between influencers, managers, and brands allocate ownership of branding elements?
3. What kinds of misappropriation or impersonation threaten influencer identity in the digital marketplace?
4. How have other jurisdictions regulated online persona and likeness rights?
5. Should India adopt a statutory publicity-right framework for influencer IP?

SCOPE & LIMITATIONS

This research focuses on the Indian IP and publicity-right landscape and its applicability to the influencer economy. The analysis includes judicial decisions, statutory provisions, ASCI guidelines, and comparative legal developments. The study does not cover taxation issues, platform algorithmic governance, or competition law aspects of influencer marketing.

RESEARCH METHODOLOGY

A doctrinal methodology is adopted for analysing statutes, case law, and regulatory guidelines. Comparative methodology is employed to study the US, UK, and EU frameworks on celebrity rights and digital persona. Secondary research includes academic literature, industry reports, and empirical studies on digital reputation. The methodology also includes contract analysis to examine influencer-brand agreements and talent management structures.

LITERATURE REVIEW

Academic literature on influencer identity increasingly recognises the transformation of self-presentation into commercial property. Scholars argue that influencer personas constitute hybrid identities, blending personal traits with curated creative output. Sen and Thomas emphasise how digital reputation is co-created by influencers and their followers, turning online personality into an intangible asset with measurable economic value.² This aligns with US scholarship on “persona rights” which treats identity traits such as voice, likeness, gestures, and signature styles as proprietary and licensable.

Indian legal scholarship has focused largely on celebrity publicity rights, with limited attention to influencers. Ramanathan argues that Indian jurisprudence inadequately addresses non-traditional celebrities whose fame emerges through social media rather than mainstream entertainment.³ Meanwhile, Mehta highlights the challenges of applying traditional trademark and copyright frameworks to influencers, noting that while specific content can be protected, the overall persona remains outside statutory boundaries.⁴

The literature also discusses legal risks arising from digital impersonation, deepfake

² Sharmila Sen & Aparna Thomas, “Digital Fame and the Commodification of Online Persona,” (2020) 12 JIPR 77.

³ Usha Ramanathan, “Identity, Image and Indian Law,” (2019) 8 NUJS L Rev 301.

⁴ Ananya Mehta, “Influencers and the Gaps in India’s IP Regime,” (2022) 4 IJIPL 55.

endorsements, and AI-generated replicas. International scholars warn that unregulated digital cloning undermines both consumer trust and creator autonomy. Comparative studies reveal that the United States adopts the broadest protection through state-based publicity-right statutes, while the UK relies on passing-off and trademark law. The European Union increasingly treats digital identity as part of data protection and moral rights.

Empirical studies by industry groups like Deloitte and FICCI show that influencer marketing in India is valued at over USD 350–400 million and growing rapidly. Scholars conclude that as influencers become brands in themselves, the absence of legal certainty over persona rights leads to disputes between influencers, management agencies, and advertisers.

Overall, the literature highlights a clear consensus: the influencer persona is economically valuable but legally under-protected, and existing Indian intellectual property frameworks lack adequate tools to address its complexities.

I. Legal Foundations of Personality Rights and Influencer Identity in India

The rapid commercialisation of the digital ecosystem has led to an unprecedented rise in individual-led brands where influencers function not merely as creators but as commercial entities. Their persona comprising name, likeness, image, voice, expressions, and digital behaviour carries independent economic value. This transformation necessitates a foundational understanding of personality rights within the Indian legal framework, which remains fragmented, judge-made, and context-specific.

Historically, Indian jurisprudence recognised personality rights primarily through passing off and privacy-based torts. Early courts focused on misuse of name or likeness when such use resulted in consumer confusion or reputational harm. A turning point came with the Supreme Court's judgment in *R. Rajagopal v. State of Tamil Nadu*, which recognised the individual's right to control commercial exploitation of identity elements as part of the right to privacy under Article 21. Subsequently, courts increasingly interpreted personality rights as proprietary interests rather than merely dignitary ones.

