

II. Understanding Celebrity and the Value of Celebrity

Celebrity today has become all-pervasive. We are all fanboys and fangirls.¹ Celebrities rule our world – telling us what to eat,² what to wear³, what to read⁴, where to travel⁵ and if famous enough to push social change – also tell us whom to vote for.⁶ Interestingly, in the

¹Vir Sanghvi, The Taste with Vir Sanghvi: Celebrity culture has taken over the world. Here's who we can thank (blame), Hindustan Times (Dec 20, 2017) <https://www.hindustantimes.com/more-lifestyle/the-taste-with-vir-sanghvi-celebrity-culture-has-taken-over-the-world-here-s-who-we-can-thank-blame/story-8HKDVkeI03OHIGzOiFFKKO.html>

² Timothy Caulfield, IS GWYNETH PALTROW WRONG ABOUT EVERYTHING? HOW THE FAMOUS SELL US ELIXIRS OF HEALTH, BEAUTY & HAPPINESS (Beacon Press 2016) at p.7 “... *never has celebrity culture played such a dominant role in so many aspects of our lives. It has a measurable influence on individual health-care decisions, the things we do to stay healthy, how we view ourselves physically, the material goods we want to possess, and our future career aspirations. Whether we like it or not, celebrity culture has a profound impact on our world, framing how we think about important issues and even influencing how we view our place in the universe.*”

³ Corbus, Samantha, Celebrity's Fashion and Beauty Lines Influence on Consumer's Choice (2009). OTS Master's Level Projects & Papers. 66. https://digitalcommons.odu.edu/ots_masters_projects/66 (“*When new styles are worn by celebrities on television or if they are photographed for a magazine, then the general public can now view the garment. The item will then gain attention. People may want to buy the product, but they necessarily cannot afford it. The popular styles are then copied and modified by the mainstream manufacturers to make the style available to the general public. This is done through the use of less expensive fabrics and they may modify the item to sell them at a lower price*”); Anthony Evan, Ario Adibratha Gunawan, Christie Anita Pardede, Felicia Hendra Wibowo & Ricky Noviyandi, How Celebrity Endorsement Influences Consumer's Purchase Intention of Fashion Products on Instagram, 4 Mgmt. & Mktg. 16 (2020), <https://doi.org/10.21632/ibr.4.1.44-56> (“*three attributes that positively impact consumer's purchase intention; familiarity with the celebrity, trustworthiness of the celebrity; and the expertise of the celebrity in giving recommendation.*”); IFAB Media - News Bureau, Meta Studies Unveil Shifts in Beauty and Fashion Consumer Behavior in India, In Fashion Business.com (Nov. 22, 2023) https://infashionbusiness.com/home/news_details/1921/8 (“*Indian consumers largely rely on Indian creators for authentic information and reviews. The study revealed that 2 out of 3 viewers of fashion content and 7 out of 10 viewers of beauty content follow Indian influencers, which significantly influences their purchasing decisions.*”)

⁴ Emily Gould, Why Does Every Famous Woman Have a Book Club Now? The Cut <https://www.thecut.com/article/celebrity-book-club-dakota-johnson.html> (Mar. 7, 2024). (“*But does getting anointed by celebrities usually improve sales the way that the Kendall Jenner photograph did for Wilder's book? One agent I spoke to said that having a book photographed in Kaia Gerber's arms was more of an ego boost for everyone involved than anything else, though it might have galvanized efforts behind the scenes somewhat*”); Stanzin Dolkar, Celebrity Book Clubs to Follow for Your Next Read, Harper's Bazaar, (Feb. 21, 2024) (“*celebrity-led book clubs have enormous social influence. They not only help you navigate your literary journeys but also garner interest in a particular title. Plus, it's refreshing to see stars follow the attractively old-fashioned habit of reading books*”).

⁵ Holly Johnson, 17 Travel Destinations Celebrities Loved in 2022, Travel Pulse.com (Dec. 24, 2022); Express Et Al Desk, Summer 2023: Celeb-Approved Hotspots For Your Next Vacation From Italy to Greece, this is where your favourite stars vacationed this year, Indian Express <https://indianexpress.com/article/et-al-express-curated/summer-2023-celeb-approved-hotspots-for-your-next-vacation-8925186/> (Last visited April 1, 2024)

⁶Anna Pivovarchuk, Celebrity culture: Famous for being famous?, Daily Hunt (June 7,2017) <https://m.dailyhunt.in/news/india/english/the+indian+economist-epaper-indecono/celebrity+culture+famous+for+being+famous-newsid-68616272>, Julie Bosman, The Oprah Factor and Obama, The Caucus (Sep 10, 2007) <https://thecaucus.blogs.nytimes.com/2007/09/10/the-oprah-factor-and-obama/>, Craig Garthwaite and Timothy Moore, The Oprah Effect: Celebrity endorsement of political candidates can make a difference at the polls, Kellogg Insight (April 2, 2012) https://insight.kellogg.northwestern.edu/article/the_oprah_effect, Kenneth T Walsh, Celebrities Campaign Against Donald Trump, US News (Sep 22, 2016) <https://www.usnews.com/news/articles/2016-09-22/celebrities-campaign-against-donald-trump>, Pragya Kaushika, Kangana Ranaut to Rahul Dravid: BJP's wishlist of celebrities it wants on board for 2019, The Print (Sep 15, 2018) <https://theprint.in/politics/kangana-ranaut-to-rahul-dravid-bjps-wishlist-of-celebrities-it-wants-on-board-for-2019/118119/>, Manish Anand, BJP to field celebrities like Akshay Kumar, Mohanlal for 2019 Lok Sabha elections?, The Indian Express (Sep 16,

wake of the unfortunate capture and consequent return of Indian Air Force Wing Commander Abhinandan Varthaman by Pakistani forces, several *fake accounts* on social media websites like Facebook and Instagram started doing the rounds.⁷ Furthermore, it came to be, not surprisingly, that after his return, several leaders started using the name and image of Wing Cmdr Varthaman on their election-campaign posters on social media, seemingly denoting his affiliation to their agenda - so much so that the Election Commission (EC) of India had to issue a notice directing political parties to refrain from using images of the armed forces in their campaign posters and other advertising during the Lok Sabha Elections, 2019.⁸



Source – Tweet of @IAF_MCC, Twitter, Now X, (March 6, 2019)
https://twitter.com/IAF_MCC/status/1103203607594369024/photo/1

2018) <http://www.newindianexpress.com/thesundaystandard/2018/sep/16/bjp-to-field-celebrities-like-akshay-kumar-mohanlal-for-2019-lok-sabha-elections-1872437.html>; Vote Against the BJP and Its Allies, Say Over 700 Theatre Artists, The Wire (April 6, 2019) <https://thewire.in/the-arts/theatre-artists-statement-against-bjp-elections>; India needs a ‘majboot sarkar’: Over 900 artists urge citizens to vote for BJP, Scroll.in (April 11, 2019) <https://scroll.in/latest/919673/india-needs-a-majboot-sarkar-over-900-artists-urge-citizens-to-vote-for-bjp>; Interestingly, after the PM Narendra Modi asked a few film industry “A-listers” to creatively encourage people to vote, Superstar Shah Rukh Khan also made a rap-song video. See Scroll Staff, Watch: Now, Shah Rukh Khan is rapping to urge people to vote in the Lok Sabha elections, Scroll.in (April 23, 2019) <https://scroll.in/video/920946/watch-now-shah-rukh-khan-is-rapping-to-urge-people-to-vote-in-the-lok-sabha-elections>. The same has continued more recently in the lead upto the 2024 Elections, with now a greater threat through deepfakes of popular entertainers being made to suggest a particular political parties’ Endorsement. Read: India Today, Aamir Khan, Ranveer Singh deepfake AI video used by political party Congress, BJP calls it cyber crime, (Apr. 18, 2024), <https://www.indiatoday.in/movies/celebrities/story/aamir-khan-ranveer-singh-deepfake-ai-video-political-party-congress-bjp-cyber-crime-2528639-2024-04-18>.

⁷The Indian Air Force (@IAF_MCC), Twitter, (March 6, 2019, 12:00AM) https://twitter.com/IAF_MCC/status/1103203607594369024/photo/1 [warning the public against following the listed fake accounts. screenshots provided]

⁸ Zeba Siddiqui, EC asks political parties not to use armed forces images for campaigns, Live Mint (March 10, 2019) <https://www.livemint.com/elections/lok-sabha-elections/ec-asks-political-parties-not-to-use-armed-forces-images-for-campaigns-1552215001282.html>; Election Commission Directs Facebook To Remove Posters With Abhinandan's Photos, Huffington Post (March 13, 2019) https://www.huffingtonpost.in/entry/election-commission-directs-facebook-to-remove-posters-with-abhinandans-photos_in_5c889a2ee4b038892f48903e



Source: Remove Abhinandan Varthaman's Photo Shared by BJP MLA, EC Directs Facebook, India Today (Mar 13, 2019) <https://www.indiatoday.in/elections/lok-sabha-2019/story/remove-abhinandan-varthaman-s-photo-shared-by-bjp-mla-op-sharma-ec-directs-facebook-1476733-2019-03-13>.

While the Election Commission observed that “armed forces are apolitical and neutral stakeholders in a modern democracy”⁹, Wing Cmdr Varthaman did manage to secure for himself, what we perceive to be, a high degree of legitimate “celebrity value”, when an old video featuring him on a TV show, was dug up from the deep abyss of the world wide web, and became “viral” again.¹⁰

Thus, it won’t be wrong to believe that what Joseph Epstein said about American culture in 2011, [below], is equally true for India, more so in recent times.

*“Celebrity at this moment in America is epidemic, and it's spreading fast, sometimes seeming as if nearly everyone has got it. Television provides celebrity dance contests, celebrities take part in reality shows, perfumes carry the names not merely of designers but of actors and singers. Without celebrities, whole sections of the New York Times and the Washington Post would have to close down. So pervasive has celebrity become in contemporary American life that one now begins to hear a good deal about a phenomenon known as the Culture of Celebrity.”*¹¹

This “all-pervasiveness” of celebrity however, presents with itself a strange dichotomy – that of its continued, often *frenzied* consumption¹² at some times, coupled with its quick dismissal

⁹ *Ibid.*

¹⁰ Watch when Wing Commander Abhinandan appeared in a popular TV show, News Mobile (March 2, 2019) <http://newsmobile.in/articles/2019/03/02/watch-when-wing-commander-abhinandan-appeared-in-a-popular-tv-show/>

¹¹ Joseph Epstein, *Celebrity Culture Is Pervasive*, CELEBRITY CULTURE (ed. Roman Espejo, 2011) <https://cmst130section6.files.wordpress.com/2013/11/celebritycultureispervasive.pdf>

¹² Note for example, the assassination of ex-Beatle John Lennon by a fan, the paparazzi frenzy that led to the car crash resulting in death of Princess Diana and her then partner, Dodi. For an academic analysis of the John Lennon assassination and celebrity culture, refer Anthony Elliot, ‘Celebrity and Political Psychology: Remembering Lennon’, 19(4) Political Psychology 833-852 (1998).

as trivial, ephemeral or even inconsequential at others.¹³ The launch thus of celebrity studies journals¹⁴, or even of published studies¹⁵ by celebrity culture and media studies scholars, has been met with scorn, surprise and in some cases, derision.¹⁶

Thus, the society's response to the phenomenon of celebrity has mainly remained ambivalent.¹⁷

Celebrity culture has gradually crept into and grown in Indian society. From local celebrities from the movies features on the Page three in national dailies to sportspersons and political leaders splashed and spoken of, often in sensationalist manner, in every form of media; the rise of “personality” and “fame” has come to be seen as a virtue – and is reckoned with as a force, often also distinct from merit, or achievement or even personal character – thereby transforming the way urban society in India functions.¹⁸

More recently in the Indian context, the Associate Editor of the national daily, *The Pioneer* opined thus:

“Days before the (her) wedding, Priyanka (Chopra, now Chopra-Jonas) herself unveiled a campaign called #SocialForGood, advocating the use of social media for a transformative impact on society, helming a news positive revolution so to speak. But truth be told, that turned out to be kind of a CSR aside for sustaining the wedding franchise that our stars are investing in for personal brand-building but which in the end is leading to a pernicious Bollywoodisation of the entire culturescape. Much to the detriment of real innovators. This is not just setting standards of an aspirational lifestyle that's unattainable and impossible in most cases but one where celebrities, pretending to be one of us by feeding everyday details

¹³ Dan Brokington and Spencer Henson, ‘Signifying the public: Celebrity advocacy and post-democratic politics’ 18(4) *International Journal of Cultural Studies* 431–448 (2015) (“*celebrity advocacy is not as popular as its populist appeal suggests*”); Murray Milner Jr., ‘Is Celebrity a New Kind of Status System?’ 47(5) *Society* 379–387 (2010) (“*when opportunities arise to be in the presence of royalty, presidents, popes, and celebrities, it is experienced as a special and memorable experience and people engage in worship-like behaviors in which they do not normally engage. At the same time, to the degree that these encounters require explicit exchanges — such as buying tickets—then people are often ambivalent: delighted to come into contact with such noteworthy individuals and yet cynical or resentful about the terms of the exchange*”)

¹⁴ Su Holmes & Sean Redmond ‘A journal in Celebrity Studies’, 1(1) *Celebrity Studies* 1-10 (2010) (“*We understood that the very notion of a scholarly celebrity journal and of academics studying the impact of celebrity culture on everyday life was touching a raw nerve at the symbolic centre of celebrity production*”)

¹⁵ *Conclusion: Celebrity and Public Culture, in* Graeme Turner, *UNDERSTANDING CELEBRITY* (SAGE Publications, 2014, ebook edition, at p. 2 of 10) (“*One of the inevitable consequences of undertaking academic work on celebrity is being asked repeatedly – by journalists, by one's colleagues, sometimes even by taxi-drivers – why you would do such a thing. Celebrity, notwithstanding its exorbitant presence within our public culture, is widely dismissed as fundamentally trivial, ephemeral, or inconsequential*”)

¹⁶ Note for instance, the account by Timothy Caulfield (Professor in the Faculty of Law and the School of Public Health at the University of Alberta) (“*Celebrity culture is often blamed for dumbing down our social discourse, but less has been said about how it is a source of misinformation. Indeed, celebrities have emerged as one of the most significant and influential sources of pseudoscientific blather. It fills our cultural landscape with notions ranging from those that are patently absurd and widely mocked to those that gain substantial social traction and market appeal. The popularity of juicing, cleanses, detox diets, weird exercise routines, and a boatload of beauty and anti-aging products and practices can be linked directly to celebrity endorsements.*”) Timothy Caulfield, *The Celebrity Illusion: Why does America invest so much in the idea of fame?* *The Chronicle of Higher Education* (April 13, 2015) <https://www.chronicle.com/article/The-Celebrity-Illusion/229197>

¹⁷ Patricia Loughlan, Barbara McDonald, Robert Van Krieken, *CELEBRITY AND THE LAW* xiii (The Federation Press, New South Wales, 2010)

¹⁸ Himani Dalmia, *The making of a Celebrity*, *Times of India* (Dec 25, 2008) <https://timesofindia.indiatimes.com/subverse/The-making-of-a-celebrity/articleshow/3887216.cms>

*of their lives, have turned online media into a giant performance space and are fomenting elitism by legitimising their club rules as the only benchmark of social engagement”*¹⁹

Thus being a “celebrity” today has become a distinct vocation²⁰ – even more in the new era of the *instant celebrity*²¹ on social media apps, where due to the nature of sharing as a tool for communication, one can “go viral” within minutes – take the case of the lady offering tea to her viewers “Hello Friends, Chai pi lo” (Drink your tea), having become a social media sensation overnight;²² or that of the Mathematics professor dancing to old Govinda songs at a family wedding²³, making him so famous, that it prompted follow-up dance videos from him!²⁴ This consumption of commodified celebrity, has been most succinctly explained by Patricia Loughlan thus: “*Celebrity is a serious business. It has enormous impact; generating spectacular incomes in both production and consumption...celebrities are the object of their audiences’ hopes, fears, desires and obsessions...*”²⁵

In this celebrity culture, the public chooses to emulate and follow celebrities who, then become carriers of values – they begin to encode these values and their celebrity personality is understood then as a semiotic sign²⁶. What they do in then in their public and private spheres both, begins to define the values the majoritarian public chooses to see encoded in them – they thus then are careful of what they wear, what they say, who they are caught with, and most importantly, the brands and products they endorse.²⁷ As early as in 1985, Richard Schickel described celebrities as the “chief agents of moral change in the United States” in his work “Intimate Strangers: The Culture of Celebrity”²⁸.

Of equal relevance and noteworthiness, is the fact that the celebrity personae, are essential and expressive *economic* resources – they enhance the commercial values of commodities they are associated with, thus lending what has been described as the *economic associative*

¹⁹Rinku Ghosh, Celebrity and mistruths, The Pioneer (Dec 1, 2018) <https://www.dailypioneer.com/2018/columnists/celebrity-and-mistruths.html>.

