

Tort Law Protections for Individuals' Images in Commonwealth Jurisdictions

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Introduction

"[U]nder English law it is not possible for a celebrity to claim a monopoly in his or her image, as if it were a trademark or brand." Lord Walker of Gestingthorpe in *OBG Ltd v. Allan* [2008] 1 AC 1 [293].

The rapid development of AI-facilitated deepfake technology has provoked new interest in the availability and efficacy of legal protections for individuals' images and other aspects of their personae.¹ The U.S. Copyright Office has concluded that existing U.S. laws "fail to provide fully adequate protection."² The "NO FAKES" bill, introduced to the U.S. Congress in 2025, aims to address at least some of these gaps.³ This Article adds to the discussion that has been provoked by deepfake technology by surveying common law tort law protections for image rights in Commonwealth jurisdictions.⁴

Two themes emerge from this survey. First, notwithstanding the absence of a distinct tort of misappropriation of personal identity⁵ in some Commonwealth

1. See Jane C. Ginsburg & Graeme W. Austin, *Deepfakes in Domestic and International Perspective*, 48 COLUM. J.L. & ARTS 297, 300–10 (2025).

2. U.S. COPYRIGHT OFF., COPYRIGHT AND ARTIFICIAL INTELLIGENCE PART 1: DIGITAL REPLICAS 22–23 (July 2024), <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-1-Digital-Replicas-Report.pdf> [<https://web.archive.org/web/20260226153447/https://copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-1-Digital-Replicas-Report.pdf>].

3. NO FAKES Act of 2025, H.R. 2794, 119th Cong. (2025) (as introduced April 9, 2025).

4. The following discussion is limited to private law protections. It does not consider the increasing array of criminal provisions directed at deepfakes. In some jurisdictions, consumer protection laws prohibit unlicensed commercial uses of an individual's image. For an example from Australia, see *Talmax Pty Ltd. v. Telstra Corp Ltd.* [1997] 2 Qd R 444 (Supreme Court of Appeal), applying s 52 of the Trade Practices Act 1974 (Cth). See also Competition and Consumer Act 2010 (Cth) sch 2 (Austl.). Elsewhere, advertising codes prohibit conduct of this kind. Singapore's Code of Advertising Practice (2008), for example, includes prohibitions against portraying or referring to any person without permission. And, relevant to the question of deepfakes, the Code provides that advertisements and sales promotions "should not manipulate (such as through electronic morphing) any person . . . to create a misleading or untruthful presentation." SINGAPORE CODE OF ADVERTISING PRACTICE, c. 3, §§ 13.1, 13.3 (3d ed. Feb. 2008).

5. In this paper the terms "misappropriation of personal identity" and "right of publicity" are used interchangeably. For present purposes, they refer to legal claims in respect of unlicensed use of aspects of another's identity, such as physical appearance or voice. The approach is consistent with that in some of the case law discussed below. For example, in *Anil Kapoor v. Simply Life India*, 2023 SCC OnLine Del 6914 [25] (High Court of Delhi), the plaintiff was seeking protection for "his personality rights, publicity rights and elements associated with his persona, such as: his name; his voice; his photograph/image/likeness; his manner of speaking and dialogue delivery; his gestures; his signatures, etc." The task of delineating the conceptual justifications for protections of image rights, and the intertwining of privacy and commercial

jurisdictions—a position reflected in Lord Walker’s observations about the law of England and Wales—the tendency overall has been toward enhancing legal rights for individuals to exploit and control uses of their images.⁶ The evolution of other private law causes of action, including defamation, breach of confidence, and passing off, has gone some way toward filling this gap. Even so, as the discussion below outlines, the protections are piecemeal and incomplete.

Second, in Commonwealth jurisdictions in which a distinct tort of misappropriation of personality is recognized—this Article considers case law from Canada, South Africa, and India—the private law analysis is coming to be infused with constitutionally-mandated commitments to protections for individual dignity.⁷ We see in these jurisdictions an alignment between the decisional law and academic commentary characterizing misappropriation of an individual’s image as dignitary affront.⁸ The strands of authority are thin, but these developments appear to align with the international movement toward a greater focus on human rights in the development of domestic private law jurisprudence.⁹ A full exposition of this development is beyond the scope of this Article: For present purposes, it suffices to suggest that the protection of image rights is another frontier in which rights discourse is infusing private law.¹⁰ As is discussed below, courts in India have already deployed these ideas in cases involving deepfakes of Bollywood movie stars.¹¹ Going forward, recognition of human dignity as an organizing principle in the context of misappropriation of individuals’ images could bolster the view—one reflected in the NO FAKES bill—that protections against deepfakes should not be confined to celebrities.¹² The new intellectual property right to be created by this bill would vest not only in celebrities seeking to monetize (or preserve the ability to monetize) attributes of their personalities, but also, as one of the bill’s sponsors noted, in “everyday” individuals.¹³

concerns is insightfully discussed in JENNIFER E. ROTHMAN, *THE RIGHT OF PUBLICITY: PRIVACY REIMAGINED FOR A PUBLIC WORLD* (2018).

6. Adam Speker & Lily Walker-Parr, *Copyright, Moral Rights, and the Right to One’s Image*, in *THE LAW OF PRIVACY AND THE MEDIA* 401, 430 (Nicole A. Moreham & Adam Speker eds., 4th ed. 2024).

7. For an influential analysis of the different senses in which the law protects human dignity, see Jeremy Waldron, *How the Law Protects Dignity*, 71 *CAMBRIDGE L.J.* 200 (2012).

8. See, e.g., Jeffrey Rosen, *THE UNWANTED GAZE: THE DESTRUCTION OF PRIVACY IN AMERICA* 19 (2000).

9. See, e.g., François du Bois, *Private Law in the Age of Rights*, in *PRIVATE LAW AND HUMAN RIGHTS: BRINGING RIGHTS HOME IN SCOTLAND AND SOUTH AFRICA* 12, 13 (Elspeth Reid & Daniel Visser eds., 2013).

10. The development is unsurprising, given the close jurisprudential links between privacy and image rights. See, e.g., Jonathan Morgan, *Privacy, Confidence and Horizontal Effect*, 62 *CAMBRIDGE L.J.* 444, 445–50 (2003).

11. *Anil Kapoor v. Simply Life India*, 2023 SCC OnLine Del 6914 (High Court of Delhi); *Aishwarya Rai Bachchan v. Aishwaryaworld*, 2025 SCC OnLine Del 5943 (High Court of Delhi).