Yet, influencers represent a modern challenge. Unlike film actors or athletes, their public persona is shaped by self-created, algorithm-driven content. They craft micro-identities Aesthetic Minimalist, Fitness Challenger, Crypto Educator, Skincare Therapist each with

identifiable traits. These micro-identities become assets that brands license, partner with, or exploit. However, Indian law does not yet formally acknowledge such digital traits or “persona architecture” as IP.

The Delhi High Court’s ruling in *Titan Industries v. Ramkumar Jewellers* strengthened the recognition of publicity rights by holding that the unauthorised commercial use of celebrity images constitutes a violation of their inherent right to control such usage. Although the case involved Bollywood actors, the court’s reasoning applies equally to influencers, who similarly cultivate commercial goodwill in their persona. Yet, unlike celebrities, influencers often lack formal contractual protection or registered marks, leaving them vulnerable to misappropriation particularly through AI-generated likeness, deepfakes, and avatar replication.

A structural gap appears because India does not recognise a standalone statutory personality right. Instead, recognition depends on a combination of tort, trademark, and copyright laws none of which fully address influencer identity. Influencers usually own copyright in original works they create (videos, captions, photos), but copyright does not protect persona, leaving name, face, gestures, or voice outside its ambit.

Another emerging challenge is platform-dependency. Influencers operate within digital walled gardens Instagram, YouTube, TikTok where algorithmic visibility becomes part of identity value. When platforms suspend accounts, shadow-ban creators, or alter algorithms, influencers lose economic value. This raises questions: is visibility itself an asset? Can an influencer claim IP-like protection over digital positioning? These unsettled questions indicate that personality rights in India must evolve from being privacy-driven to becoming commercial-property-driven rights.

Courts in the U.S. have moved toward recognising the identity of influencers as commercial assets, particularly in disputes involving lookalike models or AI-replicated voices. Indian courts have not yet addressed such cases directly, but the increasing use of influencer avatars and virtual influencers suggests that similar disputes are imminent.

Ultimately, the legal foundations for influencer personality rights exist only in fragments. India must develop a unified statutory framework to define, protect, and enforce rights over online persona as a commercial asset. The next sections explore how brand identity, economic

interests, and contractual structures shape influencer IP in the absence of such a framework.

II. Online Persona as Intellectual Property: Scope and Challenges of Ownership

Under current Indian law, protection is neither explicit nor comprehensive. Indian courts have acknowledged in passing that personality traits may hold commercial value, yet they have not categorically classified persona as IP property. For example, a name or stage name can be protected under trademark law only if it is registered or acts as a source identifier. Many influencers fail to register their brand name or handle early in their career, allowing impersonators or opportunistic third parties to file for trademarks first. This has already occurred in disputes relating to beauty and fitness influencers informally known for their brand taglines.

Copyright protects original creative works but does not extend to identity. For instance, an influencer's unique colour scheme or editing style may be duplicated without technically violating copyright law. Similarly, a parody account or a meme page can reuse an influencer's likeness unless it amounts to commercial exploitation or defamation.

A more sophisticated risk is emerging from AI-generated clones. Tools that imitate voice, face, mannerisms, and even posting patterns can replicate influencers without their consent. These AI identities can endorse brands, spread misinformation, or dilute brand value. Since personality rights are not statutorily codified, influencers must rely on a combination of privacy, misappropriation, and passing off doctrines each of which has limitations.

Additionally, influencers often collaborate with creative teams, editors, photographers, and ghostwriters. This complicates ownership because many elements of their persona humbails, slogans, choreography, transitions may be created by others. Without clear contractual arrangements, copyright in these elements may rest with the creators, not the influencer. Disputes have already arisen when videographers claim rights over viral content, restricting influencers from reusing their own persona-defining videos.

Another dimension concerns brand identity spillover. Influencers who co-own brands (e.g., cosmetic lines, fitness products) create a mixed identity: part personal, part corporate.

Determining whether the persona belongs to the individual or to the company becomes complex. If the influencer exits the brand, questions arise can the company continue using their likeness because it forms part of the brand equity? Internationally, courts have allowed companies to retain elements of persona if contracts explicitly assigned publicity rights to the corporate entity.

A final challenge lies in cross-jurisdictional enforcement. Influencers operate globally, but personality rights are territorial. What is protected in India may not be protected in the U.S. or EU, enabling unauthorised international exploitation of identity.