²⁰Epstein, *Supra* note 11.

²¹Michael Mullins, ‘New Fame in a New Ballgame: Right of Publicity in the era of Instant Celebrity’, 45 Indiana Law Review 869, 871 (2012). “*In the past decade, the Internet-representing the latest development in an exponential change in mass media heralded by the growth of cable television and specialized, niche marketing-has very nearly brought to manifest reality Andy Warhol’s putative prediction that “[i]n the future, everyone will be world-famous for fifteen minutes*”

²²WATCH: ‘Hello friends, Chai Pi Lo!’ This woman is now an Internet sensation, Netizens are wondering why, Trends Desk – The Indian Express (June 6, 2018) <https://indianexpress.com/article/trending/viral-videos-trending/watch-chai-pi-lo-video-viral-instagram-somvati-mahawar-5206915/>

²³Madhya Pradesh professor dances to Govinda’s tunes; video goes viral, Mumbai Mirror (June 2, 2018) <https://mumbaimirror.indiatimes.com/news/india/madhya-pradesh-professors-dances-to-govindas-tunes-video-goes-viral/articleshow/64426782.cms>

²⁴Dancing Uncle is back with fabulous performance on a Mithun Chakraborty song, The Indian Express (August 27, 2018) <https://indianexpress.com/article/trending/trending-in-india/dancing-uncle-is-back-with-his-second-video-as-he-performs-to-a-mithoon-number-5325497/>, Remember the Dancing Uncle? He’s Back With Mithun Chakraborty’s Iconic ‘Julie Julie’, News 18 (August 28, 2018) <https://www.news18.com/news/buzz/remember-the-dancing-uncle-hes-back-with-mithun-chakrabortys-iconic-julie-julie-1858737.html>

²⁵ Loughlan et al, *Supra* note 17 at p.1.

²⁶David Tan, THE COMMERCIAL APPROPRIATION OF FAME (Cambridge Intellectual Property and Information Law) (Cambridge University Press, Kindle Edition, 2017). (ebook) (p. 12 of 312)

²⁷ David Tan, ‘Beyond Trademark Law: What the Right of Publicity Can Learn From Cultural Studies’ (2008) 25 Cardozo Arts & Entertainment Law Journal 913

²⁸ Richard Schickel, INTIMATE STRANGERS: THE CULTURE OF CELEBRITY 29 (1985) in Michael Maddow, *Private Ownership of Public Image: Popular Culture and Publicity Rights*, 81 Cal. L. Rev. 125 (1993)

value of a celebrity persona²⁹ - i.e. “*the perceived ability to confer value on that which might be associated with the celebrity*”.³⁰

This chapter shall seek to discuss what or who a celebrity is, looking at definition attempts from cultural studies, media and branding publications, and in legal theory; discussing the manner of creation and production of the “celebrity” as a social phenomenon and how the celebrity personality is commodified. The next part of the chapter shall then seek to explain what attributes of this persona have the *economic associative value* that is to be legally protected. Furthermore, this chapter shall attempt to draw a distinction between the *celebrity* and the *non-celebrity individual* to later, in the course of this dissertation work, make the case for protection of both celebrity and all other individuals alike, under the *right of publicity*.

A. Defining Celebrity: Attempts at a comprehensive understanding of what comprises “celebrity”

“Wood burns because it has the proper stuff in it; and a man becomes famous because he has the proper stuff in him.”

- Johann Wolfgang von Goethe

A.1 Insights from *Culture Studies* and *Persona Studies*: What is *celebrity personality*?

It is now common knowledge that modern-day celebrities aren’t just tools of generating high value in businesses, having become modes of both production and consumption; but also as denoters of political views and ideologies and signs of everyday public life.³¹ It has been argued however, that this stature which is attributed to the celebrity today, whence they seemingly enjoy an unprecedented disproportionate interest from the consuming public, is increasingly less due to personal achievements or positions, but more due to the very fact that they enjoy public attention, having no or little else to boast of.³² This attraction from the public is then transformable into further other kinds of revenue generation streams : “*esteem, status, wealth, influence and perhaps even power*”³³. It has been further explained, that “(T)he increasing importance of the public face in everyday life is a consequence of the rise of public society, a society that cultivates personal style as the antidote to formal democratic equality.”³⁴

The earlier mentioned “frenzied consumption” of celebrity by the public then, is fuelled by all and myriad forms of media and information at their disposal today. Those in the media business, have chosen to capitalise and build upon this complex relationship between celebrities and their audience, by catering to their wants and desires³⁵ – presenting to them a

²⁹Tan, *Supra* note 27 at 959.

³⁰ Sheldon W Halpern, *Publicity Rights, Trademark Rights and Property Rights*, OVERLAPPING INTELLECTUAL PROPERTY RIGHTS 321-339, 325 (Neil Wilkof and Shammad Basheer, eds., 2012).

³¹Loughlan *et al*, *Supra* note 17, at p. 1; Olivier Driessens, *The celebrityization of society and culture: understanding the structural dynamics of celebrity culture* 16 (6) *International Journal of Cultural Studies* 641-657, 641 (2013).

³²Turner, *Supra* note 15 at Chapter 1, page 1 of 19 [ebook]

³³Loughlan *et al*, *Supra* note 17, at p. 2.

³⁴Chris Rojek, *CELEBRITY (FOCI)* (Reaktion Books. Kindle Edition) (ebook) at Location 50 of 3072.

³⁵Sarah K Fields, *GAME FACES : SPORT CELEBRITY AND THE LAWS OF REPUTATION 1* (University of Illinois Press, 2016)

“persona”³⁶ as the constructed, material form of the individual in public, often far removed from their real person.³⁷ For example, Nina Eliasoph, when writing on the relationship between media and public’s perception of politics,³⁸ is critical of the view that the relationship between media and political organizations treats the public as a mere outcome of these institutions, with influence flowing only one way from the government and media to the audience. While it’s true that this can be the norm, it’s important also to consider instances where the public has a hand in shaping the definition of what is truly “public” and the functioning of social institutions. This perspective is reflected in the concept of what Ruddock dubs as “liveness” in his treatise on investigation celebrityisation through reality TV media, which views audiences as actively influencing the circulation of authenticity and celebrity in society³⁹

The significance of insights from cultural studies, to better the formulation of legal conception of rights protecting the celebrity persona and individual personality attributes, have been discussed at length by Prof. David Tan in his monograph.⁴⁰ He offers a pragmatic analysis of how cultural studies looks at the “*production, circulation and consumption of the celebrity personality*”⁴¹, utilising the same in later understanding of the laws in relation to right of publicity and passing off. Prof. Tan succinctly opines thus – “*The conceptual framework of cultural studies can help one better understand why certain cultural artefacts are popular, and their impact within the environment they inhabit, and more importantly, can provide insights into how the law may respond in the context of this cultural milieu*”⁴² Building therefrom, he provides his definition of a cultural studies understanding of the celebrity personality (the public persona of an individual that is economically valuable and commercially exploitable), as being the “*collective product of the celebrity individual, the audience, and the cultural producers*”⁴³ – dubbed the “*celebrity trinity*”.⁴⁴

- i. Building on Prof. Marshall’s thesis, the *celebrity individual* is identified as *distinct* from the *public persona*, i.e. the celebrity individual is composed of merely the physical person. This physical person is dissociated and separate from the image that the audience has built of them and persona that has been bestowed upon them, and further distinct from the values that the public chooses to see encoded in them. Thus,

³⁶Detailed analysis of how celebrities are a sub-set of the larger conception of the public individual persona is present in writings of P. David Marshall, who is a thought leader in the area of persona studies. Refer P. David Marshall, *The promotion and presentation of the self: celebrity as marker of presentational media*. 1(1) *Celebrity Studies* 35-48 (2010); P. David Marshall, *CELEBRITY AND POWER: FAME IN CONTEMPORARY CULTURE*, (University of Minnesota Press, 2014); P. David Marshall, Christopher Moore & Kim Barbour, *Persona as method: exploring celebrity and the public self through persona studies* 6(3) *Celebrity Studies* 288-305 (2015).

³⁷P. David Marshall, *CELEBRITY AND POWER*, *Supra* 36 at p.4

³⁸ Nina Eliasoph, Can We Theorize the Press Without Theorizing the Public?, 21 *Pol. Comm.* 297 (2004) in Andy Ruddock, *INVESTIGATING AUDIENCES REALITY, MEDIA AND CELEBRITY* (SAGE Publications Ltd, 2007) at p. 129. (Hereinafter, ‘Eliasoph, 2007’)

³⁹ Eliasoph, 2007, *Supra* note 38, at p.127.

⁴⁰Tan, 2008, *Supra* note 27.

⁴¹*Id* at pp. 3, 5 of 312

⁴²*Id* at p. 4 of 312.

⁴³ *Id.*

⁴⁴ *Id* at p. 5 of 312.

- to re-iterate Ruddock’s premise - Reality and celebrity can be seen as a closely linked, intertwined and powerful symbols in our society.⁴⁵
- ii. The *audience*⁴⁶ comprises the public at large – as users and consumers of the celebrity personality – including both direct consumers of celebrities from the sports and entertainment industries when viewing their craft; and those that engage in secondary consumption as purchasers of mass media and celebrity-endorsed products and services. Furthermore, it is the assertion of Nick Couldry, that respectful cultural influence *acknowledges audiences as individuals who are generally well-versed in representational tactics*, enabling them to readily see through specific overt ideological assertions made by the media.⁴⁷ “Fan” and “Fandom” are distinct from the audience simpliciter, in the context of *film stars* as celebrity, especially – as “the fan is the point of convergence between the audience on the one hand and the film star on the other”⁴⁸ From the early years of the twentieth century, the audience has been a brute empirical fact of modern life and politics alike. The film star thus, it is argued, has often enough been the magnet that gathered an audience for the cinema. Like the audience, the fan is an ‘unwieldy analytical category’, especially at a time when the line between cinema and other forms and screens is practically non-existent, given in fact the active choice being made by filmmakers to release their films on OTT [Over-the-top] Platforms instead of in cinema theatres. Further, the fan has been the subject of filmic representation in several dozen films from *Devatha* (K. Hemambaradhara Rao, 1965 [Telugu]), if not earlier, to *Fan* (Maneesh Sharma, 2016, [Hindi]).⁴⁹
 - iii. The *cultural producers* are the instrumentalities that shape the audience’s perception of the celebrity personality – by moulding its creation, overseeing its development and furthering its dissemination. They thus constitute agencies of mass communication and media along with other “cultural intermediaries” like advertising agencies, public relations and talent management consultants and firms, branding consultants, transnational and local corporations that engage the celebrity personality to endorse their products and services, etc. Andrejevic, explains this, albeit with some disillusionment, thus – media, especially reality TV and “live media” and news media - are in some ways the “glue cementing politics”, the economy and the individual.⁵⁰ Through the socio-cultural phenomenon of ‘parasociality’, David Giles has argued that the way we perceive and process information on television is influenced by our cognitive and perceptual responses, which are consistent across different programs at

⁴⁵ Eliasoph, 2007, *Supra* note 38, at p.121.

⁴⁶ A discussion on the real nature of the audience itself, and the conflicting dialectics of the audience in Communication Studies – as between the perception of the (i)audience as mass public versus small community; and (ii) active participative versus passive influenced, is beyond the scope of this research, as this research isn’t focussed on communication and/or media studies. Nonetheless, *See further*: Stephen W. Littlejohn, THEORIES OF HUMAN COMMUNICATION (Wadsworth Publishing Co. 1996), in Nico Carpentier, MEDIA AND PARTICIPATION: A SITE OF IDEOLOGICAL-DEMOCRATIC STRUGGLE 65 (Intellect Ltd. 2011).

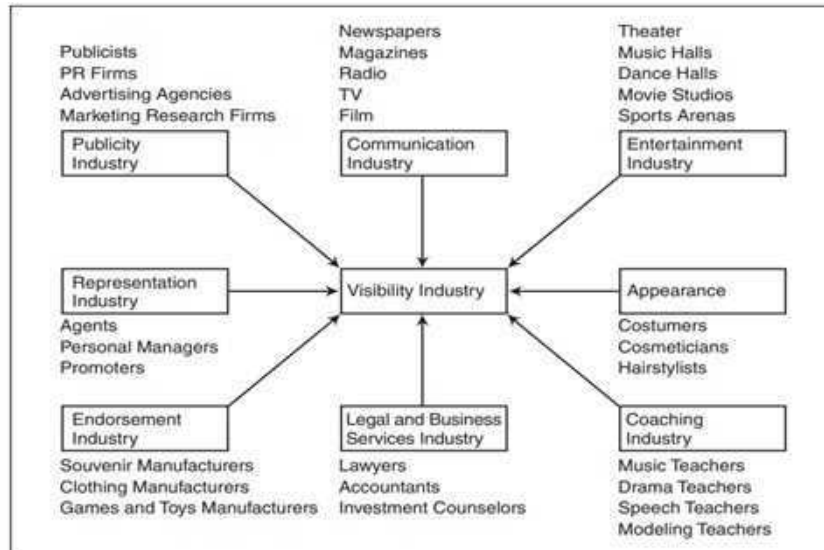
⁴⁷ Nick Couldry, Liveness, “Reality,” and the Mediated Habitus from Television to the Mobile Phone, 7 (4) *Comm. Rev.* 353 (2004)

⁴⁸ S.V. Srinivas, Fan, 12 *BioScope: South Asian Screen Stud.* 83 (2021).

⁴⁹ *Ibid.*

⁵⁰ Mark Andrejevic, *Real-izing Exploitation*, in THE POLITICS OF REALITY TELEVISION: GLOBAL PERSPECTIVES 17 (Katherine Sender & Marwan Kraidy eds., 2010).

a basic level. However, at a more complex level, factors such as identifying with media figures, forming parasocial relationships with them, comprehending storylines, and interpreting generic and formulaic media styles can shape our understanding and response to all media content. This suggests that audience engagement with media is not just passive, but also active, as the audience actively process and interpret the information presented to it.⁵¹ Rein et al, dub the cultural producers as a whole, comprising the ‘visibility industry’⁵². The figure illustrates the key subindustries involved in producing and promoting personal and professional brands, which the *high visibility* industry needs to coordinate effectively:



Source: Irving Rein et al, HIGH VISIBILITY TRANSFORMING YOUR PERSONAL AND PROFESSIONAL BRAND (McGraw Hill, 2006, 3d. edn.) at p.46.

Given the thus complex relationship between the media, the celebrity and the consuming public, it would be legitimate to argue that maintenance of celebrity status in the 21st century without media attention and media engagement is a next-to-impossible task.⁵³ That being said, the understanding of celebrity personality and its dimensions and definitions are variable, and so also is this relationship amongst the elements of the celebrity trinity. These relationships, operate within the law as their background, acting as the mode for assertion of rights and resolution of disputes, which too is ever-changing and dynamic.⁵⁴ Thus, the creation, dissemination, consumption and further creation from such consumption (*productive consumption*) of the celebrity and its semiotic meaning, is a continuous exercise in collaboration resulting in collaborative outputs at each level of creation-productive consumption. As Prof Rosemary Coombe argues in her most seminal work theorising the

⁵¹David Giles, MEDIA PSYCHOLOGY (Taylor and Francis, 2003) at p. 74. *See also* - Siyoung Chung & Hichang Cho, Parasocial Relationship via Reality TV and Social Media: Its Implications for Celebrity Endorsement, in TVX 2014 - Proceedings of the 2014 ACM International Conference on Interactive Experiences for TV and Online Video (2014). <https://doi.org/10.1145/2602299.2602306>

⁵² Irving Rein et al, HIGH VISIBILITY TRANSFORMING YOUR PERSONAL AND PROFESSIONAL BRAND (McGraw Hill, 2006, 3d. edn.) at p 34.

⁵³ Fields, *Supra* note 35 at p.3.