12. NO FAKES Act, *supra* note 3.

13. See Press Release, Rep. Maria Elvira Salazar, Salazar Introduces the NO FAKES Act (Sept. 12, 2024), <https://salazar.house.gov/media/press-releases/salazar-introduces-no-fakes-act> [<https://web.archive.org/web/20260201214853/https://salazar.house.gov/media/press-releases/salazar-introduces-no-fakes-act>]. The relevant part of the statement began: “From the biggest entertainers to everyday Americans, non-consensual voice and image clones can ruin careers, deceive families and friends,

Celebrities have no monopoly on the dignitary harms deepfakes can inflict (even if the commercial implications might differ), perhaps especially so in the sexualized contexts in which deepfakes are prevalently created and disseminated.¹⁴ The invocation in Commonwealth jurisdictions of dignitary principles in right of publicity cases might advance our understanding of relevant interests and harms of deepfakes, and appropriate legal responses to them.¹⁵

I. IDENTITY PROTECTIONS WITHOUT PUBLICITY RIGHTS

A range of other common law torts protect at least some attributes of personality. Surveyed here are defamation, breach of confidence, and passing off. These liability theories are principally concerned with interests in reputation, the ability to control dissemination of confidential information, and protecting commercial goodwill. Even so, they have served to provide some claimants with remedies against misappropriation and injury to their image.

A. DEFAMATION

The famous 1931 English case of *Tolley v. J. S. Fry and Sons Ltd.* offers us an insight on how far the commercialization of celebrity has developed during the past decades.¹⁶ Tolley was one of England's most famous golfers, the defendant a prominent chocolate manufacturer. Without authorization, the defendant used a caricature of the plaintiff in its advertising, depicting him with one of the defendant's chocolate bars protruding from his pocket. In the illustration, the plaintiff was accompanied by a golf caddy; in the text accompanying the illustration, the caddy likened the excellence of the defendant's chocolate to that of the plaintiff's drive. An amateur sportsman, Tolley based his defamation claim on the allegation that the defendant's depiction of him "meant . . . that the plaintiff had agreed or permitted his portrait to be exhibited for the purpose of the advertisement of the defendants' chocolate" and that he had "done so for gain and reward."¹⁷ The implication was that "he had prostituted his reputation as an

and traumatize victims." As currently drafted, there are no geographical limitations on the individuals in whom the new intellectual property rights are vested. Both Americans and foreigners would benefit from the rights.

14. See Press Release, David Chiu, City Att'y, San Francisco, City Attorney Sues Most-Visited Websites that Create Nonconsensual Deepfake Pornography (Aug. 15, 2024), <https://sfcityattorney.org/city-attorney-sues-most-visited-websites-that-create-nonconsensual-deepfake-pornography/> [https://web.archive.org/web/20260222142633/https://sfcityattorney.org/city-attorney-sues-most-visited-websites-that-create-nonconsensual-deepfake-pornography/].

15. The conceptual foundations for the right of publicity have long been debated. For a comprehensive survey of different perspectives in common and civil law jurisdiction, see HUW BEVERLEY-SMITH, ANSGAR OHLY & AGNÈS LUCAS-SCHLOETTER, *PRIVACY, PROPERTY AND PERSONALITY: CIVIL LAW PERSPECTIVES ON COMMERCIAL APPROPRIATION* (2005). For an insightful analysis in the deepfake context of the dignitary interests at stake in right of publicity claims, see Michael P. Goodyear, *Dignity and Deepfakes*, 57 ARIZ. ST. L.J. 931, 939–57 (2025).

16. [1931] AC 333 (HL).

17. *Id.* at 337.

amateur golf player for advertising purposes,” and that he had “been guilty of conduct unworthy of his status as an amateur golfer.”¹⁸ Tolley led evidence that the belief that he had exploited his image commercially might cause him to be called upon to resign his membership of any reputable club. Overturning a divided Court of Appeal,¹⁹ the House of Lords held the advertisement to be defamatory.

It is not that celebrity endorsements were unknown at this time. Celebrities have featured in English advertising since at least the 1880s, when Lillie Langtry became the face of the Pears soap brand.²⁰ Given the current prevalence, even ubiquity, of celebrity endorsements, including by prominent sportspeople, we might think that *Tolley v. Fry* is an antiquarian artifact of a simpler, less commercialized past—even if, at the time, the potential for sullyng the plaintiff’s image by associating him with a commercial product provided the basis for establishing the defamatory meaning. But the continued relevance of the decision, at least in some contexts, is suggested by a 1995 decision of the High Court of Singapore involving a prominent Member of the Singaporean Parliament, whose photograph was used without authorization in advertising for a restaurant.²¹ The plaintiff was also an advocate and solicitor. Here, the defamatory meaning conveyed by the photograph was that the plaintiff had consented to the use of his image for personal gain or to sponsor a private restaurant “and that he had done so by taking advantage of his position as a Member of Parliament and also for the benefit of promoting himself as an advocate and solicitor.”²² In the court’s view, the defamatory sting was worse than in *Tolley v. Fry*, “as the tone and standards of any holder of high public office and those of an advocate and solicitor required a careful, proportionate and purposeful expression in the law of defamation.”²³ Reflecting expectations as to fastidiousness required of Singaporean politicians, the judge observed that the imperative of protecting an individual’s good name applied “a fortiori” in the case of a holder of public office.²⁴

The defamation tort has also been successfully applied in cases involving the unauthorized use of an individual’s image in sexualized contexts. For example, a successful Singaporean fashion model was found to have been defamed when an escort agency used her photograph in Yellow Pages advertising.²⁵ And a prominent Australian rugby league player succeeded in defamation proceedings against an Australian

18. *Id.* at 133.

19. *Tolley v. J S Fry and Sons Ltd.* [1930] 1 KB 467 CA.

20. Joey Sanders, *Pens and Soap: Comparing British Advertising from the Victorian Era Through Historiographic and Female Lenses*, 9 GEN.: BROCK UNIV. UNDERGRADUATE J. HIST. 80, 85–6 (2024).

21. *Chiam See Tong v. Xin Zhang Jiang Rest. Pte Ltd.* [1995] 3 SLR 196 (Sing.). The advertisement appeared in the *New Paper*, at the time Singapore’s second-highest circulating newspaper. The Chinese and English language versions of the handbills differed. The former explicitly referenced the charitable event, but the latter did not. The case focused on the meaning conveyed by the English-language version.

22. *Id.* at 199.