Thus, while influencers generate IP-like value through their online persona, Indian law does not yet provide the tools necessary for robust protection. Reform must consider not only traditional publicity rights but digital-era complexities such as AI replication, global visibility, and collaborative authorship.

III. Brand Collaborations, Contracts, and Commercial Ownership of Influencer Persona

Brand collaborations form the financial backbone of influencer economics. In such arrangements, the influencer's persona becomes the product being sold its appeal, authenticity, relatability, and aesthetic value determine the fee charged. But the legal ownership of persona during these collaborations is unclear, often leading to disputes when brands claim extended usage rights or reuse influencer content without consent.

Typically, a brand-influencer agreement includes clauses on deliverables, timelines, content format, exclusivity, moral obligations, and takedown requirements. However, IP ownership clauses are frequently overlooked, especially by micro-influencers. Brands often assume ownership of all deliverables, while influencers assume they retain it. This misalignment results in confusion over whether the brand can reuse the content for paid ads (whitelisting), digital billboards, or product packaging.

The default rule under copyright law is that the creator owns the copyright unless assigned otherwise. Thus, unless an influencer contract clearly states that copyright is transferred to the brand, influencers legally retain ownership. Brands that reuse content without assignment

technically infringe. Many disputes worldwide relate to brands running long-term ad campaigns using influencer-created content after the agreed period. Indian influencers often lack bargaining power or legal awareness to negotiate assignment vs. licence.

Another concern is the unauthorised extension of persona. Brands frequently request usage rights for “all media, in perpetuity.” If an influencer agrees, the brand can legally use their face, voice, or personality traits forever creating a situation where the influencer effectively loses control of future commercial endorsements. In the West, prominent influencers have regretted signing such perpetual rights after losing control over their signature poses, taglines, or even wardrobe styles.

Exclusivity clauses also impact persona ownership. If a contract includes a 3–6 month exclusivity period, influencers cannot collaborate with competing brands. But brands sometimes extend exclusivity through vague wording such as “categories similar thereto,” restricting influencer earnings across broad product classes. This creates a virtual encroachment on persona-based income.

Another issue is co-created brand identity. Influencers often help shape brand campaigns using their personality traits sarcasm, humour, challenges, or dance steps. If such contributions become viral, ownership becomes contested. Brands may claim it as work-for-hire, while influencers may see it as part of their persona. Clear contractual drafting is required to delineate who owns what.

Influencers also face moral and reputational risks. Controversial or misleading brand claims may harm influencers’ credibility, while brands may face backlash if influencers are involved in scandals. Contracts increasingly include morality clauses, but these can be misused by brands to terminate agreements abruptly, affecting persona value. A fairer approach requires proportionality and objective criteria for termination.

Additionally, the regulatory framework for advertising (ASCI Code) places responsibility on influencers to mark paid partnerships clearly. This has direct implications for persona authenticity which is central to influencer value. Over-commercialisation can dilute persona strength, weakening the influencer’s IP in the long term.

Thus, contractual clarity is essential not only for economic fairness but for safeguarding the integrity and ownership of influencer persona.

IV. Misappropriation, Deepfakes, and Digital Identity Theft: Emerging Challenges to Influencer IP

The emergence of deepfake technology and AI-generated identity replication has created an unprecedented threat to influencer IP. Influencers, unlike traditional celebrities, rely heavily on authenticity and continuous digital presence; their brand value is inseparable from real-time engagement. Deepfakes hyper-realistic synthetic media generated through machine learning can clone an influencer's face, voice, gestures, and expressions, enabling malicious actors to impersonate them for commercial exploitation, political messaging, scams, or explicit content. In such cases, the influencer's reputation, economic value, and public trust are simultaneously at risk.

Indian law currently lacks a dedicated framework addressing deepfake impersonation. While remedies may exist under the Information Technology Act, 2000, the provisions are indirect. Sections 66C and 66D penalise identity theft and impersonation, but they do not expressly cover AI-generated likeness or fabricated audio-visual material. Influencers therefore must stretch privacy law, passing off, and defamation principles to claim relief. Personality rights as recognised in India are still primarily rooted in dignity-based protection rather than proprietary exploitation, making it difficult to claim damages for commercial misuse of persona unless there is clear evidence of monetary loss.