⁵⁴ *Id.*

social costs of too robust a regime of celebrity personality rights – “*Focusing upon cultural practices that engage, reproduce, ironize and transform the meaning and value of celebrity personas to assert alternative gender identities... celebrity is authored in a multiplicity of sites of discursive practice, and that in the process, unauthorized identities are produced, both for the celebrity and for her diverse authors. Through its prohibitions, the law produces the means by which unauthorized identities are both engendered and endangered.*”⁵⁵

While it may be believed and argued that the modern celebrity phenomenon is an emergence of the 21st century cultural-political-economic time and space, a reading of Antoine Lilti’s cultural-studies exposition of what he calls *Rosseau’s paranoia*, points in a different direction. He argues that “*It is too often assumed that celebrity is a recent notion, associated with mass media or even with contemporaneous transformations of the public sphere, but (I argue) that the mechanisms of celebrity and the uses of the word can be traced back to the eighteenth century.*”⁵⁶ This argument however, is still predicated on the fact that the usage of the word, and the understanding that *celebrity* as a “*new mode of social recognition*” is distinct from the idea of *reputation*, was even at that time, the cumulative result of “*important social and cultural shifts, with the growth of publishing, the rise of literacy, and the development of newspapers*”⁵⁷ – thus furthering the initial submission of the complex relationship between media-celebrity-the audience. Lilti’s reliance on the definition of celebrity by the famous French writer Nicholas Chamfort (1968) - “*Celebrity is the advantage of being known to people who we don't know, and who don't know us*”⁵⁸ – further stresses on the distinction between the *individual persona* and *public persona*. Thus, the emergence of the celebrity personality is traceable to a visual shift from portraits of royals to self-portraits by and of living artists, autobiographies by and of living authors and other famous persons and revelations of private lives of perceptively famous individuals in the media.⁵⁹ These private representations and revelations began to provide for the consuming public, a semblance of *normalcy* and *relatability* vis-à-vis the perceived famous person, “*deriving at once, from distance and proximity, greatness and familiarity*”⁶⁰ – thus the *cultural producers* element of the trinity, were doing nothing but responding to the audience’s “*need to humanize*” – the person so revealed was now a “*commodity*”, and the celebrity came to be based more on curiosity over the private, rather than on genuine glorification and admiration from afar.⁶¹ This socio-cultural shift gave rise thus to the

⁵⁵ Rosemary J. Coombe, *Author/izing the Celebrity: Publicity Rights, Postmodern Politics, and Unauthorized Genders*, 10 CARDOZO ARTS & ENT. L.J. 365 (1992).

⁵⁶ Antoine Lilti, *The Writing of Paranoia: Jean-Jacques Rousseau and the Paradoxes of Celebrity* 103 (1) *Representations* 53-83, 55 (Summer 2008) (Translated by David A. Bell and Jeremy Caradonna), <https://histoire.ens.fr/IMG/file/Lilti/Lilti-Representations.pdf>

⁵⁷ *Id.* at 55.

⁵⁸ *Id.*

⁵⁹ Antoine Lilti, *The Politics of Popularity : Celebrity Culture and the French Revolution* 80- 103 at 87 in *RETHINKING THE AGE OF REVOLUTIONS: FRANCE AND THE BIRTH OF THE MODERN WORLD* (David A. Bell and Yair Mintzker, Eds., Oxford University Press, 2018) (Google Books edition, chapter translated by Benjamin S. Bernard and David Moak) (ebook).

⁶⁰ *Id.* at p.88

⁶¹ *Id.*

celebrity personality as the “*familiar stranger*”⁶² – a phenomenon best explained by Jib Fowles in his explanation of “*stars*” in popular culture.⁶³ He explains by positing that individuals undergo a process of “*internal and external normalisation*” when moulding societally acceptable behaviour⁶⁴. The material used by individuals in this process is supplied by the popular culture, and they centre their attention to the symbol that they believe and perceive, best and most closely encodes their value-system. This “*element in the domain of popular culture*” is called the “*solitary personage – the individuated star*.”⁶⁵ He goes on to define *stars* as those performing elements of the popular culture domain, that garner “*attention of enough audience*” that confers upon them a wide-spread popularity.⁶⁶ This choice is then made “*intensely personal*”, in that:

- i. The star’s performance sought out by the spectator, is done because the spectator believes that such performance is an embodiment of the emotional material needed by him to “normalise”. Thus, the behaviour of the star is perceived to bring to life a societal norm in language comprehensible by the spectator
- ii. Based on this star’s series of performances, a star-specific personality is created by the spectator, that is often far from how the real-world individual behind the star may behave. This is thus the constructed familiarity that the individual confers upon an otherwise stranger – the star. This personality then gradually takes on iconic and cult significance for the spectator, and these fabricated personae begin to operate as ideals to be emulated and achieved while being elevated and worshipped.
- iii. The star’s popularity is also a conversation starter for this spectator, in groups comprising those that chose to “hitch their wagon” to the same star, so to speak, engaging in valuable discourse on topics of mutual interest. This “*stored star knowledge*” then assists the spectator in aligning his own self with the world.
- iv. The spectator gradually comes to view the star as “*a champion of the entire domain of popular culture*”, denoting a paradise antithetical to the real world, removed from doubt and distress. Popular culture is then is imagined utopia, the “mythic land of gratification and compensation”, and this imagery is validated by adoption of star behaviour(s) to match.⁶⁷

The dominant argument through the above therefore remains that “*the celebrity individual, the audience and the producers work in concert, though not necessarily in a coordinated conscious fashion, to create what is known as celebrity...there exist certain personalities called ‘celebrities’, who command widespread recognition from a diverse population*”⁶⁸

⁶² Todd Gitlin, MEDIA UNLIMITED (Picador, 2001, revised 2007) in Turner, *Supra* note 15, at p. 3

⁶³ Jib Fowles, ADVERTISING AND POPULAR CULTURE 116-118 (SAGE, 1996, Googlebooks edition) (ebook)

⁶⁴ The process of “normalisation” has been explained by Chris Rojek thus – “... normalization, in which *celebrity status is rendered transparent through the articulation and recognition of common traits between the psychology and culture of celebrities and fans. By exposing the out-of-face side to personality, the celebrity momentarily becomes more like us. Recognition that celebrities are human after all often enhances public esteem.*” See Rojek, *Supra* note 34 at Location 169 of 3072.

⁶⁵ *Id.* at 117.

⁶⁶ *Id.*

⁶⁷ *Id.* at 118.

⁶⁸ Tan, Commercial Appropriation of Fame, *Supra* note 26 at p.18 of 312.

Therefore, the opening sentence of this chapter legitimately points to the “*heightened cultural visibility of the celebrity.*”⁶⁹

The two chief schools of cultural studies: the Frankfurt School and the highly influential counter – the Birmingham School, too offer several valuable insights into the debate surrounding the manufacture and dissemination of the celebrity its and persona.⁷⁰ The chief proponents of the Frankfurt school, Max Horkheimer and Theodor Adorno – offer a cynical view of the culture industry and posit the construct of “masses” and “sameness” – standing thus in stark contrast to the individual-centric thesis of Fowles (as above). In their seminal work *The Dialectic of Enlightenment*⁷¹ they propound the idea that while the technological explanation of the cultural industry is characterised by millions of participants that demand “reproduction processes” – that further lead to the “use of standardised products to meet same replicated needs across countless locations”; - what isn’t considered is that the hold technology enjoys over society is not the result of technical rationality, but the “rationality of domination”.⁷² They therefore opine: “*All mass culture under monopoly is identical, and the contours of its skeleton, the conceptual armature fabricated by monopoly, are beginning to stand out. Those in charge no longer take much trouble to conceal the structure, the power of which increases the more bluntly its existence is admitted. Films and radio no longer need to present themselves as art. The truth that they are nothing but business is used as an ideology to legitimize the trash they intentionally produce. They call themselves industries, and the published figures for their directors’ incomes quell any doubts about the social necessity of their finished products.*”⁷³ Thus, their focus is on commodification of products of the culture industry, and therefore mass-mediated popular culture generates art that is no-longer autonomous, but is instead moulded by the capitalist rationality of generating innumerable profit-making sales. The prominent theme therefore in these writings, seems to be that even the most harmless and benign forms of mass-culture products : be it music or writings or art, “*only are commodities to be consumed for leisure and entertainment purposes, but they possess messages that are geared towards the conservation of the prevailing capitalist system*”⁷⁴ When this view is applied by extension, to the contemporary celebrity personality, it seems that the celebrity is a product, a commodity, created and perpetuated by the aforementioned element of the “cultural producers” and exchanged for money, that has egged and induced the audience to “*live in a world of hypnotic definitions and automatic ideological*

⁶⁹ Turner, *Supra* note 15 at p. 3.

⁷⁰ Graeme Turner, WHAT’S BECOME OF CULTURAL STUDIES (SAGE Publications,2012) in Tan, Commercial Appropriation of Fame, *Supra* note 26 at p. 38 of 312, f.n. no. 15.

⁷¹Max Horkheimer and Theodor W. Adorno, DIALECTIC OF ENLIGHTENMENT (Gunzelin Schmid Noerr, Ed. translated by Edmund Jephcott, Stanford University Press, 2002) in Tan, Commercial Appropriation of Fame, *Supra* note 26 at p. 38 of 312, f.n. no. 7

⁷²Theodor Adorno & Max Horkheimer, *The Culture Industry: Enlightenment as Mass Deception, in Dialectic of Enlightenment* (1944), transcribed by Andy Blunden (1998), proofed and corrected Feb. 2005, available at <https://www.marxists.org/reference/archive/adorno/1944/culture-industry.htm>.

⁷³ *Id.*

⁷⁴ *Theorising Celebrity*, in Lee Barron, CELEBRITY CULTURES: AN INTRODUCTION (SAGE Publications, 2015) (ebook) at page 6 of 16. (DOI: <http://dx.doi.org/10.4135/9781473910492.n3>)

equations”.⁷⁵ This thesis when transplanted into the context of movies, both in Hollywood and in India, could be used to explain predictability of film narratives and character growths, themes and plots, as running parallel to public images of the actors and stars that play those characters and enact those themes and plots.⁷⁶ Nonetheless, it has been effectively also argued that “...contemporary examples such as Will Smith, George Clooney, Anne Hathaway, Hugh Jackman, Christian Bale, Bradley Cooper, Michael Fassbender, or Jennifer Lawrence, then we might see an extension of the point: by and large, the kinds of star fronting a film will typically determine its content from the outset, irrespective of plot, and establish the conventions of its genre (Action, Romcom, Teen, Musical, Crime Thriller, etc.). And yet, although Anne Hathaway might be typically associated with the romantic comedy genre (The Princess Diaries, The Devil Wears Prada, or Valentine’s Day), she portrays very different characters (and gives very different performances) within Love and Other Drugs, The Dark Knight Rises, and Les Misérables”⁷⁷ Therefore, the Frankfurt school’s emphasis on “sameness” and celebrities as only culturally constructed commodities, may not truly be the rule – it is the presence of one black swan that undoes the supposition that all swans are white.⁷⁸ However, in spite of the differences what can be culled out is commonality of a few principles between what Fowles suggests and what the Frankfurt school proponents posit : that the audience is a consumer of the celebrity personality and that media portrayal of this personality is what the public then emulates. Thus the celebrity perceived as an “*embodiment of particular majoritarian ideals*”.⁷⁹

Tan⁸⁰ and Turner⁸¹ identify Stuart Hall as a main proponent of the Birmingham School on cultural studies, which is seen as a ‘corrective’ to the Frankfurt School⁸². As a contemporary semiotician, in his influential essay⁸³ on communication production and dissemination through television, and his other essay exploring the troubling meanings of the term “popular” in “popular culture”⁸⁴, Prof. Hall believes that instead of mass-generated “sameness”; popular culture entails a “*contested terrain*”⁸⁵ where there is a struggle that is

⁷⁵ Tony Bennett, *Theories of the Media, Theories of Society in CULTURE, SOCIETY AND THE MEDIA* (Michael Gurevitch, Tony Bennett, James Curran and Janet Woollacott, eds., 1982) cited in Tan, Commercial Appropriation of Fame, *Supra* note 26 at p. 38 of 312, f.n. no. 9.

⁷⁶ Barron, *Celebrity Cultures*, *Supra* note 74, at page 7 of 16.

⁷⁷ Barron, *Id.*

⁷⁸ The slogan “*No number of sightings of white swans can prove the theory that all swans are white. The sighting of just one black one may disprove it*” is attributed to Karl Popper’s falsifiability principles. Read more at: Karl Popper: Philosophy of Science, The Internet Encyclopedia of Philosophy (Last visited April 5, 2019) <https://www.iep.utm.edu/pop-sci/>

⁷⁹ Tan, Commercial Appropriation of Fame, *Supra* note 26, at p. 15 of 312

⁸⁰ Tan, Commercial Appropriation of Fame, *Supra* note 26.

⁸¹ Turner, 2012 *Supra* note 70.

⁸² Douglas Kellner, *MEDIA CULTURE: CULTURAL STUDIES, IDENTITY, AND POLITICS BETWEEN THE MODERN AND THE POSTMODERN 8* (Routledge, 1995, Googlebooks edition) (ebook)

⁸³ Stuart Hall, *Encoding, decoding, in THE CULTURAL STUDIES READER* (Simon During ed., 2nd edition, Routledge, 1999) (ebook available at : http://www.cieg.unam.mx/lecturas_formacion/monografico-del-doctorado-estudios-latinoamericanos/bibliografia-complementaria/During-The-cultural-studies-reader-1993.pdf) at p. 523 of 626.

⁸⁴ Stuart Hall, *Notes on Deconstructing the Popular, in CULTURAL THEORY AND POPULAR CULTURE: A READER.* (John Storey ed., 3rd Edition, London: Pearson, 2006) (Googlebooks edition) at p. 477 - 487

⁸⁵ Tan, Commercial Appropriation of Fame, *Supra* note 26 at p. 15 of 312; Michael Denning, *The End of Mass Culture 37 International Labor and Working-Class History 4-18, 4*(Spring, 1990).

ongoing – between those that are *for* and those that are *against* the “*culture of the powerful*” - it shows the agreement between “*consent and resistance*”, an area where socialist culture isn’t simply expressed, but where socialism itself is constituted.⁸⁶ The Birmingham School therefore is of the view that the interpretative analysis of image, narratives, ideologies and meanings isn’t restricted to just the text but also the subtext – so, while analysis of the form, surface and look is important, culture conveys meaning and values implicitly through the subtext too.⁸⁷ As Kellner pointed out : “*I would advocate a culture studies...to analyse both image and meaning, surface and depth as well as politics and erotics of cultural artefacts.*”⁸⁸ – contributing further to the Birmingham school argument thus that images so generated that seemingly denote the reality, are but a “*naturalised illusion*”,⁸⁹ due to the fact that the verbal-visual combination that they are a result of, is a collective consequence of complex coding procedures.

Indian scholars too suggest this cohesive link between media as the vehicle that carries a communicative message to the audience, while using the celebrity individual’s celebrity persona as its mouthpiece. For example, M Madhava Prasad while studying the crucial role of film stars in political mobilisation and the shaping of democratic political life in Tamil Nadu and Andhra Pradesh-Telangana since the 1950s, pointed out how the films of legendary superstars turned politicians and government officials - Nandamuri Taraka Rama Rao, also known as NTR and Maruthur Gopalan Ramachandran, popularly known by his initials MGR, became the vessel for political propaganda.⁹⁰ It was thus the celebrity power and charismatic super-star pull of NTR and the carefully constructed manipulation in the cinema of MGR, that were successful in planting the seed of a certain type of political pull in the minds of the consuming audience.⁹¹ Nonetheless, reading the works of Sivathamby⁹² and Srinivas (largely on the Telugu film industry and the hero worship of film stars turned politicians, especially, NTR)⁹³, alongside Madhava Prasad’s suggests that these film stars are

⁸⁶ Hall, *Supra* note 84 at p. 487.

⁸⁷ Tan, Commercial Appropriation of Fame, *Supra* note 26 at p. 15 of 312

⁸⁸ Kellner, *Supra* note 82 at 236.

⁸⁹ Stuart Hall, *The Rediscovery of “Ideology”: Return of the Repressed in Media Studies*, in Gurevitch et al, Culture, Society and the Media, *Supra* note 75 (Googlebooks edition) (ebook) available at: https://books.google.co.in/books?id=Cwfbp1QmffsC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

⁹⁰ M. Madhava Prasad, *Cine-Politics: On the Political Significance of Cinema in South India*, in CINE-POLITICS: FILM STARS AND POLITICAL EXISTENCE IN SOUTH INDIA, (M. Madhava Prasad Ed., Hyderabad: Orient Blackswan, 2014) found at the Journal of the Moving Image, at: https://jmionline.org/article/cine_politics_on_the_political_significance_of_cinema_in_south_india. [JMI, No. 1, January 1999, pp. 37-52 – this earlier version is being relied on here]

⁹¹ *Id.* at p.38

⁹² Sivathamby, Karthigesu, THE TAMIL FILM AS A MEDIUM OF POLITICAL COMMUNICATION (Madras : New Century Book House, 1981) in Madhava Prasad, *Cine-Politics*, *Supra* note 90.