23. *Id.*

24. *Id.*

25. *Hanis Saini Hussey v. Integrated Info. Pte Ltd.* [1998] SGHC 219 (Sing.). The plaintiff’s original claim was against the publisher of the advertisement. It joined the operator of the escort agency to the proceedings. After the publisher settled, it sought indemnification from the agency.

magazine that had published a photograph of him in a dressing room shower in which his genitals could be seen. Accompanying the photograph was text “of a suggestive nature, emphasizing a display of masculine nudity.”²⁶ Here, the defamatory sting was that the plaintiff had deliberately permitted such a photograph to be published. In addition, the publication would cause members of the public to think that he was unfit to continue with the promotional work with young people with which he had been engaged.²⁷

Protections afforded by defamation can sometimes go further than torts protections for commercial interests in celebrity, as a recent South African case illustrates.²⁸ A twelve-year old girl was photographed on a surf beach by a freelance photographer who then sold the photograph to the defendant publisher. The publisher featured the photograph on the cover of a surfing magazine, accompanied by the words “filth,” “all-natural Eastern Cape honey,” and “100% pure filth photos inside.”²⁹ As glossaries of surfing slang explain,³⁰ the word “filth” can bear positive connotations in “surf lingo.”³¹ The South African court was not, however, convinced as to the defendant’s evidence on the point, and upheld the defamation claim.³² As is discussed below, the court indicated it might also have found for the plaintiff based on the misappropriation of the plaintiff’s image.³³

At the same time, there may be doctrinal limitations to the capacity of the defamation tort to vindicate image rights, even in sexualized depictions. A well-known decision of the House of Lords, *Charleston v. News Group Newspapers Ltd.*³⁴ was a

26. *Australian Consol Press Ltd. v. Ettingshausen* [1993] NSWCA 10, 2 (Austl.). The case went to the Supreme Court of New South Wales Court of Appeal on the question of whether damages were excessive.

27. *Id.* Referring to *Haelan Labs., Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866, 868 (2d Cir. 1953), Kirby P. (the president of the appellate bench) observed that the defamation tort here was providing relief for harms that would be compensable under U.S. state law protections for misappropriation of personality. But, in his view, the absence in New South Wales common law of a tort directed at misappropriation of personality should mean that damages in successful defamation claims should be kept in check, and limited to compensating for the harm to the plaintiff’s reputation. He observed: “Other notions, which arguably should or might in other places, or from a general sense of fairness ought to give rise to an entitlement to damages, must be ignored. They are irrelevant to our law.” *Id.* at 10.

28. *Wells v. Atoll Media (Pty) Ltd.* 2010 (4) All SA 548 (WCC) at ¶ 51 (S. Afr.).

29. There was evidence that the photograph had been used as a pin-up photograph at an all-boys High School, and the girl herself had received social media postings describing her as a “slut” and a “little porno star.” *Id.* at para. 5, 9.

30. *How to Speak the Surf Lingo?*, SURF & SUN (Aug. 16, 2022), <https://www.surfandsun.com.au/blog/2022/how-to-speak-the-surf-lingo.php> [<https://web.archive.org/web/20260213194641/https://www.surfandsun.com.au/blog/2022/how-to-speak-the-surf-lingo.php>].

31. *Wells*, (4) All SA 548 (WCC) at para. 10.

32. It should not be thought, however, that defamation can always achieve protections for the image of non-celebrities—the “everyday” individuals whose interests the sponsors of the NO FAKES Bill purport to be solicitous. The court’s analysis suggests that, with a little more care by the defendant—either in its choice of terms that accompanied the photograph, or in its preparation of evidence about the likely understanding of “filth” to readers of surfing magazine—it is possible that the defamatory claim would not be made out.

33. See *infra* Part II.

34. *Charleston v. News Grp. Newspapers Ltd.* [1995] 2 AC 65 (appeal taken from Eng.).

precursor to current controversies involving sexualized deepfakes of famous individuals. The two plaintiffs were leading actors in an astonishingly successful television soap opera, *Neighbours*. An English tabloid published an article featuring the actors' faces superimposed onto near-naked bodies, apparently engaging in, as Lord Bridge of Harwich described it, "an act of intercourse or sodomy." One headline read: "Porn Shocker for Neighbours Stars."³⁵ None of this was done with the consent of the plaintiffs. Even so, the defamation claim failed. An analogue version of clickbait, the text of the newspaper article clarified that plaintiffs' faces had been superimposed on the bodies of "real porn models" by the makers of a pornographic computer game.³⁶ As described by Lord Bridge, the article combined eye-catching prurience with "self-righteous indignation" directed at the makers of the game,³⁷ which contrasted "oddly with the prominence given to the main photograph."³⁸ Nonetheless, the House of Lords held that a reasonable reader must be assumed to have read the whole article, including the less prominent section that explained the provenance of the images, thereby removing the defamatory sting.³⁹

The orthodox, and largely uncontroversial, position that defamation claims do not survive the death of the plaintiff is a further constraint on the defamation tort as a vehicle for protecting image rights.⁴⁰ The point arose in the image rights context in a 2023 decision of the High Court of Delhi concerning a famous Bollywood actor who had died under circumstances then regarded as "suspicious."⁴¹ His father sought to enjoin the use of his son's name, caricature, lifestyle or likeness in forthcoming films and other ventures, alleging that "gross . . . damage" would be done to the actor's "vast reputation/goodwill amongst the public across the world and the Hindi film industry" by associating with him with an "immoral" and "promiscuous" feature film.⁴² The claim was summarily dismissed as misconceived, partly on the basis that the defamation tort does not survive the death of the plaintiff.⁴³ In contrast, and in line with U.S.

35. *Id.* at 69.

36. *Id.*

37. *Id.*

38. *Id.* The role of the bane and antidote principle in Anglo defamation law is broadly analogous to the effect of disclaimers where liability is based on trademark or unfair competition principles. *See id.* at 313, 316–17; HOWARD S. HOGAN & STEPHEN W. FEINGOLD, *INTELLECTUAL PROPERTY LAW IN CYBERSPACE* 425 (G. Peter Albert, Jr. & Intell. Prop. L. Assoc. 2d ed. 2011).

39. *Charleston*, 2 AC (HL) at 72.

40. In New Zealand, this question has been raised in the context of a decision of the New Zealand Supreme Court holding that a criminal appeal may be pursued after the death of the convicted person. *Ellis v. The King* [2022] NZSC 114. In its analysis, the apex New Zealand court referred to the law of the indigenous Māori (tikanga), according to which a person's reputation endures after death. While the current New Zealand law does not allow a civil claim for defamation to be brought after the death of the plaintiff, scholars have questioned whether this position aligns with tikanga principles. *See, e.g.*, Pete McKenzie, *The Afterlife of Peter Ellis*, NORTH & SOUTH (Mar. 16, 2021), <https://northandsouth.co.nz/2021/07/27/peter-ellis-tikanga/> [<https://web.archive.org/web/20260213194147/https://northandsouth.co.nz/2021/07/27/peter-ellis-tikanga/>].