The absence of statutory clarity also complicates cases where deepfake-generated versions of influencers are used for brand endorsements or advertisements without consent. If the impersonation does not create confusion among consumers but merely mimics style or tone, courts may hesitate to intervene under passing off. This creates a grey area where influencers' economic interests in their persona are inadequately protected. Given the rise of AI voice cloning, influencers with signature vocal styles—comedians, voice-over artists, vloggers face heightened vulnerabilities.

Another danger arises from explicit deepfake content. Female influencers are disproportionately targeted, with fabricated explicit imagery being circulated online as

harassment or retaliation. Such misuse causes severe reputational damage, emotional distress, and long-term harm to career prospects. Despite this, India currently lacks a deepfake-specific criminal provision. Aggravated offences under Sections 67 and 67A of the IT Act may apply, but enforcement remains weak.

Digital identity theft extends beyond deepfakes. Many influencers face impersonation through fake accounts that solicit money from followers, endorse unauthorised brands, or spread misinformation. Trademark law provides partial protection if the influencer has registered their name or pseudonym as a mark, but many do not. Copyright provides no help because persona is not a copyrightable subject matter. Thus, influencers often depend on platform-level reporting mechanisms, which vary in effectiveness and responsiveness.

Platforms such as Instagram and YouTube have created takedown systems, but these are not legally binding and do not impose liability for failure to act. Influencers lack statutory rights that compel platforms to remove impersonation content swiftly. The Digital Personal Data Protection Act, 2023 does not explicitly cover deepfakes because they involve non-consensual synthetic generation rather than misuse of actual personal data.

Another concern is synthetic influencer clones AI-generated influencers that replicate the style and identity of existing creators. Brands may use such clones to avoid paying real influencers, raising questions of unfair competition. Influencers cannot prevent such replication unless they can prove substantial similarity causing confusion, which again forces them into traditional passing off claims. Without statutory personality rights, enforcement remains inconsistent and heavily fact-dependent.

Internationally, jurisdictions such as the United States have begun recognising rights against digital impersonation through expanded publicity rights and specific legislation like the No Fakes Act (proposed), which aims to regulate AI cloning of identity. India must move in the same direction.

Ultimately, misappropriation and deepfake threats demonstrate that influencer IP cannot be adequately protected through existing fragmented remedies. A dedicated statutory personality rights regime is now a necessity.

V. Need for Legal Reform: Towards a Unified Personality Rights and Influencer IP Framework in India

The rapid evolution of influencer culture requires a complete rethinking of how identity is protected in law. Existing legal tools copyright, trademark, privacy, tort, IT Act were designed for analogue-era celebrities, not algorithm-dependent creators whose identity is constantly shaped through digital interactions. A unified legal framework is necessary to ensure both proprietary and dignitary interests of influencers are protected.

First, India must adopt a statutory definition of personality rights, explicitly recognising:

- (a) name, likeness, image, voice, signature expressions;
- (b) avatars, digital replicas, and AI-generated likeness;
- (c) behavioural identity and signature mannerisms; and
- (d) unique digital identifiers such as handles, thematic aesthetics, and persona traits.

Such recognition would align Indian law with the jurisprudence evolving in the U.S., EU, and South Korea, where courts increasingly treat persona as a commercial asset capable of assignment, licensing, and enforcement.

Second, statutory codification should incorporate both economic rights and moral rights. Economic rights allow influencers to monetize and control the commercial use of their identity, while moral rights safeguard against derogatory or misleading portrayals. These rights must be inheritable and enforceable against both private actors and digital platforms.

Third, reforms must address AI-generated impersonation by creating a specific offence for non-consensual deepfake creation, especially when used for commercial exploitation or explicit content. Criminal penalties must be supplemented by civil remedies, including statutory damages, injunctions, and platform obligations to remove synthetic identity misuse promptly. Platforms should be required to implement deepfake detection systems and transparency mechanisms for AI-generated content.