⁹³ Srinivas, S. V. *Fans and Stars : Production, Reception and Circulation of the Moving Image*. Unpublished Ph. D. Dissertation. Department of English, University of Hyderabad, 1987 in Madhava Prasad, *Cine-Politics*, *Supra* note 90 . See also S.V. Srinivas, *Rajnikant in Japan: Indian “superstardom” and low value markets*. 14 Inter-Asia Cultural Studies. (2013); S.V. Srinivas, *POLITICS AS PERFORMANCE* (2013)(Ideas of Prof. Srinivas on films, fandom, cine stars and politics have been discussed with Prof Srinivas himself, during a teaching stint of this PhD researcher at NALSAR, Hyderabad in 2019, several views of this author are those that have been discussed over online exchanges when requests were made for access to Prof Srinivas’s writings – these

elevated to the level of demi gods, worshipped for not only their acting prowess, but more, for the values espoused by the characters they portray.⁹⁴In fact, MGR’s characters are discussed in stark contrast and opposition to NTR’s – NTR’s filmography was never *overtly political propaganda* and yet, he rose to God-like public prominence, while MGR’s portrayal and film narratives focussed on the political protagonist, led to the – “*rise of MGR as an autonomous signifier that transcends the party programme coincides with the politics of compromise that led DMK into the arena of parliamentary politics...*”⁹⁵ “In the case of MGR there is an additional force of the social circumstance. He played the characters of heroes who are socially relevant to the vast majority of the Tamil filmgoers. ***In such a situation he emerged as the symbol of the fulfilment of their own wishes***”⁹⁶ The organized and hyper-visible variant of fandom that is characteristic of film star – celebrity fans in the southern Indian states has always presented itself hand in hand with with politics, thus lying at the cusp of a foundationally *populist cinema*, one which revolves around the rescue of the common people by the leader, and from a coalition of villains (who came to be increasingly identified as the political establishment – something that is now adopted in more recent films like Allu Arjun’s *Pushpa* films, the second instalment of which releases in 2024 and most fittingly, Shah Rukh Khan’s biggest hit of 2023 - *Jawan*, unsurprisingly directed by Tamil film-maker Atlee, who is known for his own unique brand of *massy-hero is the saviour protagonist* cinema), and populist electoral politics, powered by highly publicized schemes that supposedly benefit the poor directly and are also presented as evidence of the leader’s love and generosity.⁹⁷ This attribution reflects the *affinity* model of stardom and celebritisation as espoused by Richard Dyer, discussed in the following pages⁹⁸ and the earlier discussed ideas of the *familiar stranger*⁹⁹. The case of MGR’s political power, God-like status leading to *hero-worship* and cinematic greatness is further discussed by Dhamu Pongiyannan, whence they point out how, over two million people attended his funeral and unfortunately, thirty one followers died by suicide, following his death, and only “death was able to dislodge him from power”.¹⁰⁰ Pongiyannan points out that MGR as the first film star to achieve the position of Chief Minister, and the first to have constructed his *public persona* by holding *fan gatherings* and authorising *fan clubs*, set in motion a practise of film stars coming to rely on their pull with their audiences to launch their political careers.¹⁰¹ Interestingly further, Pongiyannan explores the Indian’s populace’s fixation with skin tone, when discussing and analysing the film popularity and subsequent political rise of

reflections have been relied on, with relevant sources being cited as far as practicable in this part of the research).

⁹⁴ Madhava Prasad, Cine-Politics, *Supra* note 90 at p.39.

⁹⁵ *Id.* at p.38

⁹⁶ Sivathamby, The Tamil Film, *Supra* note 92, at pp.41-42

⁹⁷ S.V. Srinivas, Fandom and Performative Political Regimes, in *MEDIA AND THE CONSTITUTION OF THE POLITICAL: SOUTH ASIA AND BEYOND* 218 (Ravi Vasudevan ed., 2021) (Politics and Society in India and the Global South), available at https://perspectivia.net/publikationen/psigs/vasudevan_media/srinivas_fandom.

⁹⁸ Dyer, *Infra* note 133.

⁹⁹ Gitlin and Turner, *Supra* note 62.

¹⁰⁰ Dhamu Pongiyannan, *FILM AND POLITICS IN INDIA: CINEMATIC CHARISMA AS A GATEWAY TO POLITICAL POWER*, 39-40 (*Film Cultures* Book Series, Peter Lang AG, Internationaler Verlag der Wissenschaften, 2015).

¹⁰¹ *Id.* at p.40

Jayalalitha.¹⁰² Max Weber’s *Theory of Charisma*¹⁰³, posits that charismatic authority arises when an individual’s claim to extraordinary or exceptional abilities [*“supernatural, superhuman or... exceptional powers”* (Weber, 1947)] is recognized by others, leading them to participate in a programme of action aimed at addressing extraordinary distress or ensuring the success of extraordinary endeavors. It is thus argued in Weber’s thesis that this type of authority emanating from the hold of charismatic power over its subjects, is distinct from rational and traditional forms of authority, which are based on everyday routine control and are therefore more stable. Pongiyannan relies on this enunciation of *charisma* in critically analysing the celebrification and socio-cultural and political pedestalling and almost deification of Jayalalitha – through her appearance with fairer skin than most populace in southern India; and also her romantic positioning as MGR’s partner.¹⁰⁴ It is argued that it was her skin colour and her aura and appearance, in fact, that became a major factor in her success thus:

*“Her complexion is as tender as sandal
Her face shines like the full moon
Her speech is rhythmically flawless
Her acting is nothing but natural
Her beauty is overwhelming!”*¹⁰⁵

In the Hindi film industry, a most fitting case study is of the star power of Shah Rukh Khan – and to appropriate a popular dialogue from his films – *“Naam toh Suna hoga!”*¹⁰⁶ (*You must’ve heard the name*). Shah Rukh Khan (now popular by his initials, ‘SRK’ – so much so, that true to the Tamil-Telugu film industry practise, in his career record creating hit film, *Jawan* from 2023, with Tamil director Atlee, he is credited in the opening credits of the film as *“Super Star SRK”*). A detailed case study on the trademark ‘SRK’ is discussed later in Chapter IV) is no stranger to anyone and is a global superstar, and this researcher, too, is a fan of the actor – and more, of his deliciously, carefully constructed public persona. Having won the 2023 Time100 Reader Poll¹⁰⁷ and riding high on a revived and reclaimed stardom after a hugely successful 2023 at the theatres,¹⁰⁸ SRK began 2024, being awarded the *Indian*

¹⁰² *Id.* at pp.71-100

¹⁰³ This work relies on the re-telling and discussion of Max Weber’s works by T.E. Dow - T. E. Dow, *The Theory of Charisma*, 10 (3) Soc. Q. 306 (1969), available at <http://www.jstor.org/stable/4104918>. This further clarifies thus [at p. 306, Editor’s note] – *“Weber’s writings on charisma have been translated, paraphrased, and interpreted by numerous modem writers. Henceforth the “Weber (1947)” ref- erence will refer to the portions of Wirtschaft und Gesellschaft selected for translation by A. M. Henderson and Talcott Parsons.... For two other selective treatments by modem writers see Gerth and Mills (1946) and Bendix (1960).”*

¹⁰⁴ Pongiyannan, *Film and Politics*, *Supra* note 100, at p.72.

¹⁰⁵ Puratchi Thalaivi Jayalalitha (Revolutionary Leader Jayalalitha), Manimekalai Prasuram, 2011. (Trans. From Tamil by Pongiyannan, *Film and Politics*, *Supra* note 100, at p.74)

¹⁰⁶ SrknBhai_editss, “Rahul! Naam to sunaa hoga | Srk video Edit”, YouTube,uploaded by SrknBhai_editss, Nov 18, 2022, <https://www.youtube.com/watch?v=LrlxSD9Vefc>

¹⁰⁷ Film Star Shah Rukh Khan Wins the 2023 TIME100 Reader Poll, TIME, (April 6, 2023) <https://time.com/6269128/shah-rukh-khan-time100-reader-poll-2023/>; Shah Rukh Khan tops TIME 100 Reader Poll, defeats Lionel Messi, Prince Harry, Live Mint (April 7, 2023) <https://www.livemint.com/news/world/shah-rukh-khan-wins-time-100-reader-poll-2023-defeats-lionel-messi-prince-harry-and-serena-williams-11680856547335.html>

¹⁰⁸ Abhimanyu Mathur, One year of Pathaan: How Shah Rukh Khan proved in 2023 that OG superstar abhi ‘zinda hai’, killed ‘boycott Bollywood’, DNA India (Updated Jan 25, 2024) <https://www.dnaindia.com/bollywood/report-one-year-of-pathaan-shah-rukh-khan-showed-his-superstardom-in-2023-jawan-dunki-atlee-hirani-siddharth-anand-3075592> ; Swathi P Ajith, 2023, a year of resurgence and

of the Year by CNN-News18.¹⁰⁹ SRK today is a phenomenon that is the subject of several books and studies, and also because of how eloquent, witty and self-deprecatingly glib SRK can be in his press appearances, there are today, manifold ways in which SRK articulates himself, coupled with his articulation in film, advertising and has built for himself, an image system that caters for different audience expectations.¹¹⁰ His aura and charm are undeniable¹¹¹, he lights up every frame he is in¹¹², and changes the energy of every room he walks into.¹¹³ As the consuming audience's aspirational affinity to the star continues to grow manifold, analytics now, in the current majoritarian socio-political economic reality of our country, point to how, "...he serves at once as a site for locating 21st century Indian nationalism, as a symbol of national aspirations, as well as the complex intersection of a parallel text—comprising not only on his film roles but also on extra-filmic information—that conflates his star persona with an epic Hindu narrative despite his self-avowed identity as an Indian Muslim."¹¹⁴

Shah Rukh Khan's star persona, is best explained by Shrayana Bhattacharya, author of the hugely popular and continually number 1 selling book on Amazon – *Desperately Seeking Shah Rukh*.¹¹⁵ The book explores the lives of Indian women from various socioeconomic backgrounds who find solace and inspiration in Bollywood superstar Shah Rukh Khan. Bhattacharya uses these women's stories, and the *fandom as a methodology* to study and to delve into broader themes of economic disparity, gender roles, and the pursuit of personal independence in modern India, thus offering a unique perspective on how fandom can intersect with and illuminate larger societal issues, portraying Shah Rukh Khan as both a symbol of aspiration and an escape from the struggles of everyday life. She explains in a further piece calling for greater seriousness being accorded by social science researchers to the influence of cultural and popular iconography – “*I decided to use fandom for actor Shah Rukh Khan as a prism to explore the voices and stories of women. I wanted specialists and*

record-breaking success for Shah Rukh Khan, Onmanorama, (December 31, 2023) <https://www.onmanorama.com/entertainment/entertainment-news/2023/12/31/shah-rukh-khan-2023-bollywood-success-movies.html>.

¹⁰⁹Indian of the Year, CNN News 18 Last accessed April 1, 2024 <https://www.news18features.com/indianoftheyear/>; CNN-News 18, Shah Rukh Khan Wins CNN-News18 Indian Of The Year Award | Indian Of The Year 2023 | Shah Rukh Khan; YouTube, Uploaded by CNN-News 18, Jan 12, 2024, <https://www.youtube.com/watch?v=QJAIRuXgGU8>.

¹¹⁰Florian Stadler, SRK and global Bollywood, South Asian Diaspora, 2017 DOI: 10.1080/19438192.2017.1368934 (Book Review)

¹¹¹Praseeda Gopinath, 'A Feeling You Cannot Resist': Shah Rukh Khan, Affect, and the Re-scripting of Male Stardom in Hindi Cinema, *Celebrity Stud.*, DOI: 10.1080/19392397.2017.141120 (2017).[" *In Indian cinema and popular culture, he is the embodiment of emotion, most often love and pain, whose emotions and body produce a reciprocal emotional and affective response in the audience. As the feeling neoliberal cosmopolitan man, then, he re-writes what it means to be a middle-class Indian Hindu man on-screen, a male star in the Bombay film industry, and the idea of the Hindi film hero.*"]

¹¹²7 Memorable Cameo Appearances By Shah Rukh Khan, *Film Companion*, Last accessed: April 1, 2024 <https://www.filmcompanion.in/ampstories/web-stories/from-saathiya-to-ae-dil-hai-mushkil-7-memorable-cameo-appearances-by-shah-rukh-khan>

¹¹³Karan Johar Feels Shah Rukh Khan is 'Irreplaceable', Says 'There Never Will be a Personality Like Him' curated by Akriti Anand for News18, (Jan 18, 2024) "*I don't think there's a better conversationalist, a more intelligent mind, a more charming and arresting persona, and an aura that is inexplicable than Shah Rukh Khan. That majestic magnetism only he has. He's irreplaceable.*" <https://www.news18.com/movies/karan-johar-feels-shah-rukh-khan-is-irreplaceable-says-there-never-will-be-a-personality-like-him-8744986.html>

¹¹⁴Sunny Singh, *The Road to Rāmarājya: Analysing Shah Rukh Khan's Parallel Text in Commercial Hindi Cinema*, 17 Bells: Barcelona English Language and Literature Studies (2008), available at <https://raco.cat/index.php/Bells/article/view/141365>.

¹¹⁵Shrayana Bhattacharya, *DESPERATELY SEEKING SHAH RUKH: INDIA'S LONELY YOUNG WOMEN AND THE SEARCH FOR INTIMACY AND INDEPENDENCE* (HarperCollins 2021).

non-specialist readers to grasp the tears, triumphs and textures hidden behind the depressing aggregate statistics on women's employment; to make some of the dense academic literature more accessible to those afraid of numbers and economics; to explore how notions of love were mediating economic outcomes; to unpack how each one of us can help shift gender norms to a better equilibrium through scrutinising our own everyday intimate inter-personal behaviours."¹¹⁶ Discussing SRK's iconography in an editorial commemorating his 30 years in cinema¹¹⁷, she wrote:

"It is probably facile to offer intellectual reasons to explain Khan's longevity in the film industry. Millions of people unambiguously love the actor to the point that public adulation for him is often dismissed as cringeworthy celebrity worship...."



Source: PTI, April 11, 2024, SRK Greeting fans outside Mannat, his residence in Mumbai, Eid, 2024 (PTI)

"...The men he plays feel deeply, are constantly vulnerable to the gaze of the Other, and shed many, many (many) tears. ...These teary-eyed displays of humanity have only endeared him to countless fans...."

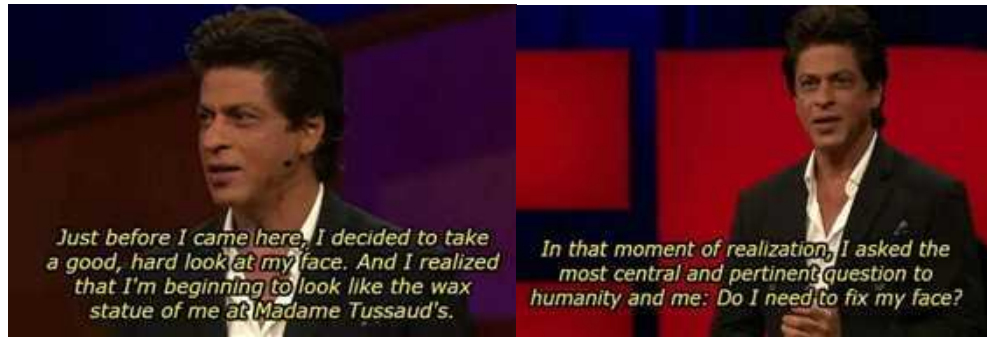


(Screenshots taken from several films and compiled)

¹¹⁶ Shrayana Bhattacharya, Talking Film Icons, Understanding Society: What can social science researchers discover if they stepped out of rigid frameworks of understanding deprivation and asked 'subjects' about their joys and pleasures?, The India Forum (May 4, 2022) <https://www.theindiaforum.in/article/talking-film-icons-understanding-society>

¹¹⁷ Shrayana Bhattacharya, Shah Rukh Khan: Why the actor's charm has endured the test of time, BBC, (July 13, 2022) <https://www.bbc.com/news/world-asia-india-62117921>

“...Khan has crafted a deliciously arrogant and poised public persona, forever seducing us with moments of self-disclosure followed by self-deprecating intellect and bitter sarcasm.”



(Screenshots taken from SRK's TEDx Talk)¹¹⁸

“...In a world of uncertain and harsh realities, Khan's fantastical images remain a source of awe, escape and entertainment.”



(Screenshots taken from several films and compiled)

From the discussion in the preceding pages, it becomes clear that the concepts from cultural studies have provided immense fodder for the growth and development of a distinct field of contemporary celebrity studies. The focus of contemporary cultural studies is heavily on the relationship between the three elements of the celebrity trinity; and therefore, there has been a proliferation of writing¹¹⁹ that concentrates on the cultural studies meanings of the celebrity personality and its relationship to fame and glory.¹²⁰ To put this intertwined and inextricably linked relationship between the celebrity individual and their celebritisation via the media producers and the consuming audience and fans - better in the Indian-filmstar as celebrity context, from the Hindi film industry *'Bollywood'* - The cultural geography of Bollywood has been significantly shaped by the activities of media users who engage with and circulate Bollywood content in ways that go beyond the traditional boundaries of the nation-state, linguistic barriers, and market segments envisioned by industry professionals. Tapping into and often defined by a global pirate infrastructure, fan practices create media circulation trajectories that challenge industry narratives of illegality as well as scholarly frameworks for comprehending global media cultures. These fan-driven media flows transcend the

¹¹⁸ Shah Rukh Khan, Thoughts on Fame, Humanity and Love, TEDx, April 2017, Last Accessed: April 1, 2024. https://www.ted.com/talks/shah_rukh_khan_thoughts_on_humanity_fame_and_love?utm_campaign=tedsread&utm_medium=referral&utm_source=tedcomshare

¹¹⁹E.g. This chapter shall focus on the writings of Daniel Boorstin, Richard Dyer, P. David Marshall, Lee Barron, Chris Rojek and Graeme Turner.