41. *Krishna Kishore Singh v. Sarla A. Saraogi*, 2023 SCC OnLine Del 3997 (High Court of Delhi).

42. *Id.* at 18.

43. *Id.* at 35. A further ground for dismissing the case was that it was speculative. No clear information was before the court about the content of any proposed depictions of the actor's death.

protections for post-mortem image rights under some states' laws,⁴⁴ the NO FAKES bill would protect rights in digital replicas after death.⁴⁵

B. BREACH OF CONFIDENCE AND TORTS PROTECTIONS FOR PRIVACY

Lord Walker's observation that English law does not protect rights of publicity was made in the context of a claim for breach of confidence involving one of the most storied celebrity weddings in recent decades: between actors Michael Douglas and Catherine Zeta-Jones.⁴⁶ The couple had sold the exclusive right to publish photographs of their wedding to *OK!* magazine, which paid them 1 million pounds for the exclusive rights.⁴⁷ Rival publication *Hello!* had unsuccessfully bid for the rights, offering the same amount. The couple agreed to engage a photographer themselves and supply *OK!* with pictures, and went to some lengths to comply with their obligation to use their best efforts to ensure that no other photographs would be taken. Despite this, a photographer infiltrated the wedding, who then sold the photographs he had taken to *Hello!*, which the latter published the following day.⁴⁸ A majority of the House of Lords confirmed that *OK!* also had a claim for breach of confidence against *Hello!*⁴⁹

The distinction between legal protections for image rights and the breach of confidence claim is made clear in the following statement by Lord Hoffman:

There is in my opinion no question of creating an "image right" or any other unorthodox form of intellectual property. The information in this case was capable of being protected, not because it concerned the Douglases' image any more than because it concerned their private life, but simply because it was information of commercial value over which the Douglases had sufficient control to enable them to impose an obligation of confidence.⁵⁰

Even so, legal protections for confidential information protected "how the wedding looked—the photographic images which bring the event to life and make the viewer a virtual spectator at it."⁵¹ This, in turn, vindicated the actors' concerns with controlling how they presented themselves to their public. While the specific legal claim was for breach of confidence, the following passage from the judgment explains some of the other interests at stake:

Mr and Mrs Douglas sought to keep this information private primarily to protect their "image". Film directors take into account the public perception of actors and actresses

44. For a recent discussion of post-mortem image rights in the context of privacy principles, see Anita L. Allen & Jennifer E. Rothman, *Postmortem Privacy*, 123 MICH. L. REV. 285, 292–311 (2024). See CAL. CIV. CODE § 3344.1 (as amended by 2024 Cal. Stat. ch. 258 (A.B. 1836)) (West 2025).

45. NO FAKES Act, *supra* note 3.

46. *OBG Ltd. v. Allan* [2008] 1 AC 1.

47. *Id.* at 108.

48. In other proceedings, the Douglases recovered modest damages against *Hello!* See *Douglas v. Hello! Ltd.* [2007] UKHL 21.

49. For the related litigation initiated by Douglas and Zeta-Jones, see *Douglas v. Hello! Ltd.* (No 3) [2003] 3 All ER 996.

50. *OBG Ltd.*, 1 AC at [124].

51. *Id.* at [326].

when casting for films. Miss Zeta-Jones said the “hard reality of the film industry is that preserving my image, particularly as a woman, is vital to my career”. Mr Douglas said his name and likeness are valuable assets to him. It is important for him, for professional reasons, to protect his name and likeness and prevent unauthorised uses of either.⁵²

As is true of defamation, however, the protections offered by a breach of confidence action do not entirely align with a right of publicity claim. The “image” of the Douglases was protected in a specific context: how they appeared at their wedding. No enforceable claim to confidence attaches merely to the appearance of world-famous actors. In this respect, *OBG Ltd. v. Allan* is thus another instance of gap-filling, in the absence of any direct protections for an individual’s image.

The evolution of legal claims for breaches of confidence catalyzed the development of new tort protections for privacy rights.⁵³ In the leading decision from England and Wales, a newspaper was held to have invaded the privacy rights of celebrated fashion model Naomi Campbell when it disclosed that she was seeking treatment for drug use and published photographs of her outside the venue for a Narcotics Anonymous meeting.⁵⁴ The House of Lords held the newspaper article and the publication of the photographs to be unjustifiable intrusions into her private life.⁵⁵

There are, however, significant limits to the capacity of privacy torts to protect an individual’s image. The *Campbell* decision provides no support for the idea that disclosure of any image of the plaintiff may be prohibited: The newspaper was liable for breach of confidence only because the photograph added to the unjustifiable disclosure of private information about medical treatment.⁵⁶ The use of the image went beyond what could be justified by the news of Ms. Campbell seeking treatment for drug addiction.⁵⁷ In addition, rights to freedom of expression need to be balanced against interests in privacy, with some courts undertaking a proportionality analysis to balance the different public and private interests at stake.⁵⁸ And courts have reasoned that the disclosure must be accompanied by a reasonable expectation of privacy and, according to some lines of Commonwealth authority on privacy protections, the disclosure needs

52. *Id.* at [252].

53. In the United Kingdom, the Human Rights Act 1998 (U.K.) added to the impetus for the development of a new tort, as has the European Convention on Human Rights. *See Campbell v. MGN Ltd.* [2004] 2 AC 457, [11], [16], where Lord Nicholls of Birkenhead discussed the relationship between the evolution of the common law and jurisprudence under the Convention.

54. *Campbell*, 2 AC at [6]. The original newspaper story accompanying the photographs adopted a relatively supportive tone, directed at Ms. Campbell’s determination to remedy her drug abuse. The newspaper published additional photographs and a much more critical story following Ms Campbell’s filing of proceedings against it. *Id.* At 8.

55. Campbell had conceded that the newspaper was entitled to disclose that she was seeking treatment for drug dependency. *Campbell*, 2 AC at [129].

56. Relying on a first instance New Zealand decision, Lord Hope noted in *Campbell* that “[t]he taking of photographs in a public street must, as Randerson J said in *Hosking v. Runting* [2003] 3 NZLR 385, 415, [138], be taken to be one of the ordinary incidents of living in a free community.” *Campbell*, 2 AC at [122].

