Getting the Deal Through: Right of Publicity

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Unlegislated it may be, but the right to publicity is not an unrecognised right in India; Vaishali Mittal explains the jurisprudential regime, as it has been evolved by the country's courts. Excerpts taken from the chapter published in Getting the Deal Through: Right of Publicity. **Is the right protected after the individual's death? For how long? Must the right have been exercised while the individual was alive?** As stated above, there is no specific legislation that governs right of publicity in India. Claims are initiated under varying legislations. It is unclear whether such rights extend after an individual's death, since no precedent or case law in India discusses this aspect yet. However, if a dispute can be brought under the Copyright Act 1957, then one can protect and safeguard such rights after an individual's death as well. This is because the term of copyright protection over works in India extends for a stipulated period, even after the demise of the author. Furthermore, moral rights are perpetual and do extend beyond one's death. **Can the right be transferred? In what circumstances?** The commercial right that a person acquires through intellectual property protection is transferable as per the provisions of the Trade Marks or Copyright Act. The right in intellectual property is transferable by way of either assignment or licensing. However, the position of transferability of the right in itself is ambiguous. The discussion on transferability of the right is restricted to the judgment in ICC Development (International) v Arvee Enterprises and Anr wherein the court stated that 'any effort to transfer the right of publicity from an individual to the organiser (non-human entity) of the event would be a violation of the Indian Constitution.' **Are punitive damages available? If so, under what conditions?** Punitive damages have been awarded to injured parties where their right of publicity has been infringed. Courts tend to look at whether the accused deliberately infringed the rights of the owner to determine the nature of damages awarded to the plaintiff. Furthermore, any action against the defendants (accused) aimed at continuing the violation of one's personality rights, despite being aware of such rights accruing to an individual, is an important factor in the grant of punitive damages. *This chapter was published in Getting the Deal Through Right of Publicity 2018.*

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