¹²⁰Tan, Commercial Appropriation of Fame, *Supra* note 26, at p. 17 of 312

limitations imposed by industry and national borders, forging new pathways for the consumption and dissemination of Bollywood content worldwide.¹²¹

The following pages shall briefly look at the existing literature that exhibits a common underlying theme, that of “well-knownness” and “widespread attention” as criteria for defining the contemporary celebrity.

A.2 Celebrity as “well-knownness”: Public Identifiability and fame in the creation of celebrity personality

Daniel Boorstin’s seminal work¹²² provides for the starting point in most texts that follow, on defining the celebrity. Though tautological when he opined that “*a celebrity is a person who is known for his well-knownness*”¹²³ it lays the foundation for what has been previously argued – that the celebrity persona is the result of media’s capitalisation of the public’s need for consumption, and thus widespread recognition of the celebrity. Boorstin predicates his definition on first what he calls the concept of “*pseudo events*”: a kind of “synthetic reality”, wherein the very fact that an occurrence is celebrated and publicised, starts lending it increased value when it may not have been valued at all at its inception. The more the event is publicised, the more it gets imprinted into the minds of the consuming public as being of heightened importance.¹²⁴ Boorstin thus posits, that *fame* comes from rapid proliferation in contemporary popular culture, as opposed to being the exclusive domain of those that possess actual talent,¹²⁵ - a critique which Antoine Lilti has built on further by proffering the distinction between glory for heroes versus curiosity towards the emergent celebrity in eighteenth century France.¹²⁶ Whalen calls this phenomenon the “*essential emptiness of celebrity*,”¹²⁷ when Boorstin’s argued that “*...in the democracy of pseudo-events, anyone can become a celebrity if only he can get into the news and stay there...what is remarkable is not only that we fill experience with so much emptiness, we manage to give the emptiness such appealing variety*”¹²⁸

Prof. Graeme Turner too has adopted this reading of celebrity fame proliferation, and explains further that “*while heroic figures are distinguished by their achievements or by the great simple virtues of their character, celebrities are differentiated ‘mainly by trivia of personality,’*”¹²⁹ thereby explaining that for Boorstin, an individual became a celebrity, by the power of personality differentiation.

¹²¹ Aswin Punathambekar, FROM BOMBAY TO BOLLYWOOD: THE MAKING OF A GLOBAL MEDIA INDUSTRY (New York University Press 2013) at p.23.

¹²²DANIEL J BOORSTIN, THE IMAGE: A GUIDE TO PSEUDO-EVENTS IN AMERICA (Narrated by Timothy Danko, Blackstone Audio Inc.,50th Anniversary Edition, 1962, audiobook released in Sept 2018) (Audible App edition)(audiobook).

¹²³ *Id.* at Chapter 4 (audiobook).

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ Lilti, Politics of Popularity, *Supra* note 59. – check this one can also be 59

¹²⁷Boorstin, The Image, *Supra* note 122 in Gary Whannel, MEDIA SPORT STARS: MASCULINITIES AND MORALITIES 43 (Routledge, 2002) (Googlebooks edition)(ebook).

¹²⁸ *Ibid.*

¹²⁹ Turner, *Supra* note 15, at p.5

Turner's analysis of Boorstin's reading, then presents the celebrity as a symbol of cultural change, the 'human pseudo-event'.¹³⁰ In a nutshell, Turner identifies the following characteristics of celebrity and its study¹³¹:

- i. The celebrity is a "representational genre", furthered by the culture of consumption, providing immense text and subtext for semiotics discourse;
- ii. The celebrity is also a "discursive effect", - relying on the works of Chris Rojek¹³² and Richard Dyer¹³³ - that while modern celebrity is individualistic and more-or-less meritocratic,¹³⁴ - it is not owned by those specific individuals alone, and instead is subject to the representation of those individuals. Thus celebrity value and power changes with change in media treatment, and "understanding it demands giving close attention to the representational repertoires and patterns employed in this discursive regime."¹³⁵ The idea of "celebrity" thus then gets removed from the hands of the specific few elite, and the numbers of those subject to the discursive process of 'celebrification'¹³⁶ increases – falling into the expectations of the audience and population in general.¹³⁷
- iii. The celebrity is a "commodity" – given the evolved sophistication of media communication methods of the celebrity to the public, the celebrity has by itself become a source for content generation by the media. The media can create and celebrity from nothing, by the mere fact of commodification (this topic shall be discussed later in this chapter) and trade in the persona of individuals (e.g. the success of the reality TV genre. In this context, celebrity's primary function as a commodity that is traded, becomes commercial and promotional.¹³⁸

Turner's definition of celebrity is thus: "celebrity is a genre of representation and a discursive effect; it is a commodity traded by the promotions, publicity, and media industries that produce these representations and their effects; and it is a cultural formation that has a social function we can better understand"¹³⁹

...

Bringing attention back then to the epigraph at the beginning of this section, while von Goethe's words seem to suggest that fame accrues to those that possess an innate ability – a talent, vocation, artistic, linguistic, acting, sporting abilities *etc*, the analysis presented above only increasingly proves that becoming a celebrity today is easier – based on

¹³⁰ *Ibid.*

¹³¹ Turner, *Supra* note 15 at p.9; Graeme Turner, *Approaching celebrity studies*, 1 (1) *Celebrity Studies* 11-20, 12 (2010).

¹³² Rojek, *Supra* note 34.

¹³³ Richard Dyer, *STARS* (British Film Institute, 1979); Richard Dyer, *HEAVENLY BODIES: FILM STARS AND SOCIETY* (Routledge, 2nd edition 2004)

¹³⁴ Loughlan et al, *Supra* note 17 at p. 10.

¹³⁵ Turner, *Supra* note 15 at p.8.

¹³⁶ Refer Olivier Driessens, *Supra* note 28, wherein he draws the distinction between 'celebrification' as the process by which an individual becomes a celebrity, and the magnification of celebrity value *versus* 'celebritisation' as the supra-process by which celebrity becomes embedded into society and culture.

¹³⁷ Turner, *Supra* note 15 at p.83.

¹³⁸ *Id.* at p.9

¹³⁹ *Ibid.*

widespread media circulation. Most contemporary celebrity culture scholars agree on the fact that a defining characteristic of the modern celebrity is heightened media visibility.¹⁴⁰ Therefore, Robert van Krieken argues that celebrity can be defined as: “a quality or status characterized by a capacity to attract attention, generating some ‘surplus value’ or benefit derived from the fact of being well known (highly visible) in itself in at least one public arena. It can be either positive or negative, including notoriety”¹⁴¹

Chris Rojek, further points out that celebrities are “cultural fabrications” and thus are careful constructions of mediated “chains of attraction”. The “cultural intermediaries” have a continuous role of keeping the celebrity personality relevant, by ensuring their circulation in the media for audience consumption.¹⁴² Thus “that mass-media representation is the key principle in the formation of celebrity culture... presence in the public eye is comprehensively staged.”¹⁴³ The emergence of celebrity culture in India too has been attributed to the democratisation of mass media and the rapid commodification of everyday life resulting in the rampant rise of consumerism.¹⁴⁴ Albeit labelled somewhat “unsavoury”,¹⁴⁵ the demand and supply economics of the pace at which celebrity consumption is progressing in India has been described thus : “On the demand side there has risen a race of famished consumers who hungrily fall upon and devour any scrap of information if it concerns a media personality...Not that the supply side lags behind. Every wannabe worth his or her photoshopped portfolio is busy providing a glut of information about all the ‘fun shoots’, the ‘fun parties’ and the ‘fun life’ via a multimedia collage comprising of selfies, twitter feeds, interview soundbytes and behind-the-scenes pictures of shooting locations and cover shoots. Entire television channels have sprung up with the sole purpose of dissecting every single look, gesture or careless movement made by celebrities on camera in order to hypothesize about whom they are dating, whom they have jilted or whom they have been jilted by. Any news about celebrity marriages, divorces, live-in relationships, adoptions or surrogacy becomes the topic for next day’s editorials while their casual comments acquire headline status.”¹⁴⁶

Therefore, instead of predicating celebrity on fame acquired through hard work alone, Rojek proposed the following kinds of celebrity¹⁴⁷:

- i. *Ascribed* celebrity – the status stems from descent and biological lineage for example the status enjoyed by Prince Harry and Prince William, or, more recently in the era of social media, the status enjoyed by Alexis Olympia Ohanian Jr. – who has her own “verified” Instagram account with the handle @olympiaohanian (run by her parents,

¹⁴⁰ Tan, *Supra* note 26 at p. 23 of 312.

¹⁴¹ Robert van Krieken, *CELEBRITY SOCIETY* 10 (Routledge, 2012, Googlebooks edition)(ebook)

¹⁴² Rojek, *Supra* note 34 at Location 71 of 3072

¹⁴³ *Id.* at Location 108 of 3072.

¹⁴⁴ Ranjan Narula and Abhishek Nangia, *India: Reacting to a celebrity-obsessed culture*, World Trade Mark Review (January 5, 2015) <https://www.worldtrademarkreview.com/india-reacting-celebrity-obsessed-culture>

¹⁴⁵ Aditya Gupta, *The Cerebral Cortex: The ever-growing Indian obsession with ‘The Celebrity’*, QRIUS.com (Jan 26, 2014) <https://qrius.com/growing-indian-obsession-celebrity/>

¹⁴⁶ *Id.*

¹⁴⁷ Rojek, *Supra* note 34 at Locations 177 -194 (of 3072)

tennis legend Serena Williams and Reddit co-founder Alexis Ohanian Sr.) and has over six hundred and forty four thousand followers on Instagram:



Source: Instagram Page for Olympia Ohanian Jr. <https://www.instagram.com/olympiaohanian/?hl=en>
Closer home, the great example of *ascribed* celebrity is Taimur Ali Khan – the son of film actors – Kareena Kapoor Khan and Saif Ali Khan. Even he was just two years of age, he was a major paparazzi favourite – often acknowledging them and waving back at the shutterbugs;¹⁴⁸ and his popularity- such that look-alike dolls flooded the markets!¹⁴⁹



Source: Subhash K. Jha, Saif Ali Khan reacts to Taimur Doll, Masala.com, (Updated: Aug 10, 2021) <https://www.masala.com/bollywood-news/saif-ali-khan-reacts-to-taimur-doll-272845>

Therefore, while it is possible to add to, or subtract from the degree of “celebrity” through personal actions, the fact that there “is” celebrity status, is predetermined.

¹⁴⁸Times of India, 12 Pictures of Taimur Ali Khan That Completely Stole Our Hearts, accessed August 11, 2022; Times of India, Taimur Ali Khan Waves at the Paparazzi for the First Time, accessed August 11, 2022, <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/photo-features/12-pictures-of-taimur-ali-khan-that-completely-stole-our-hearts/Photos-Taimur-Ali-Khan-waves-at-the-paparazzi-for-the-first-time/photostory/64027564.cms>.; Mid-Day, Taimur Ali Khan Plays Football, Waves at Paparazzi Post Intense Gaming Session, accessed August 11, 2022, <https://www.mid-day.com/photos/taimur-ali-khan-plays-football-waves-at-paparazzi-post-intense-gaming-session/45226>.; News18, Saif Ali Khan Pissed With Paparazzi Clicking Taimur, Says 'Enough, My Child Will Go Blind', accessed August 11, 2022, <https://www.news18.com/news/movies/saif-ali-khan-pissed-with-paparazzi-clicking-taimur-says-enough-my-child-will-go-blind-2100367.html>.

¹⁴⁹ Business Today, Brand Taimur Already? Saif Ali Khan Isn't Complaining About the Taimur Doll, accessed August 11, 2022, <https://www.businesstoday.in/latest/brand-taimur-already-saif-ali-khan-isnt-complaining-about-the-taimur-doll/story/293182.html>.; News18, Forget Cute Photos, You Can Now Take Taimur Baba Home for Just Rs 1000, accessed August 11, 2022, <https://www.news18.com/news/buzz/forget-cute-photos-you-can-now-take-taimur-baba-home-for-just-rs-1000-1944687.html>. [The case of the Taimur look-alike doll shall be discussed in detail in the chapter on Right of Publicity in India]

- ii. *Achieved* celebrity – this status is begot by those in mostly the sporting or entertainment industry, however again, as examples in the beginning of this chapter show, even military personnel and politicians are garnering celebrity status. Achieved celebrity arises from individual accomplishments and feats, won through hard work in open competition. They are perceived by the audience as those with talents and skills that are to be revered, and if possible, emulated. E.g. Sportspersons like Serena Williams, Monica Seles,¹⁵⁰ Virat Kohli¹⁵¹, movie stars like Brad Pitt, Shah Rukh Khan¹⁵² etc. as well-recognised and loved for their work and special talents.
- iii. *Attributed* celebrity – The idea of celebrity by *mere attribution* brings us back to the discussion in the foregoing pages, that celebrity status is a creation of the culture industry intermediaries – the cultural producers. Celebrity status is then conferred on perceptibly “unexceptional” individuals, by their regular and prolonged showcase as noteworthy. “*Sensationalism aims to generate public interest with the object of galvanizing public attention.*”¹⁵³ For example in India, in July 2006, then five year old, Prince Kashyap fell into an uncovered borewell that was almost 60 feet deep. The incessant media coverage of the 48-hour long rescue operation and the child’s ordeal made him into instant, an albeit unlikely celebrity.¹⁵⁴ Following his rescue, it was reported that he was being elevated to having received some divine intervention, and thus came to be invited to regular *jagraatas* and *yagnas* in his village; and was also promised a better school education¹⁵⁵ and the army even offered him a position once he turned 18, if he fulfilled the selection tests and criteria.¹⁵⁶ However, as the papers described in an interview conducted seven years after his rescue, Prince had returned to a life of “*almost anonymity.*”¹⁵⁷ Thus, in the short while during and following his rescue, prince became an *ascribed celebrity*, however, given the slump in attention according to him in the media, he may fall within a different category: what Rojek calls “*celetoids*”

¹⁵⁰ Monica Seles’ story of dealing with the rise and fall of her celebrity status and tennis accomplishments, in the face of a stalker attack, are discussed in Warren Ko, *The Cruellest Irony: Monica Seles and Her Struggle With German Justice* (2020), available at: https://www.law.berkeley.edu/sugarman/Sports_Stories_-_Monica_Seles.pdf

¹⁵¹ The Indian cricket team captain, is the first sportsperson to have made it to the Top 2 of the Forbes India Celebrity List 100, for the first time since its inception. 2018 Forbes India Celebrity 100: Top sportsmen who made it to the list (Dec 6, 2018) https://www.business-standard.com/article/current-affairs/2018-forbes-india-celebrity-100-the-top-sports-stars-who-made-to-the-list-118120600497_1.html

¹⁵² A discussion of how Shah Rukh Khan has global celebrity value is discussed by Lee Barron in his work on Celebrity cultures. Refer, *Global Celebrity in* Barron *Supra* note 60 at pp. 6-7 of 12 [doi: <http://dx.doi.org/10.4135/9781473910492.n8>]

¹⁵³ Rojek, *Supra* note 34 at Location 189 of 3072.

¹⁵⁴ Avijit Ghosh, *For Prince, the end of a charmed life*, Times Of India (Nov 27, 2013) http://timesofindia.indiatimes.com/articleshow/26442574.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

¹⁵⁵ Asad Rehman, *For Prince of Kurukshetra, 48 hours in borewell a snapshot of haunting images* The Indian Express (Updated Dec 18, 2016) <https://indianexpress.com/article/india/for-prince-of-kurukshetra-48-hours-in-borewell-a-snapshot-of-haunting-images-4432813/>

¹⁵⁶ Ghosh, *Supra* note 110.

¹⁵⁷ *Id.*

Outside of the three categories of celebrities, there thus lies, according to Rojek, a fourth distinct kind, of not-truly-celebrity – the “*celetoids*”. These are compressed, concentrated forms of the ascribed celebrity, and therefore there isn’t much distinction between the manners in which *celetoids* and ascribed celebrity are created. Nonetheless, the distinction lies in that their presence in public eye, i.e. their prominence and celebrity-value.¹⁵⁸ By their very nature, *celetoids* receive an almost instantaneous, overnight fame, and then similarly disappear from the public consciousness. Their fame is thus fleeting and Rojek therefore posits that “(T)he public elevation of, and concentration on, *celetoids* often follows public scandal.”¹⁵⁹ While the unfortunate mishap with Prince cannot truly be termed a scandal, it did raise important questions from the public on safety of children and lax government attitudes towards uncapped borewells¹⁶⁰ and even prompted an apex court order directing covering of all borewells¹⁶¹ though the same happened over three years after the incident. Making Prince fit within the categories suggested by Rojek still proves to be a tall order – however, Turner has suggested another type of celebrity – the “*accidental celebrity*”, based on James Monaco’s third category of celebrity – the “*qasar*”.¹⁶² These are individuals who come to attract media and public attention for no overt action by themselves – inadvertently, and often due to incidents beyond their control.