57. This issue arose because the plaintiff had earlier publicly denied that she had resisted the prevalence of illegal drug-taking in the fashion industry. *Campbell*, 2 AC at [80].

58. *See Nicole A. Moreham, Privacy, Freedom of Expression and Legitimate Audience Interest*, 139 L.Q. REV. 412, 426-434 (2023).

to be highly offensive to a reasonable person in the position of the plaintiff.⁵⁹ As with defamation, the complex privacy law jurisprudence that has emerged in the Commonwealth jurisdictions will provide some protections for an individual's image in some, but certainly not all, circumstances.⁶⁰ And, again, to the extent that these developing common law principles can serve to protect an individual's image at all, the protections are only incidental to the vindication of privacy interests.⁶¹

C. PASSING OFF

An important milestone in the development of the capacity of the tort of passing off to protect image rights was the 1960 decision of the Full Court of the Supreme Court of New South Wales in *Radio Corp Pty Ltd. v. Henderson*.⁶² The case concerned two well-known ballroom dancers whose image was reproduced without authorization on the sleeve of a record of ballroom dancing music. The plaintiffs succeeded on the basis that this would cause buyers of the record to believe that they "recommended the record as providing good music for ballroom dancing."⁶³ Referencing *Tolley v. Fry*, the court in *Henderson* noted the changing social and economic context since that decision:

The point which seems to emerge with clarity is that one's conception of the status of an amateur sportsman 30 years ago is quite different to what is accepted today. The development in the advertising of products...has opened up a new field of gainful employment for many persons who...have found themselves in a position to earn

59. *Hosking v. Runting* [2005] 1 NZLR 1 at [42] (N.Z.). As Professor Nicole Moreham has observed, a reasonable expectation of privacy is not necessarily the same thing as a reasonable desire for privacy. Knowledge of media practices might mean that in some circumstances a reasonable person might not be able to expect any (or much) protection of privacy interests. See Nicole A. Moreham, *Recognising Privacy in England and New Zealand*, 63 CAMBRIDGE L.J. 555, 557 (2004).

60. New Zealand law also recognizes a tort of intrusion on a plaintiff's seclusion. In the leading authority, the actionable intrusion involved videoing a roommate while showering. *C v. Holland* [2012] 3 NZLR 672 at [1]. See Nicole A. Moreham, *A Conceptual Framework for the New Zealand Tort of Intrusion*, 47 VICT. UNIV. WELLINGTON L.R. 283, 283–84 (2016).

61. Privacy rights receive express protection under section 36 of the Québec Civil Code also, which designates use of a person's "name, image, likeness or voice for a purpose other than the legitimate information of the public" as an invasion of privacy. S.Q. 1991, c.3. The Supreme Court of Canada held in *Aubry v. Éditions Vice-Versa Inc* [1998] 1 S.C.R. 591 that the publication of a photograph of a seventeen-year-old child taken in a public place was an invasion of her privacy under the Code. The Court reasoned (at [53]):

Since the right to one's image is included in the right to respect for one's private life, it is axiomatic that every person possesses a protected right to his or her image. This right arises when the subject is recognizable. There is, thus, an infringement of the person's right to his or her image, and therefore fault, as soon as the image is published without consent and enables the person to be identified.

The Court observed that it had to "be decided whether the public's right to information can justify dissemination of a photograph taken without authorization." *Id.* at [61]. The Supreme Court of Canada revisited the *Aubry* decision in *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 and elaborated further on the nature of the balancing test required. See *Id.* at [153]–[157].

62. *Radio Corp Pty Ltd. v. Henderson* [1960] NSW 279, 292 (Austl.).

63. *Id.* at 281.

substantial sums of money by lending their recommendation or sponsorship to an almost infinite variety of commodities.⁶⁴

As with sporting celebrities, so with professional dancers: The activity of the plaintiffs had “resulted in their recommendation becoming a saleable commodity” that could be protected by the passing off tort.⁶⁵

Australian courts continued the development of the passing off tort to protect a celebrity’s image, most predominantly in cases involving the *Crocodile Dundee* franchise,⁶⁶ where passing off was deployed to prevent businesses suggesting that they were associated with the films. They had done so by deploying actors and imagery that imitated or invoked the actor who played the films’ eponymous character.⁶⁷

The capacity of passing off to protect image rights was further entrenched by a 2015 decision of the Court of Appeal of England and Wales⁶⁸ in a case involving unlicensed reproduction of a photograph of popstar Rihanna on t-shirts sold by a chain of clothing stores.⁶⁹ Dutifully reciting the conventional UK position, as set out in *OGB v. Allan*, the Court nevertheless confirmed that the use of a particular image of a celebrity could still give rise to a passing off claim, on the basis that consumers could think that the celebrity had authorized its use. Here, it was relevant that Rihanna was known to be a fashion icon; she had done promotional work for the clothing chain in the past; and customers would know that her styling in the particular photograph was reminiscent of images used in the context of her latest album. Accordingly, it was *because* Rihanna had engaged in promotional activities that a claim for passing off could be made out.⁷⁰ We are now a long way from *Tolley v. Fry*. Given the incessant commercialization of celebrity status by many famous individuals, in some circumstances there may be significant overlap between passing off and the right of publicity.

64. *Radio Corp*, [1960] NSW at 292.

65. *Id.*

66. *Pacific Dunlop Ltd. v. Hogan* [1989] 23 FCR 553 (Austl.); *Hogan v. Koala Dundee Pty Ltd.* [1988] 20 FCR 314 (Austl.). On the overlap between common law remedies and Australian consumer protection laws, see *Hutchence v. South Sea Bubble Co Pty Ltd.* (1986) 64 ALR 330, 339–40 (Austl.). See also Andrew Terry, *Exploiting Celebrity: Character Merchandising and Unfair Trading*, 12 UNIV. N.S.W. L.J. 204, 212–17 (1989).

67. In one case, marsupial imagery, passing off was held to have occurred where a store used in its branding imagery of a koala dressed in a manner that invoked the eponymous character in the *Crocodile Dundee* movies. *Hogan v. Koala Dundee Pty Ltd.* [1988] 20 FCR 314 (Austl.).

68. An earlier first instance decision in the High Court of England and Wales (Chancery Division) to like effect was *Irvine v. Talksport Ltd.* [2003] EWCA (Civ) 423, [2002] 2 All ER 414 (passing off found where defendant had misrepresented that a prominent F1 racing driver was associated with a commercial radio station).