Fourth, influencers need stronger contractual protections. Standardised influencer agreements should mandate clauses on:

- copyright ownership and assignment,

- duration and scope of usage rights,
- exclusivity limitations,
- AI/replica rights,
- morality clauses,
- consent requirements for content modification,
- platform obligations.

Agreements should also distinguish between persona rights (which cannot be permanently assigned without restrictions) and content rights (which can be licensed or assigned based on commercial negotiation).

Fifth, there must be an accessible system for international enforcement of persona rights. Given the global nature of influencer content, India should explore reciprocal enforcement mechanisms with foreign jurisdictions. A centralised regulatory authority or tribunal could expedite cross-border takedowns and impersonation disputes.

Sixth, India should encourage influencers to register their digital identity markers stage names, taglines, visual signatures as trademarks. This would provide a baseline legal mechanism for preventing impersonation and unfair commercial use. The Trademark Registry could expand classification categories to include digital persona identifiers, similar to developments in the EUIPO.

Finally, any reform must balance protection with freedom of expression. While safeguarding influencers from misuse, the law must preserve legitimate artistic parody, commentary, and transformative use. A proportionality framework similar to constitutional rights analysis could help courts weigh competing interests case by case.

A coherent legal framework would create certainty for influencers, brands, and platforms, ensuring that digital identity is treated as a valuable asset deserving enforceable protection. Without comprehensive reform, influencers will continue to face legal vulnerabilities, economic exploitation, and reputational harm in an increasingly volatile digital environment.

CONCLUSION

The rise of the influencer economy marks a fundamental shift in how identity functions as an economic and cultural asset. Unlike traditional celebrities who depend on third-party studios, sponsors or sports federations, influencers build their persona independently, cultivate communities organically, and monetise their individuality through dynamic, algorithm-driven engagement. This makes their persona not just a reflection of who they are, but a commercially valuable form of intellectual property. Yet, the Indian legal system rooted in pre-digital jurisprudence does not recognise this new category of identity-based IP with clarity or cohesion.

Throughout this research, it becomes evident that influencers face multifaceted risks: unauthorised commercial exploitation of their image, AI-generated deepfake impersonation, digital identity theft, misappropriation by brands, overbroad contractual assignments, and unregulated platform control over algorithmic visibility. Existing legal frameworks—copyright, trademark, privacy, tort law, IT Act address parts of the problem but lack the structural coherence necessary to govern modern digital identity. These frameworks are reactive, fragmented, and often inadequate when confronted with AI-based replication or globalised digital platforms.

The jurisprudence on personality rights in India, although evolving, remains dependent on judicial creativity rather than statutory clarity. Courts have recognised publicity rights and protected the dignity of individuals, but they have not consistently treated persona as a transferable and enforceable commercial right. This gap becomes critical for influencers whose livelihood depends on monetising their digital identity. Without a codified framework, influencers must navigate complex contractual negotiations and rely on platform discretion, leaving them vulnerable to exploitation and impersonation.

Further, the threat posed by deepfakes represents a paradigm shift. AI-generated likenesses can erase the line between genuine and synthetic identity. This undermines consumer trust, destroys influencer reputation, and allows malicious actors to profit from cloned personas. Current Indian laws do not explicitly address synthetic identity misuse, deepfake creation, or avatar-based commercial replication, leaving a significant regulatory vacuum.

To address these challenges, India must adopt a dedicated statutory regime for personality

rights—one that defines, recognises, and protects influencer identity as a form of intellectual property. Such legislation must incorporate economic and moral rights, regulate AI-based identity cloning, impose obligations on digital platforms, and establish clear rules for contract drafting and licensing. Flexible fair-use provisions and proportionality-based balancing tests must ensure that legitimate parody and commentary remain protected.

Influencer IP is no longer merely a question of privacy or passing off. It is a central issue of digital economic rights. As India becomes one of the world's largest creator economies, legal recognition of digital persona is not optional it is indispensable. A strong, future-ready framework will empower influencers, protect consumers from deception, guide brands toward ethical practices, and uphold the integrity of digital commerce.

The future of influencer identity protection lies in bridging the gap between human expression and intellectual property, ensuring that the law evolves in step with technology and culture.

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