Therefore, instead of discounting real achievement in the making of celebrity, such that “hero-ism” becomes completely dissociated from the celebrity, Loughlan *et al* propose a “*spectrum combining achievement or talent and the independent value of well-knownness*”¹⁶³ While some celebrities, with their attributed star value lie more towards the *marketing end* of the spectrum, others lie in the middle – with little talent, magnified by the culture industry intermediaries, some continue to make significant contributions to human existence without having been packaged, branded and marketed; and some fall at the other extreme of the spectrum, nurturing a strong dislike for publicity, continuing to hide genuinely honed talents and brushing them under the carpet.¹⁶⁴

In the twenty first century, there has been an unprecedented growth in the range of media outlets, offering to the celebrity myriad options to propagate their notoriety. The public persona then, can be born almost instantaneously – such as the phenomenon of *manufactured celebrity* from reality television shows¹⁶⁵ – such that a once unknown person becomes an overnight sensation, and topic of dinner table conversation. It’s the internet age, and in this age, there are no gatekeepers of who gets to enter and remain in the public eye and thereby monetise their image.¹⁶⁶ Individuals themselves can now use social media platforms, and put

¹⁵⁸ Rojek, *Supra* note 34 at Location 225-227 of 3072

¹⁵⁹ *Id.* at Location 243 of 3072

¹⁶⁰ Rehman, *Supra* note 112

¹⁶¹ In Re: Measures for Prevention of fatal accidents of small children due to their falling into abandoned bore wells and tube wells, (2010) 15 SCC 224

¹⁶² Turner, *Supra* note 15 at Chapter 1, page 15 of 19 [ebook]

¹⁶³ Loughlan *et al* *Supra* note 17, at p. 5.

¹⁶⁴ *Ibid.*

¹⁶⁵ Tan, Commercial Appropriation of Fame, *Supra* note 26 at p. 23 of 312.

¹⁶⁶ Chapter 9, *Success just for being you: Opportunity in the Internet Age*, in Karen Sternheimer, CELEBRITY CULTURE AND THE AMERICAN DREAM: STARDOM AND SOCIAL MOBILITY (Routledge, 2014) (Google books edition available at:

out content, turning into valued “influencers”¹⁶⁷ In her study on the lives of young American women who shot to fame and attention on the world wide web through their own uploads and broadcasts on social media via bedroom webcams, Theresa Senft, while explaining how the generation of celebrity value on the internet is full of contradictions mentions : “...on the web, popularity depends on connection to ones’s audience, rather than an enforced separation from them... (this) explains why a camgirl will explain in one breath how she is in no way similar to a film or television star, and yet insist in the next that because she opens up her life to public scrutiny, she is not an ordinary person either...Always she’ll negotiate what she means”¹⁶⁸

A classification of the kinds of celebrity has been provided in a succinctly done table in the work by Alexandra Ruiz-Gomez¹⁶⁹, reproduced below:

Rojek’s “three-part model of fame”

| Type of fame | Characteristic | Examples | Authors & Date |
|---------------|--|---|----------------|
| 1) Ascribed | Fame inherited from famous parents or relatives | Royalty or the children of prominent people | Rojek, 2001 |
| 2) Achieved | Fame due to achievements or talents | Athletes, political figures, scientists | |
| 3) Attributed | Fabricated or staged by industry mediators (public persona was created to fit certain interests) | Movie stars or TV stars | |

Other forms of celebrity

| Type of fame | Definition | Examples | Authors & Date |
|------------------------------|--|--|---|
| Celeboid | Short-lived unpredictable lasting fame. | The winner of a TV quiz. | Rojek, 2001 |
| Celeactor | Someone who behaves like a real celebrity in real life. | A wannabe that pretends to be famous. | |
| Infamous | People who attract attention for negative reasons. | A criminal that attracts media attention and may generate fans, followers or even copycats. | |
| Accidental celebrity | Someone who attracts attention inadvertently for reasons out of his control. | Someone who witnesses an event and might appear inadvertently on mass media gaining quick attention. | Turner, 2004 |
| Subcultural celebrity | Mediated figures who are famous only by their fan audience. | Cult TV show actors, local newscasters, or small town politicians. | Hills, 2003; Marwick, 2015a; Ferris, 2010 |

https://books.google.co.in/books?id=RpSLBQAAQBAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

¹⁶⁷ Melody Nouri, *The Power of Influence: Traditional Celebrity vs Social Media Influencer* (2018). Advanced Writing: Pop Culture Intersections. 32 available at: https://scholarcommons.scu.edu/cgi/viewcontent.cgi?article=1032&context=enl_176

¹⁶⁸ Theresa M. Senft, *CAMGIRLS: CELEBRITY AND COMMUNITY IN THE AGE OF SOCIAL NETWORKS* 26 (Peter Lang Publications, 2008) (Googlebooks edition available at: https://books.google.co.in/books?id=u9w-XY_gU2gC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

¹⁶⁹ Alexandra Ruiz Gomez, *Digital Fame and Fortune in the age of Social Media: A Classification of social media influencers*, *aDResearch ESIC*, 19(19) Primer semestre, enero-junio 8-19 (2019) <https://doi.org/10.7263/adresic-019-01>.

A.3 Are social Media Influencers and Content Creators, Celebrities?

Fame has taken on new forms due to technological advancements, particularly on platforms like Instagram and YouTube.¹⁷⁰ With this proliferation of new media of communication, we have seen the rise of social media content creators. As over time, the notion of celebrity has transformed, adapting to new forms of recognition brought about by each emerging technology, now in this digital era, we see a rapid rise in the popularity of what are now known as social media influencers¹⁷¹ (the politer term to use is *social media content creators* as this researcher has learnt in several private DMs -direct messages exchanged with content creators on Instagram), this era's newly minted celebrities who derive their fame from platforms like Instagram and YouTube. Various terms such as *micro-celebrity*¹⁷², *instafamous*¹⁷³, and *internet famous*¹⁷⁴ are frequently used interchangeably to describe these new icons of popular culture¹⁷⁵. Influencers are 'DIY- do-it-yourself' social media personalities who develop their digital identity, craft their content, and cultivate their own followers – bypassing the traditional route of being planted into audience visibility by the media industry overtly, and instead use the new media platform to stand-out¹⁷⁶. To be valuable to brands, they need to effectively attract attention to both themselves and products, often by having a large audience¹⁷⁷. This involves a series of strategic actions such as embodying a brand themselves, presenting a distinct unique selling proposition, and maintaining a professional, commercially-focused approach consistently¹⁷⁸.

Ruiz Gomez has again, succinctly provided all possible forms of celebrity manifestations in the modern media communicative mechanisms: “*The different types of social media influencers are classified by audience size. The classification differentiates mega influencers into gold category (over one million followers) or diamond (over 10 million followers), using the standard of the Youtube partner program for content creators (Youtube Creator Academy, 2018). Mega influencers embody the epitome of the ability to capture attention.*

¹⁷⁰ Castulus Kolo & Florian Haumer, Social Media Celebrities as Influencers in Brand Communication: An Empirical Study on Influencer Content, Its Advertising Relevance, and Audience Expectations, 6 J. Digital & Social Media Mktg. 273 (2018).

¹⁷¹ Mingyi Hou, Social Media Celebrity and the Institutionalization of YouTube, 25 Convergence: The Int'l J. of Res. into New Media Techs. (2018), <https://doi.org/10.1177/1354856517750368>.

¹⁷² Marwick, A. and Boyd, D. (2011) To See and Be Seen: Celebrity Practice on Twitter. Convergence: The International Journal of Research into New Media Technologies, 17, 139-158. <http://dx.doi.org/10.1177/1354856510394539>

¹⁷³ Marwick, A. (2015) Instafame: Luxury selfies in the attention economy. Public culture, 27(1(75), 137-160

¹⁷⁴ Ruiz Gomez, *Digital Fame*, *Supra* note 169, at p.10

¹⁷⁵ Ruiz Gomez, *Digital Fame*, *Supra* note 169, at p.9

¹⁷⁶ Turner, 2014 *Supra* note 15.

¹⁷⁷ Susie Khamis, Lawrence Ang & Raymond Welling, Self-Branding, 'Micro-Celebrity' and the Rise of Social Media Influencers, 8 *Celebrity Stud.* 191 (2017).

¹⁷⁸ M. Hou, Social Media Celebrity and the Institutionalization of YouTube, 25 *Convergence* 534 (2019), <https://doi.org/10.1177/1354856517750368>. Refer also Mart Ots & Crystal Abidin, Influencers Tell All? Unravelling Authenticity and Credibility in a BRAND SCANDAL, IN *BLURRING THE LINES: MARKET-DRIVEN AND DEMOCRACY-DRIVEN FREEDOM OF EXPRESSION* 153 (Nordicom 2016) cited in Ruiz Gomez, *Supra* note 169, at p. 15

They provide reach that might exceed the audience of mass media and are used in large awareness campaigns. Users in this category include high profile accounts like Youtuber millionaires mentioned earlier or other high profile accounts in other platforms. Mega influencers are the A-listers of social media fame and considered and treated like big traditional celebrities. These elite social media influencers are the real social media celebrities.”¹⁷⁹:

| Influencers that use specific platform or formats | | | Size of audience |
|--|--|---|--|
| Youtubers | Influencer that uses Youtube | Value classified according to Youtube partner program (Silver, Gold, Diamond) | Varying number of followers. (See below) |
| Vloggers | Influencers that uses Vlog format | Vloggers typically use Youtube and/ or Instagram (Hou, 2018) | |
| Instafamous | Influencers who uses Instagram | It implies capturing a large audience (Marwick, 2015b). | |
| Classification of influencer status based on size, regardless of platform used or format (Hatton, 2018; Bernazzani, 2018, Bullock, 2018) | | | Size of audience |
| Micro influencers | The largest group of influencers | They are considered to have the highest engagement with followers (Markerly, 2015) | Up to 99K |
| Macro influencers | Silver (Youtube) | Also called Power middle users (Chen, 2013) | From 100K to 500K followers |
| | Macro (advanced level) | Must be very professional and consistent (Booth & Matic, 2011) | Over 500 followers and up to 1 Million |
| Mega influencers | Gold (Youtube Creator Academy, 2018) | They have become extremely well-recognized authorities in a certain topic through strategic self-branding | Over 1 million |
| | Considered Social Media Celebrities A-listers | Diamond (Youtube Creator Academy, 2018) | Elite of social media influencers that can command mass media size audiences (Hou, 2018) |

A celebrity’s credibility has three markers - three dimensions of social media: *expertise, trustworthiness, and attractiveness*¹⁸⁰, and when applied to social media creators as influencers, in India especially, there’s an entire sub-cultural economy that is booming – the *creator economy*.¹⁸¹ The India Creator Economy market size was valued at US\$ 976.0 million in 2023 and is expected to reach US\$ 3,926.2 million by 2030, grow at a compound

¹⁷⁹ Ruiz Gomez, *Digital Fame*, *Supra* note 169 at p.17

¹⁸⁰ Faizan Baig & Saad Ullah Shahzad, *Impact of Social Media Influencer’s Credibility Dimensions on Consumer Behavior: An Empirical Study Related to Influencer Marketing on Pakistan’s Fashion Industry* (May 2022) (Unpublished Masters thesis, Jönköping University, International Marketing, Master of Science in Business Administration) <http://hj.diva-portal.org/smash/get/diva2:1687888/FULLTEXT01.pdf>.

¹⁸¹ Moneycontrol News, *Creator Economy Summit: Indian Content Creators Open Up About Fame vs Money*, Moneycontrol (Oct. 31, 2023), available at <https://www.moneycontrol.com/news/business/creator-economy-summit-indian-content-creators-open-up-about-fame-vs-money-11636951.html>.

annual growth rate (CAGR) of 22% from 2023 to 2030.¹⁸² The India Creator Economy Market is experiencing growth primarily due to two key factors. *Firstly*, the expanding reach of the internet and social media platforms is significantly contributing to market expansion. As mentioned earlier, with internet connectivity and smartphone usage continuing to increase rapidly, more individuals are gaining access to various social media platforms – contributing further to the surge in the number of content creators actively engaging with their audience across a variety of platforms, including video-sharing sites, blogs, podcasts, and others. This surge in content creation has opened up new avenues for monetization, attracting brands and advertisers to collaborate with creators for targeted marketing campaigns.¹⁸³ *Secondly*, there is a growing demand for authentic and relatable content, which is further driving market growth. In today's digital landscape, consumers are actively seeking content that aligns with their interests, preferences, and values. Content creators, leveraging their ability to produce personalized and niche content, are meeting this demand and building a dedicated following. This increased engagement has led to greater opportunities for brand partnerships and sponsorships, as brands seek to tap into the highly engaged audience base cultivated by content creators.¹⁸⁴ Today, even Digital Stars and content creators follow a more 'multi-step' process, focussing on their own personal brand on the world wide web, to ensure that they create content that is engaging, credible and original.

Thus, while the glamour of content creation is apparent, it requires substantial effort and work. In 2022, Forbes - recognising the pull of influencers and use of their content by brands, released its first ever ranking of the most influential creators on the web.¹⁸⁵ Wealth, renown, and determination (“*Money. Fame. Moxie*”)¹⁸⁶ were found to be the essential ingredients for inclusion in this Forbes’ inaugural list - ranking individuals who reliably were found to have the capacity to captivate millions with their unique and engaging content, attracting substantial investments from leading global brands - eager to sponsor them. Subsequently, the Forbes India and Goat—GroupM's brand-safe influencer and content marketing solution—have recognized the contributions of these creators through the 2023 India's Top 100 Digital Stars list¹⁸⁷, considering both quantitative and qualitative measures. The focus has been on creators primarily active on platforms like Instagram, YouTube, and Facebook, evaluating key metrics such as followers, engagement, views, reach, and impressions across these platforms¹⁸⁸.

¹⁸² Coherent Market Insights, *India Creator Economy Market Size and Share Analysis - Growth Trends and Forecasts (2023 - 2030)* (2023), available at <https://www.coherentmi.com/industry-reports/india-creator-economy-market>.

¹⁸³ *Ibid*

¹⁸⁴ *Id.*

¹⁸⁵ Alexandra Sternlicht, Top Creators 2022, Forbes (Sept. 6, 2022), <https://www.forbes.com/sites/alexandrasternlicht/2022/09/06/top-creators-2022/?sh=7295c08267a1>.

¹⁸⁶ *Ibid.*

¹⁸⁷ Forbes India, India's Top 100 Digital Stars 2023, Forbes India (October 26, 2023), <https://www.forbesindia.com/lists/2023-digital-stars/>.

¹⁸⁸ Naini Thaker & Kunal Sawant, *Digital Stars 2023: Rise of the Influencers*, Forbes India (Oct. 26, 2023), <https://www.forbesindia.com/article/digital-stars-2023/digital-stars-2023-rise-of-the-influencers/89235/1>.