69. *Fenty v. Arcadia Group Brands (trading as Topshop)* [2015] EWCA (Civ) 3. The copyright in the photograph was owned by the photographer who then licensed it to the defendant.

70. The highest court in Malaysia, the Federal Court, has held that an individual celebrity has standing in a passing off claim of this nature, even if his celebrity status is exploited through a corporate vehicle. *Mohammad Hafiz bin Hamidun v. Kamdar Sdn Berhad* [2021] 4 MLI 878 [50]–[61] (Malay.). Citing passing off cases from other Commonwealth jurisdictions discussed in this Part, including *Irvine*, *Henderson*, and *Fenty*, the Court affirmed that in Malaysian common law the passing off tort could provide a remedy against misleading use of a celebrity’s name or likeness—in this instance in the marking of fabrics.

Apex Commonwealth courts have yet to assess in detail any limits on the ability of the passing off that might be relevant in the deepfakes context.⁷¹ Passing off remains, at least in theory, grounded in misappropriation of goodwill, which, on a conventional analysis, results from misrepresentations calculated to deceive or confuse the plaintiff's consumers. As noted above, the requirements of the passing off tort have been adapted to provide significant protections for a celebrity's image, but the tort has not sufficiently evolved to protect a celebrity's image *per se*. Issues may arise as to whether relief will be afforded where the use of a celebrity's image is accompanied by prominent disclaimers or in contexts (such as pornographic depictions) in which relatively few of those viewing the material would suppose that there was any connection between the plaintiff and the depiction at all. And, passing off's original concern with protecting business goodwill is likely to mean that the tort cannot provide any kind of remedy for "everyday" individuals lacking celebrity status.

Additional difficulties may arise from a UK Supreme Court decision holding that a passing off claim requires "customers" within the jurisdiction in which protection is sought.⁷² On this view, one not shared by all Commonwealth jurisdictions, reputation is not enough.⁷³ It is not clear what this might mean for passing off claims by foreign celebrities. Celebrity seems to be squarely based on reputation, even if, as the Rihanna case shows, image rights are easier to protect when the plaintiff is in the business of endorsement, and had engaged in extensive promotional activity. In Rihanna's case, that activity had occurred in the United Kingdom. But consider the case of well-known Spanish or French movie stars who had *not* engaged in commercial activity within the jurisdiction. The UK Supreme Court's insistence on "customers" within the jurisdiction might preclude relief for passing off where an individual's fame derives from reputation alone.

In sum, in Commonwealth jurisdictions in which misappropriation of an individual's is not remedied by a separate form of tort liability, other torts—including defamation, breach of confidence, and passing off—provide some protections for misappropriation of an individual's image. But none of these causes of action, however much they have evolved, provides for direct protection of an individual's image. Individuals seeking to protect against misappropriation of their images are required to characterize their claims in line with conventional interests protected by these torts: reputation, confidences and privacy, and goodwill.

71. At the first instance level, there is some discussion of this point in a New Zealand decision, in which the judge cautioned: "Against creating any fresh monopolies in this area are freedom of expression, community access to intellectual progress and the public interest in competition." *Tot Toys Ltd. v. Mitchell* [1993] 1 NZLR 325 at 364 (N.Z.).

72. *Starbucks (HK) Ltd. v. British Sky Broadcasting Group* [2015] UKSC 31 [47].

73. See Graeme W. Austin, *The Consumer in Cross-Border Passing Off Cases*, 47 VICT. UNIV. WELLINGTON L. REV. 209, 211 (2016) (noting that the approach to territoriality in passing off cases in Australian and New Zealand case law differs from that of the UK Supreme Court).

II. MISAPPROPRIATION OF AN INDIVIDUAL'S IMAGE

Some Commonwealth jurisdictions do recognize misappropriation of personality as a distinct tort. In Canada, the common law has recognized a right of publicity from at least the early 1970s.⁷⁴ Summarizing the requirements of the tort, the Court of Appeal for British Columbia recently described the tort in terms that will be familiar to U.S. lawyers: “taking advantage of the plaintiff’s name, reputation, likeness, or some other component of their individuality or personality that a viewer would associate with the plaintiff.”⁷⁵ The earliest successful claim involved a professional water skier who had monetized his image, principally through promotion of specific photograph depicting his waterskiing skills.⁷⁶ Though the plaintiff was not widely known, the court held the defendants’ use of a sketch based on the photograph to publicize its business to be an unlicensed appropriation of personality, a tort that was independent of passing off or infringement of copyright or trademark.⁷⁷

A case involving the legendary Canadian pianist Glenn Gould provided an opportunity for the Ontario Court of Appeal to hold that commercial benefit alone is not a sufficient basis for liability, and distinguished between uses of a plaintiff’s image for “sales” and uses where the plaintiff was the “subject” of the defendant’s use.⁷⁸ Liability for appropriation of personality could arise only in the former category—where the defendant’s commercial activity is not about the plaintiff, but instead uses the plaintiff’s image to sell something else. Applying this framework, the court exonerated the defendant’s publication of a book about Gould containing photographs of the plaintiff.⁷⁹

In four Canadian provinces—British Columbia,⁸⁰ Saskatchewan,⁸¹ Manitoba,⁸² and Newfoundland and Labrador⁸³—there are also statutory torts for the invasion of privacy. In the case of Saskatchewan, Manitoba, and Newfoundland and Labrador, the provincial statutes list the unauthorized appropriation of a person’s name or likeness

74. *Krouse v. Chrysler Canada Ltd.* (1973) 1 O.R. 2d 225 (Can. Ont.). The claim in this case was ultimately unsuccessful, but the analysis provided the foundation for later cases. Useful discussions of the Canadian position include: Eric Reiter, *Personality and Patrimony: Comparative Perspectives on the Right to One’s Image*, 76 TUL. L. REV. 673, 712–715 (2002); Robert Howell, *Personality Rights: A Canadian Perspective: Some Comparisons with Australia*, 1 AUST. INTEL. PROP. J. 212 (1990).

75. *RateMDs Inc. v. Bleuer*, 2025 BCCA 329, para. 121 (Can.).

76. *Athans v. Canadian Adventure Camps Ltd.* (1977), 17 O.R. 2d 425 (Can. Ont.).

77. The plaintiff does, however, need to be recognizable. See *Joseph v. Daniels* (1986), 4 B.C.L.R. 2d 239, para. 15 (no liability for use of image of the plaintiff bodybuilder’s torso where the plaintiff could not be identified).

78. *Gould Estate v. Stoddart Publ’g Co.*, 1996 CanLII 8209 (Can. Ont.) *aff’d* (1998), 39 O.R. 3d 545 (Can. Ont.).