Source: Forbes India, Instagram (July 18, 2022) <https://www.instagram.com/p/CgJDoKBPW8T/>

Dentsu, one of the largest global marketing and advertising agency networks in the world, also continues to recognise the phenomenon of influencer marketing, so much so that it has dedicated teams working on it- *Dentsu Influence* which offers a comprehensive, creator-first marketing and performance solution designed for optimal impact across all stages of the marketing funnel..¹⁸⁹ In a study on *Impact of Influencer Marketing in India*¹⁹⁰ they pointed out how, influencer marketing has evolved beyond just a marketing strategy to become a cultural movement that has transformed the marketing landscape.¹⁹¹ Influencer marketing highlights the synergy between different social media niches, with a growing focus on *micro-influencers* who have strong connections with their audiences. – pointing to the affinity models¹⁹² discussed in this Chapter. These micro-influencers are crucial in fostering positive brand images through their engagements and collaborations, signaling a new phase in influencer marketing – described at the positive halo effect¹⁹³. Interaction with influencers on

¹⁸⁹ Dentsu Influence, <https://www.dentsu.com/id/en/dentsu-influence>

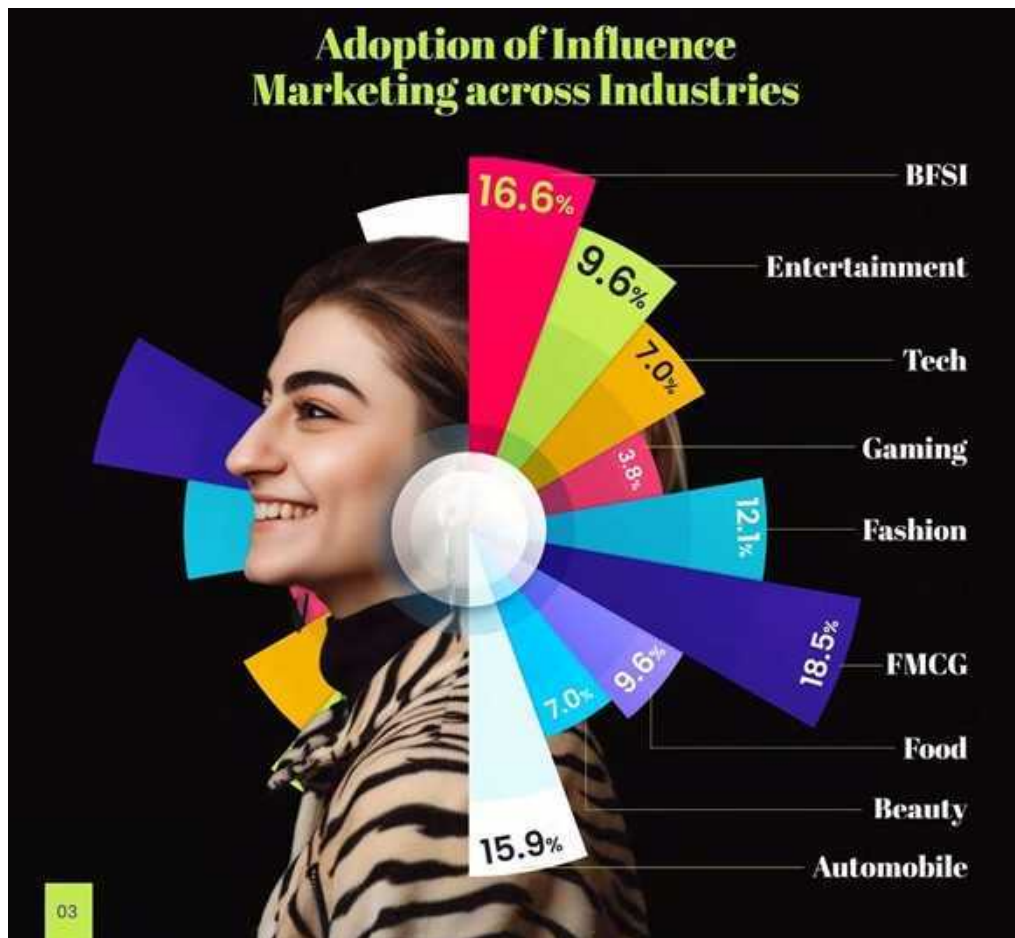
¹⁹⁰The Impact of Influencer Marketing in India, May 2023, Dentsu, Asia Pacific (June 6, 2023) <https://www.dentsu.com/sg/en/insights/the-impact-of-influencer-marketing-in-india.>)

¹⁹¹ *Ibid* at p.2

¹⁹² Dyer, STARS, discussed under Section B of this chapter, note 218-219

¹⁹³ Pringle, *Infra* note 216 at p.72

social platforms empowers users to choose who to follow, reinforcing their trust in the endorsements made by these influencers. This trust, digitally established and sustained, forms the core of influencer marketing. Moreover, the anonymity provided by the digital realm is essential for the success of this marketing strategy. Followers, who are also prospective buyers, are attracted to the well-crafted public images of influencers, which gradually become integrated into normal lifestyle and identity expressions.¹⁹⁴ Companies across various sectors are increasingly engaging influencers to promote their products and services, making influencer marketing a crucial element of their overall marketing strategies. The study thus suggests that the leading the adoption of influencer marketing are companies in the Fast-Moving Consumer Goods (FMCG) sector, which account for 18.5% of such marketing, followed by the Banking, Financial Services, and Insurance (BFSI) sector at 16.6%, and the automotive sector at 15.9%. Positioned fourth at 12.1%, the fashion industry is also integrating influencer marketing into its promotional strategies, a trend expected to significantly increase in the coming years. Independent fashion brands are projected to equal the presence of major e-commerce platforms soon.¹⁹⁵



Source: The Impact of Influencer Marketing in India, May 2023, Dentsu, Asia Pacific (June 6, 2023) [https://www.dentsu.com/sg/en/insights/the-impact-of-influencer-marketing-in-india.\)](https://www.dentsu.com/sg/en/insights/the-impact-of-influencer-marketing-in-india.) at p. 6

¹⁹⁴ The Impact of Influencer Marketing in India, May 2023, Dentsu, Supra note 190, at p. 4

¹⁹⁵ *Ibid* at p.6

It therefore came as no surprise when in early August 2023, The Advertising Standards Council of India (ASCI) expanded its definition of *celebrities* in its guidelines¹⁹⁶ to now include *social media influencers with a following of 500,000 or more*¹⁹⁷. This update aims to ensure that advertisements featuring celebrities, including social media influencers, comply with the ASCI Code and that celebrities conduct due diligence to verify and substantiate claims made in ads¹⁹⁸. The ASCI also emphasizes that celebrities should not endorse products or treatments prohibited under specific acts. The revised guidelines reflect the changing landscape of influence, where social media influencers play a significant role in shaping consumer behavior and trust.¹⁹⁹ Thus, Indian content creators, similar to their counterparts globally, have evolved from merely producing short-form reels, long-form vlogs, and viral videos for instant social media fame, to becoming dynamic drivers of the economy. As brands increasingly rely on influencer marketing over traditional forms, these content creators are playing a growing and crucial role in brand marketing strategies.²⁰⁰ Thus, given the guidelines, we now have an attempt at a legal definitional standard, for who comprises a *celebrity*, at least for the purpose of endorsement and advertising regulation.

B. Celebrity as “commodity” and “consumption” – the marketable image of celebrity personality (*economic associative value*)

Having earlier posited that it is widespread public identification that defines celebrity, and also discussed its *necessity* in fact for brands and marketing, it is easier to submit then that there has emerged a new genre of the “*democratic celebrity*”²⁰¹ – due to the new internet age and media developments. In this construct, the hierarchy in the creation and consumption of celebrity is obliterated in reality. Consumers are instead presented with personae that are identifiable in their imperfections and fallibility; as ‘public selves’ are constructed by users themselves.²⁰² Thus, the consumer is presented with what is described as the “*democratic celebrity*” where social media influencers, reality show participants-turned-stars and film and

¹⁹⁶ GUIDELINES FOR CELEBRITIES IN ADVERTISING (‘Celebrity Guidelines ASCI’), in Advertising Standards Council of India, THE CODE FOR SELF-REGULATION OF ADVERTISING CONTENT IN INDIA (‘ASCI CODE’) at p. 37 https://www.ascionline.in/wp-content/uploads/2024/04/Code-Book_Codes_Webready.pdf

¹⁹⁷ Celebrity Guidelines ASCI, *Ibid.* (“a) *Celebrities, for the purpose of these guidelines are famous and wellknown people, who are from the field of entertainment and sports, and would also include other famous and well-known personalities like doctors, authors, activists, educationists, etc. who • Get compensated Rs. 40 lakhs or equivalent value annually for appearing in advertisements or campaigns on any medium and any format OR • Has a social media followership of 500,000 or more on any single social media handle*”)

¹⁹⁸ Celebrity Guidelines ASCI, *Ibid.* (“d) *Celebrity should do due diligence to ensure that all description, claims and comparisons made in the advertisements they appear in, or endorse, are capable of being objectively ascertained and capable of substantiation, and should not mislead or appear deceptive*”)

¹⁹⁹ BE Staff, ASCI broadens the definition of celebrities in its code, to include social media influencers, Brand Equity (Aug 9, 2023) <https://brandequity.economictimes.indiatimes.com/news/advertising/asci-broadens-the-definition-of-celebrities-in-its-code-to-include-social-media-influencers/102572017>

²⁰⁰ M Saad, The creator economy: From making bite-sized reels, long-form vlogs and plain viral videos to becoming dynamic drivers of the economy, content creators are capitalising on a new wave of commerce aided by digital media platforms, Financial Express, December 3, 2023, available at <https://www.financialexpress.com/lifestyle/the-creatornbspeconomy/3323933/>

²⁰¹ Elizabeth Currid-Halkett, STARSTRUCK: THE BUSINESS OF CELEBRITY (2010) in Tan, Commercial Appropriation of Fame, *Supra* note 26, at p. 38 of 312, f.n. no.79.

²⁰² Sternheimer, *Supra* note 166.

sports A-listers occupy the same market space.²⁰³ It is these production, distribution and consumption practices taking place in the celebrity market, that further the notion that, in the end, “*all stars burn the same*”.²⁰⁴

Nonetheless, what is evident is that in the present day, star-crazed world, there is constant circulation of new content and as a consequence, new celebrity-type personae through the media.²⁰⁵ And the perceived advantages of continuous presence in the public eye are also manifold – so much so that “being famous” is considered an end in itself.²⁰⁶ The mass media provides a wide variety of individuals with whom the public chooses to identify.²⁰⁷ Studies have shown, that people try to emulate the appearance, style, mannerism and behaviour of those in the media that they feel the closest to, figuratively.²⁰⁸ The public audience is then called the “*media consumers*” and the celebrities so emulated have been branded the “*media characters*”.²⁰⁹ These media characters – the celebrities, are increasingly aware of their power over their audiences, and thus product manufacturers and service providers, naturally seek them out to help enhance their own brand’s familiarity, favourability and hence saleability. These celebrities – the media characters – are usually *stars of the cultural economy*, spanning music, film, fashion, the plastic arts, and sports, play a dual role as top performers and objects of desire. They embody celebrity and glamour, qualities that are amplified through constant media exposure, casting a radiant aura over associated goods and services²¹⁰. Stars and celebrities act as “symbolic fetishes and economic brands”²¹¹, exerting a “branding effect”²¹² that stabilizes and boosts demand for specific products, especially in a volatile and competitive economic landscape. This branding effect is crucial as it helps

²⁰³Joshua N. Morrison, *All Stars Burn the Same: Media Customs and the flattening of Celebrity*, in CELEBRITY MEDIA EFFECTS: THE PERSUASIVE POWER OF THE STARS 5-14, 12 (Carol M. Madere Ed., Lexington Books, 2018, Googlebooks edition, available at: https://books.google.co.in/books?id=tah6DwAAQBAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

²⁰⁴ *Ibid.*

²⁰⁵ Elizabeth Currid-Halkett and Allen J. Scott, *The geography of celebrity and glamour: Reflections on economy, culture, and desire in the city*, 4 City, Culture and Society 2–11, 2 (2013) available at: https://elizabethcurridhalkett.com/wp-content/uploads/2017/05/Currid_Halkett_Scott_Celebrity.pdf

²⁰⁶ Barrie Gunter, CELEBRITY CAPITAL: ASSESSING THE VALUE OF FAME 1 (Bloomsbury, 2014, Googlebooks edition, available at: https://books.google.co.in/books?id=IzxeBAAAQBAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

²⁰⁷Benson P. Fraser & William J. Brown, *Media, Celebrities, and Social Influence: Identification With Elvis Presley*, 5(2) Mass Communication and Society 183-206, 188 (2002) available at: http://dx.doi.org/10.1207/S15327825MCS0502_5

²⁰⁸ Fowles, *Supra* note 63. See also Cynthia Hoffner and Joanne Cantor, *Perceiving and responding to mass media characters*, in RESPONDING TO THE SCREEN: RECEPTION AND REACTION PROCESSES 63-101 (J. Bryant & D. Zillmann, Eds., Hillsdale, NJ, US: Lawrence Erlbaum Associates, Inc., 1991); Cynthia Hofner and Martha Buchanan, *Young Adults’ Wishful Identification With Television Characters: The Role of Perceived Similarity and Character Attributes*, 7 Media Psychology 325-351 (2005).; Elly A. Konijn and Johan F. Hoorn, *Some Like It Bad: Testing a Model for Perceiving and Experiencing Fictional Characters*, 7 Media Psychology 107-144 (2005)

²⁰⁹ Fraser and Brown, *Supra* note 207.

²¹⁰ P. David Marshall, *New media—new self: The changing power of celebrity*, Ch. 36 in THE CELEBRITY CULTURE READER (Ed. P.David Marshall, New York: Routledge, 2006)

²¹¹ Currid-Halkett and Scott, *Supra* note 205.

²¹² *Ibid.*

maintain demand and loyalty for products. Additionally, the celebrity status gained in one sector of the cultural economy can be leveraged through product endorsements to influence demand in other sectors of the economy. This interconnected system allows for the generation of substantial profits, benefiting both the celebrities themselves and the companies utilizing their services.²¹³

Therefore, as a consequence of celebrities being themselves consumed, as well as endorsing products and services, “celebrities are not just social role models whose actions or statements can influence the many, they are also cultural commodities, and their value is increasingly calculated in terms of their increasing ability to generate financial gain for others.”²¹⁴ Thus, celebrities function as vehicles that aid in the process of market creation for the commodities and brands they choose to endorse.²¹⁵ As has been observed, “celebrity endorsement acts as a sign post to quality, and can significantly enhance the reputation of the brand.”²¹⁶ Thus, when a celebrity endorses a product, its overall appeal for the consumer increases, the consumer gets that “little bit extra” in terms of building the product’s association with the celebrity endorser, has fodder for entertainment, and paints a mental image of the celebrity in actuality using the product or service.²¹⁷ Furthermore, in the language of *sales and marketing* predominantly, the act of manufacturing celebrity, the very creation of the celebrity personae, is an industry in itself, a stand-alone commercial enterprise – that is made up of highly evolved and institutionalised players at the level of *cultural producers* as well as *cultural intermediaries* as mentioned above. In this “celebrity industry”, the celebrity, due to its attention grabbing and retention capacity, is the “central commodity”. The celebrity performer therefore itself is the commodity, the product being sold and consumed.²¹⁸ However, unlike a factor-production-line method, observed in more conventional manufacturing industries, the process of building celebrity is more individuated – each celebrity persona is specifically shaped to cater to a its audience and keep up appearances of a self-brand so built. Therefore in practise, an individual celebrity persona – the A-lister, the star, reaches iconic proportions, compounded further by the specific historical courses its circulation takes, and it accrues semiotic meaning over time.²¹⁹ The celebrity is this a sign embodying certain values that the consuming public chooses to see encoded in them.²²⁰ In the “stars as consumption” model of Dyer²²¹, further based upon the works of Andrew Tudor²²², a typology of the star-consumer relationship is pointed out thus:

²¹³ Gilad Ravid & Elizabeth Currid-Halkett, *The Social Structure of Celebrity: An Empirical Network Analysis of an Elite Population*, 4 *Celebrity Stud.* 182 at 186 (2013), <https://doi.org/10.1080/19392397.2013.791047>.

²¹⁴ Gunter, *Supra* note 206, at p.3

²¹⁵ Olivier Driessens, *Celebrity Capital: Redefining celebrity using field theory*, 42 *Theor. Soc.* 543-560, 547 (2013)

²¹⁶ Hamish Pringle, *CELEBRITY SELLS* xxii (John Wiley and Sons, 2004, Googlebooks edition https://books.google.co.in/books?id=XfVjbe8ZsyYC&pg=PA47&source=gbs_toc_r&cad=4#v=onepage&q&f=false)

²¹⁷ *Ibid.*

²¹⁸ Joshua Gamson, *CLAIMS TO FAME: CELEBRITY IN CONTEMPORARY AMERICA* 64 (University of California Press, 1994, Googlebooks edition https://books.google.co.in/books?id=OWNLM_1ur8C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q=celebrity%20performers&f=false).

²¹⁹ *The Economy of Celebrity*, in Turner, *Supra* note 15 at Chapter 2, page 6 of 16 [ebook]

²²⁰ Dyer, *STARS*, *Supra* note 133 at pp. 2-3.

²²¹ *Id.* at p. 18

- i. “*emotional – affinity*” – described as the weakest of the types, nonetheless most common, the consumer in the audience perceives a level of attachment to the star, based on such celebrity’s projection in film and media. For example, studies from as early as in the late 1930s, pointed out that visuals of otherwise well-liked stars being intoxicated over regular intervals, out in the media, or even pretending on film, made their popularity go down considerably, and as a consequence, the sales of products they endorsed.²²³
- ii. “*self – identification*” – stronger than the emotional-affinity stage, in this stage of the star-consumer relationship, the consumer places herself in the shoes of the celebrity persona, often reaching extremes of consciousness. They assume a sense of kinship and believe that the star professes a persona on screen that they relate to and identify with.²²⁴
- iii. “*imitation*” – this is believed to be the commonest amongst the younger cinema-going, film-watching, magazine-reading crowd. The star acts as a model for the audience, and consequences of imitation can begin go beyond the films – wherein the frenzied consumption with repeated emulation comes into the picture.²²⁵
- iv. “*projection*” - imitation magnified, takes shape as projection. The consumer starts living their lives as if they are an extension of their celebrity idol’s persona. Projection can take extreme forms, in which the image that the consumer has conceived of the star celebrity, moves beyond that which was manifested in and fed by the media. The “*star-conception*” is then the resulting output of both the media-projected image of the star, coupled with characteristics imputed to this image but the consumers own conceptualisation and projection.²²⁶ Thus, at the extreme end, the consumers’ real-world seemingly merges with the star-world, based upon derived terms and mannerisms.