79. In a recent case involving a website soliciting ratings of medical practitioners, the Court of Appeal for British Columbia considered that the website was on the “subject” side of the line. *RateMDs*, 2025 BCCA 329, para. 113.

80. Privacy Act, R.S.B.C. 1996, c 373, § 1(1).

81. Privacy Act, R.S.S. 1978, c P-24, § 2.

82. Privacy Act, C.C.S.M. c P125, § 2(1).

83. Privacy Act, R.S.N.L. 1990, c P-22, § 3(1).

as an example of an invasion of privacy.⁸⁴ The British Columbia privacy statute codifies the misappropriation of personality as a separate tort, creating a statutory tort where another uses:

the name or portrait of another for the purpose of advertising or promoting the sale of, or other trading in, property or services, unless that other, or a person entitled to consent on the other's behalf, consents to the use for that purpose.⁸⁵

Because a separate common law right of publicity has existed for several decades, the distinct role of statutory protections for image rights might be difficult to discern. But in recent case law questions have been raised about the preemptive effect of the statutory protections, implying that common law publicity rights should be tethered to, and possibly constrained by, the legislation.⁸⁶ The Court of Appeal for British Columbia has also noted, however, that the privacy interests protected by the British Columbia Privacy Act have a “quasi constitutional status and must be interpreted broadly,”⁸⁷ and, in this context, the court also noted the express and implicit privacy protections in the Canadian Charter of Rights, which are “informed by its underlying values of dignity, integrity, and autonomy.”⁸⁸ At the same time, the link to the Canadian Charter necessitates taking account of the rights of others, including rights to freedom of expression and access to information.⁸⁹

The Supreme Court of Appeals of South Africa has also confirmed that appropriation of personality gives rise to a distinct tort claim. In the leading case, *Grütter v. Lombard*,⁹⁰ the court's analysis drew on the common law and Roman Dutch tradition, as well as the protection of dignity in South Africa's Constitution.⁹¹ The Court noted that in the new constitutional order, there are no sharp distinctions between privacy and preserving one's identity against unauthorized exploitation.⁹² But the Court also observed that as with any civil wrong there may be circumstances in which considerations of public policy will justify conduct intrusion on a person's personality interests. None, however, applied on the facts of the case which involved straightforward appropriation of the plaintiff's name for personal advantage. *Grütter* was referenced in *Wells v. Atoll Media*, the decision discussed above involving the picture of the minor on the cover of the surfing magazine. In the latter decision, the court said:

84. Samuel Rowe, *Privacy in European, Civil, and Common Law*, in *THE LAW OF PRIVACY AND THE MEDIA* 72, 115 (Nicole A. Moreham & Adam Speker eds., 4th ed. 2025).

85. Privacy Act, R.S.B.C. 1996, c 373 § 3(2).

86. *See* Bao v. Welltrent United Consulting Inc., 2025 BCCA 3, [33]–[34].

87. *RateMDs*, 2025 BCCA 329, para. 36.

88. *Id.* at para. 53.

89. *Id.* at para. 98.

90. 2007 (4) SA 89 (SCA).

91. S. AFR. CONST., 1996 c 2 § 10.

92. *Grütter*, 2007 (4) SA 89 (SCA) at para. 12 (quoting *Khumalo v. Holomisa*, 2002 (5) SA (CC) at para. 27 (S. Afr.)).

In the context of this case . . . the appropriation of a person's image or likeness for the commercial benefit or advantage of another may well call for legal intervention in order to protect the individual concerned.⁹³

The common law of India also recognises personality rights.⁹⁴ A recent case involved misappropriation of the image and voice of Aishwarya Rai Bachchan, an extraordinarily famous Indian movie star.⁹⁵ Her claims were against the following parties: a website representing itself as Bachchan's official website; the host and distributor of unauthorized apps that enabled the downloading of wallpapers featuring Bachchan's image; a website selling t-shirts featuring photographs of Bachchan; an e-commerce platform selling and facilitating the sale of mugs and t-shirts featuring Bachchan's image; a motivational speaker firm using the plaintiff's name and image to suggest an association with Bachchan; a chatbox enabling users to engage with a digital impersonation of Bachchan, including in sexualized contexts; operators of a YouTube channel featuring deepfake videos depicting Bachchan, including "misleading and inappropriate content"; Google LLC in its capacity of owner of YouTube; and various John Doe defendants. Some of the allegations included complaints that defendants had superimposed Bachchan's face "on someone else's body, generating images of the Plaintiff with other celebrities and creating inappropriate content" and making sexually explicit comments and remarks.⁹⁶ Finding for the plaintiff, the court enjoined⁹⁷ misappropriation of the plaintiff's name/acronym, image and likeness and "any other attributes of her persona which are exclusively identifiable with her for any commercial and personal gain" including, but not limited to, artificial intelligence, generative artificial intelligence, machine learning, deepfakes, face morphing, in any medium and format.⁹⁸

Judicial statements on the scope of the right of publicity tort in Indian cases reflect familiar concerns with the commercial value of celebrity. For instance, the court in the *Bachchan* observed:

Personality rights . . . entail the right to control and protect the exploitation of one's image, name, likeness or other attributes of the individuals' personality, in addition to the commercial gains that can be derived from same.⁹⁹

In this respect, the claim focused on the "commercial value of the picture or representation of a prominent person or performer and protects his proprietary

93. *Wells*, 2010 (4) All SA 548 (WCC) at para. 49 (S. Afr.) (noting the principle might not apply in crowd scenes).

94. A detailed survey of tort protections under the common law of India is provided in *Karan Johar v. Indian Pride Advisory Pvt. Ltd.*, 2025 SCC OnLine Bom 546 (High Court of Judicature at Bombay, Ordinary Original Civil Jurisdiction, Commercial Division).

95. *Aishwarya Rai Bachchan v. Aishwaryaworld*, 2025 SCC OnLine Del 5943 (High Court of Delhi).

96. *Id.* ¶ 33.18.

97. This was on an interim basis. The procedural posture of the case was an application by the plaintiff for the court to waive the requirement of mandated mediation.

98. *Aishwarya Rai Bachchan*, 2025 SCC OnLine Del 5943, ¶ 39.

99. *Id.* at ¶ 34.

interest in the profitability of his public reputation or persona.”¹⁰⁰ But Indian judges have also acknowledged the additional harms to the dignitary interests of the claimants, broadly in line with statements in Canadian and South African case law:

When the identity of a famous personality is used without their consent or authorization, it may not only lead to commercial detriment . . . but also impact their right to live with dignity.¹⁰¹

The intertwining of commercial and dignitary concerns are also apparent in a 2023 case involving Anil Kapoor, another renowned Indian actor.¹⁰² The case concerned misappropriation of his image in various contexts, including through the creation and dissemination of deepfakes. As in the *Bachchan* decision, the case targeted a variety of defendants who were alleged to have infringed the plaintiff’s “personality rights, publicity rights and elements associated with his persona.”¹⁰³ The plaintiff made broad claims as to his protectable interests: “his name; his voice; his photograph/image/likeness; his manner of speaking and dialogue delivery; his gestures; his signatures, etc.”¹⁰⁴ The procedural posture of the case (an application for interim relief) did not provide an opportunity for the court to examine in detail the scope of image rights under the common law of India; at the same time, the court granted the relief sought by the plaintiff and made no suggestion that the actor’s rights did not capture these aspects of his persona. The wide range activities for which relief was sought were similar to those detailed in *Bachchan*, and also included the making and dissemination of a variety of unlicensed digital replicas.¹⁰⁵

100. Karan Jorhar, 2025 SCC OnLine Bom 546, ¶ 12 (citing *DM Ent. Pvt. Ltd. v. Baby Gift House*, CS (OS) No. 893 of 2002, ¶ 14).

101. *Aishwarya Rai Bachchan*, 2025 SCC OnLine Del 5943, ¶ 35.

102. *Anil Kapoor v. Simply Life India*, 2023 SCC OnLine Del 6914 (High Court of Delhi).

103. *Id.* ¶ 25.

104. *Id.*

105. The court provided the following inclusive list of the activities complained of by the plaintiff:

Publishing and collecting fee by using his photographs that he would be attending an event, as a motivational speaker; Using morphed images of the Plaintiff and collecting monies for selling prints of his images; Creating wallpapers on mobile phones using Plaintiff’s image; Using voice, dialogues and names from his movies in his own voice, as ringtones and ring back tones; Promoting and selling merchandise such as magnets, T-shirts, cups, stickers, keychains, using his photographs with/without the word ‘Jhakaas’; Advertising and selling face masks with the Plaintiff’s pictures; Providing electronic stickers with Plaintiff’s image and collecting monies for the same; Using his name and photographs for posters; Selling suits under the Plaintiff’s name and image; Providing forged autographs and photographs of the Plaintiff; Creating images and videos of the Plaintiff in a morphed manner; Using Artificial Intelligence to produce images and videos that are extremely derogatory, not merely to the Plaintiff but to other actresses as well . . . whose faces are being morphed with the Plaintiff’s face - resultantly picturing the Plaintiff on a song or photograph with the clothes worn by these actresses; Generating images of the Plaintiff as cartoon characters using Artificial Intelligence; Providing GIF images of the Plaintiff on various social media handles; Squatting on domain names such as www.anil Kapoor.in, www.anil Kapoor.net and www.anil Kapoor.com; Creating, publishing, and disseminating fake pornographic videos of the Plaintiff along with other actresses. *Id.* ¶ 30.

Drawing on earlier case law on the right of privacy in the Supreme Court of India,¹⁰⁶ the court in *Kapoor* linked the private law tort claim to the Constitutional guarantee of “life and liberty”, from which the constitutional right to privacy is derived.¹⁰⁷ The tenor of the court’s analysis is suggested by the following passage:

The technological tools that are now freely available make it possible for any illegal and unauthorised user to use, produce or imitate any celebrity’s persona, by using any tools including Artificial Intelligence. The celebrity enjoys the right of privacy, and does not wish that his or her image, voice, likeness is portrayed in a dark or grim manner, as portrayed on the porn websites. Moreover, the Plaintiff’s image is being morphed along with other actresses in videos and images generated in a manner, which are not merely offensive or derogatory to the Plaintiff, but also to such other third party celebrities and actresses.

The Court cannot turn a blind eye to such misuse of a personality’s name and other elements of his persona. Dilution, tarnishment, blurring are all actionable torts which the Plaintiff would have to be protected against.¹⁰⁸

Moreover, the protections afforded to the plaintiff were not just for him; they were also “for the sake of his family and friends who would not like to see his image, name and other elements being misused, especially for such tarnishing and negative use.”¹⁰⁹ For present purposes, the following passage is perhaps the most significant: “The present case shows how elements of intellectual property that protect the attributes of an individual, in fact have other dimensions, including rights protected by the Constitution of India.”¹¹⁰ In line with the analysis in *Bachchan*, the court concluded: “If an injunction is not granted in the present case, it will lead to irreparable loss/harm to the Plaintiff and his family, not only financially but also with his right to live with dignity.”¹¹¹

III. CONCLUSION

Invoking the right to live with dignity in the context of personality rights reminds us that misappropriation of an individual’s image or other attributes of personality is not only an economic concern. The dignitary concerns referenced in these cases might serve to expand our understanding of the conceptual foundations for protections of personality, while also exposing some of the common ground with the civil law approaches discussed by Professor Valérie Laure Benabou in this Symposium issue.¹¹² The defamation tort, which is sometimes relied on in jurisdictions in which publicity rights are not recognized, also serves to vindicate dignitary interest, as do emerging

106. R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632.

107. *Id.* ¶¶ 9, 26.

108. *Anil Kapoor*, 2023 SCC OnLine Del 6914, ¶¶ 42–43.

109. *Id.* ¶ 45.

110. *Id.* ¶ 46.

111. *Id.* ¶ 47.

112. Valérie-Laure Benabou, *Deep Fakes and Private Rights in the Perspective of EU Law: Is it Necessary to Intervene?*, 49 COLUM. J.L. & ARTS 729 (2026).

common law rights to privacy.¹¹³ As David Louk's contribution to this Symposium underscores, countless "everyday" individuals, mostly women and girls, have been victimized by the deployment of deepfake technology.¹¹⁴ As we get better at articulating the harms that deepfakes can inflict, legal responses will inevitably be required to take account of both the economic and dignitary interests at stake.

113. For an insightful analysis of the dignitary foundations of the common law privacy torts, see Nicole A. Moreham, *Why is Privacy Important? Privacy, Dignity and Development of the New Zealand Breach of Privacy Tort* in *LAW, LIBERTY, LEGIS.* (Jeremy Finn & Stephen Todd eds., 2008).

114. David S. Louk, *Deepfakes, Real Enforcement Challenges*, 49 *Colum. J.L. & Arts* 817 (2026).