From the above, it can be further argued that the value of the celebrity has undergone a process of personalisation from consumer-driven culture²²⁷. But that argument is not in any manner made to over emphasize the role of the consumer in building of celebrity persona, and definitely not to undermine the increasingly important role of the cultural intermediaries and the cultural producers. However, what is maintained and argued, in agreement with Currid-Halkett and Scott is that – “*celebrity and glamour are socially-constructed within the machinery of contemporary commercial culture and its ever-increasing generation of a type*

²²² Andrew Tudor, *IMAGE AND INFLUENCE: STUDIES IN THE SOCIOLOGY OF FILM* (St. Martin's Press, 1975; Routledge, 2013)

²²³ Margaret Farrand Thorpe, *AMERICA AT THE MOVIES 94* (New Haven, Yale University Press, 1939)(Digital version available at : <https://archive.org/details/americatmovies00marg/page/94>) cited in Tudor (2013), *Supra* note 222 at pp. 80-81, f.n.no. 9., Googlebooks edition available at : https://books.google.co.in/books?id=M55WAgAAQBAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false)

²²⁴ Tudor (2013), *Supra* note 222, at p. 81

²²⁵ *Ibid.*

²²⁶ *Id.* at p.82

²²⁷ P. David Marshall, *THE CELEBRITY PERSONA PANDEMIC 6* (University of Minnesota Press, 2016, Googlebooks edition, available with the researcher)

of fame that is expressed in highly mediatized images and popular recognition”²²⁸ Therefore, the celebrity and the value that it entails, are both products of commodity system of capitalism.²²⁹

Nonetheless, this process of “*creating celebrity marketing enchantment*”²³⁰ can have a downside. Since the celebrity and the product are closely inter-linked, as mentioned earlier, the product’s marketability fate relies heavily on the behaviour of the celebrity endorser. The connection thus may backfire, if the celebrity endorser misbehaves in public in some way, and result in a fall in sales figures and consumer loyalty.²³¹ For example, study estimated that in the after-math of the news of golfer Tiger Wood’s extra marital affair, Accenture decided to drop him from their advertising campaigns, and a total of nine of his own sponsors, like Gillette, American Express and AT&T, ended up in losses to the tune of US \$ 12 billion in shareholder value!²³² Similarly, in early 2009, Olympic swimming champion and record medal holder Michael Phelps was dropped by one of its sponsors, and his advertising contract wasn’t renewed by the American cereal manufacturer – Kellogg Co., when a photograph of him smoking out of a glass pipe – a “bong” started doing the rounds on the internet.²³³ Kellogg’s went to the extent of releasing a statement saying that this photograph and Phelp’s behaviour was not consistent with their household image.²³⁴ Closer home, the example of film superstar Shah Rukh Khan and his deteriorating endorsements²³⁵ until the blockbuster year he had in 2024 can be taken up. While his name continued to figure on the Forbes’ India Celebrity 100 List (example of 2017-18 figures is taken here),²³⁶ however he went down at the thirteenth position from the second position in 2017; and his earnings went down considerably to INR 56 Crores from the reported INR 170.50 crores in 2017.²³⁷ Given the claim that “*for celebrities, it is strictly their performance in their fields that gets them endorsement deals,*”²³⁸ it didn’t come as much of a surprise when Pepsi decided against renewing the endorsement deal with Shah Rukh Khan, as he didn’t fit within their

²²⁸ Currid-Halkett and Scott, *Supra* note 205, at p. 2.

²²⁹ *Id.* at p.3

²³⁰ Loughlan et al, *Supra* note 17 at p. 3

²³¹ *Ibid.*

²³² Alsia Wolfson, 5 times a celebrity -- like Kevin Durant -- has downed a company’s stock, Market Watch (Sept 1, 2017) <https://www.marketwatch.com/story/5-times-a-celebrity---like-kevin-durant---has-downed-a-companys-stock-2017-09-01>

²³³ Kellogg’s drops Phelps after bong controversy, Campaign (Feb 6, 2009) <https://www.campaignlive.co.uk/article/kelloggs-drops-phelps-bong-controversy/879213>.

²³⁴ *Ibid.*

²³⁵ Urvi Malvania, With a shrinking list of endorsements, has brand SRK lost the Midas touch?, Business Standard (Sept 26, 2018) https://www.business-standard.com/article/companies/with-a-shrinking-list-of-endorsements-has-brand-srk-lost-the-midas-touch-118092601199_1.html

²³⁶ 2018 Celebrity 100, Forbes India Magazine, <http://www.forbesindia.com/lists/2018-celebrity-100/1735/1> (last visited: April 27, 2019)

²³⁷ 2017 Celebrity 100, Forbes India Magazine, <http://www.forbesindia.com/lists/2017-celebrity-100/1665/1> (last visited: April 27, 2019).

²³⁸ Tasmayee Laha Roy, ‘Embarrassing adolescent’: At 53, Shah Rukh Khan is neither the hero, nor the brand he used to be, MoneyControl.com (Nov 2, 2018) <https://www.moneycontrol.com/news/business/happy-birthday-shah-rukh-khan-at-53-srk-is-in-a-kind-of-an-embarrassing-adolescent-where-he-can-neither-play-the-hero-nor-the-father-to-the-hero-experts-3120741.html>

“Youngistan” motto,²³⁹ and Nerolac paints roped in actor and a star in his own right – Ranveer Singh, dropping SRK.²⁴⁰ Further, in light of the fact that most of SRK’s movies until 2023 hadn’t been super hits, his popularity with brands had also lessened. As was observed by Saurabh Uboweja, international brand expert and CEO - Brands of Desire, a management consulting firm, “Companies pay millions to celebrities for endorsement, so they want full value in return. Moreover, the safest strategy in present times is to target the millennials or the even younger Gen Z and SRK is no longer a brand that fits in there.”²⁴¹ However, in the lead up to the release of the January 2023 SRK film Pathaan, he was signed on by *ThumsUp* (traditionally endorsed by Salman Khan and Akshay Kumar), and the entire year saw a spate of advertisements on TV and online on YouTube and other OTT platforms, with SRK in his ‘Pathaan character look’, with the tagline ‘*Soft Drink Nahi, (Not a Soft Drink, It’s a Storm)*’, playing on the action-image that is being reclaimed by the actor, as well as the cola-drink’s original tagline – ‘*Taste the Thunder!*’

However, this may not be always true – and if a celebrity’s deviance from established mainstream image leads instead to the increased attractiveness of the product for the consumer in a specific target audience, the celebrity association may as well be allowed to continue.²⁴² Furthermore, due to the immensely important role the audience and the fandom play in continuance of the celebrity’s image themselves, a total reverse may happen, wherein an endorsement may backfire on the celebrity themselves, and they may need to release a retraction/apology. For example, Akshay Kumar has always been the beloved actor-entertainer amongst masses²⁴³, and in fact, continually stays amongst the Top#3 in the Celebrity Brand Valuation lists²⁴⁴ inspite of several of his films of late unfortunately flipping at the box office, due to his huge bag of brand endorsements. He is known for his immense discipline and his healthy lifestyle choices²⁴⁵ have in fact seen him become the face of even government anti smoking campaign²⁴⁶, and he is usually the go to actor for social message

²³⁹ Ratna Bhushan, PepsiCo drops Shah Rukh Khan as brand ambassador, Economic Times (Feb 13, 2009) <https://economictimes.indiatimes.com/industry/services/advertising/pepsico-drops-shah-rukh-khan-as-brand-ambassador/articleshow/4124594.cms>.

²⁴⁰ Laha Roy, *Supra* note 238.

²⁴¹ Laha Roy, *Supra* note 238.

²⁴² Loughlan et al, *Supra* note 17, at p. 3

²⁴³ Saumya Tewari, Why Mass Brands love Akshay Kumar, LiveMint (Sep 9, 2018) <https://www.livemint.com/Consumer/0GpO1iBh3UH7ZhIdHTlotM/Why-mass-brands-love-Akshay-Kumar.html>

²⁴⁴ “Akshay Kumar retained the third position with a brand value of USD 153.6 mn.”, Celebrity Brand Valuation Report 2022: Beyond the Mainstream, Kroll (March 21, 2023); <https://www.kroll.com/en/insights/publications/valuation/celebrity-brand-valuation-study-2022>; “Akshay Kumar lands the third position with a brand value of \$139.6 mn.”, Celebrity Brand Valuation Study 2021: “Digital Acceleration 2.0”, Kroll (March 30, 2022) <https://www.kroll.com/en/insights/publications/valuation/celebrity-brand-valuation-study-2021>

²⁴⁵ Sourav Majumdar, Discipline and Disruption Make Akshay Kumar Bollywood's Hit Machine, Forbes India (Jan. 5, 201) <https://www.forbesindia.com/article/2016-celebrity-100/discipline-and-disruption-make-akshay-kumar-bollywoods-hit-machine/45259/1>.

²⁴⁶ Bhavya Sadhwani, Akshay Kumar’s Anti-Smoking Ad Likely To Be Played At The Beginning Of Web Series & Films Soon, IndiaTimes (Jan. 17, 2023), <https://www.indiatimes.com/entertainment/binge/akshay-kumars-anti-smoking-ad-likely-to-be-played-at-the-beginning-of-web-series-films-soon-590469.html>.

films²⁴⁷ (*Toilet: Ek Prem Katha*, on the necessity of toilets and the *Swachh Bharat Abhiyaan*, *Padman* – inspired by Arunachalam Muruganatham's life - who is recognized for developing an inexpensive machine for producing sanitary pads and for pioneering various methods to raise awareness among women in rural India about the outdated and unhygienic practices related to menstruation). Therefore, when Akshay Kumar appeared with two other superstar actors – SRK and Ajay Devgn, in the advertisements in video, print and even voice (on radio) for the *Vimal Elaichi* ‘mouth freshener’ (allegedly containing tobacco), with the extremely recognisable tagline – “*Bolo Zubaan Kesari!*”(Speak in Saffron Flavoured Tongues)²⁴⁸



Source: YouTube

his fandom rose up in protest,²⁴⁹ and meme pages even found old advertisements²⁵⁰ and made up new memes using screen grabs from the anti smoking campaign ad, and several accounts made up collages calling out his alleged hypocrisy:

²⁴⁷ Yashika Mathur, Kick the Butt, Dig the Pit: Akshay Kumar Stars in Ads on Tobacco Use and Toilets, Hindustan Times (Apr. 30, 2018), <https://www.hindustantimes.com/bollywood/kick-the-butt-dig-the-pit-akshay-kumar-stars-in-ads-on-tobacco-use-and-toilets/story-oEOrryxj1jQE3OeypFFFaL.html>.

²⁴⁸ Vimal Elaichi - Ajay Devgn | Shahrukh Khan | Akshay Kumar Hindi TVC 40 secs; YouTube, Uploaded by vimal Elaichi, April 16, 2022 <https://www.youtube.com/watch?v=H7ZX6qa0RFc>

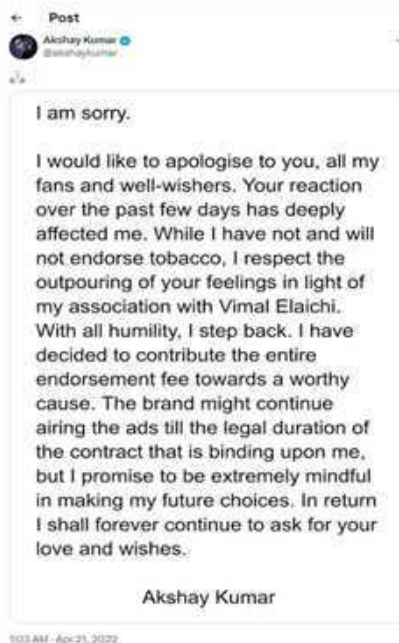
²⁴⁹ Tribune Web Desk, Akshay Kumar's Old Pic of Cigarette Ad Surfaces After He Claims Never Endorsed Tobacco, Twitter User Asks 'Are Cigarettes Made of Gulkand?', Tribune India (Apr. 22, 2022), <https://www.tribuneindia.com/news/entertainment/akshay-kumars-old-pic-of-cigarette-ad-surfaces-after-he-claims-never-endorsed-tobacco-twitter-user-asks-are-cigarettes-made-of-gulkand-388443>.

²⁵⁰ India.com Entertainment Desk, Akshay Kumar's Old Cigarette Ad Goes Viral, Fan Says 'Herogiri Phu-Phu Karne Mein Nahi' – Check More Reactions, India.com (Apr. 22, 2022) <https://www.india.com/entertainment/akshay-kumar-old-cigarette-advertisement-goes-viral-fan-says-herogiri-phu-phu-karne-mein-nahi-check-more-reactions-5352191/>.



Source: Tweets of @BrijwaSRKman, @OfficialVijayJi, and @IamRajenderPal, Twitter, Now X, (April 13, 16 and 21, 2022), available at <https://x.com/BrijwaSRKman/status/1516867385126690816>, <https://x.com/IamRajenderPal/status/1515308379933192194> and <https://x.com/OfficialVijayJi/status/1514243282389602309>

The backlash made Akshay Kumar eventually apologise²⁵¹ on all his social media handles:



Source: Tweet of @akshaykumar, Twitter, Now X, (April 22, 2022), available at: <https://x.com/akshaykumar/status/1516862694833360897>.

As pointed out in the opening lines to this chapter, we all enjoy celebrities and are more often than not, willing players in the proliferation of celebrity culture. We also consume celebrities. It therefore wouldn't be wrong to assert that in this day and age, the bottom line is that :

²⁵¹ Grace Cyril, Akshay Kumar Steps Down as Tobacco Brand Ambassador After Backlash, Says 'I Am Sorry', India Today (Apr. 21, 2022), available at <https://www.indiatoday.in/movies/celebrities/story/akshay-kumar-steps-down-as-tobacco-brand-ambassador-after-backlash-says-i-am-sorry-1939925-2022-04-21>.

*Celebrity Sells.*²⁵² Celebrities have immense potential value for the societies in which they are bred and in which they function. It is further therefore an “*indisputable fact*”²⁵³ that products sell when a celebrity is shown associated with it, either as endorser, or as an actor in a TV commercial. These ads for the allegedly tobacco containing mouth freshener *Vimal Elaichi* and the consequent audience furore at seeing Akshay Kumar and even SRK for that matter, endorse potential carcinogenics, says a lot about the effect of celebrity and celebritification on the fans. However, there are those that have defended the ads and the celebrities therein, suggesting that it is the audience that needs to re-think its fixation with film stars, and the attempts by fandoms to continually hoist film entertainers onto a pedestal and hold them to often, impossible standards. Journalist Lehar Kala opines – “*Precisely because there’s an existing ban on direct tobacco advertisements companies need to spend on A-list Bollywood stars as a way of gaining credibility. Blaming stars for promoting cancer causing substances is more about our own morally (misplaced) even if liberal-minded notions. Sanctimonious thinking goes, they already have money, fame and security. Do they really need to stoop this low and model for just about anything to make more? Perhaps it’s entirely natural to fall for simplistic reasoning rather than address the warped way we evaluate evidence to arrive at a biased conclusion. Clearly, the government values the profit gains from taxing tobacco over the health of the nation but it’s the stars posing in these ads who become an easy target.*”²⁵⁴ McCarthy calls this the “look-at-me!” effect²⁵⁵, in that there is immense commercial benefit in having a celebrity name and face associated with a product or service – the mere celebrity presence is what catches the audience’s eye by offering to them a persona they identify and recognise. Therefore, it is the celebrity personality construct – this phenomenon, that bestows upon a product or service, its marketability, by the very fact of association. As was pointed out by Prof. Halpern, “*The phenomenon of celebrity generates commercial value. A celebrity’s persona confers an associative value, or economic impact, upon the marketability of a product*”²⁵⁶ Therefore the ability of a celebrity to create and confer increased economic worth in anything with which its is associated is termed the ‘*economic associative value*’ of the image of such celebrity. The Right of Publicity, which shall be discussed in a later chapter, protects this very economic associative value of the image of mostly, celebrity persona, however, the researcher shall aim to argue and submit that the right is available to those in whom no real celebrity persona may be present or evident. Nonetheless, as a preliminary assertion, the right of publicity, most simply put, protects any individual’s *marketable image or persona*. This formulation, however, has been most succinctly put forth by McCarthy in his seminal work as – “*The right of publicity is not merely a legal right of the celebrity, but is a right inherent to everyone to control the commercial use of identity and persona and recover in court damages and the commercial*

²⁵² Pringle, *Supra* note 216; Loughlan *et al*, *Supra* note 17, at p. 28. See also Pankti Mehta Kadakia, *Celebrity sells: Stars build their brands*, Forbes India Magazine (Dec 14, 2018) <http://www.forbesindia.com/article/2018-celebrity-100/celebrity-sells-stars-build-their-brands/52035/1>.

²⁵³ Loughlan *et al*, *Supra* note 17, at p. 29

²⁵⁴ Lehar Kala, *Smoky Haze Over an Ad*, Indian Express (Oct. 15, 2023), <https://indianexpress.com/article/opinion/columns/smoky-haze-over-an-ad-8983303>

²⁵⁵ J. Thomas McCarthy, *RIGHTS OF PUBLICITY AND PRIVACY* § 4:8 (2nd ed)(Westlaw ebook version available on file with researcher)

²⁵⁶ Sheldon W Halpern, *The Right of Publicity: Commercial Exploitation of the Associative Value of Personality* 39(5) *Vanderbilt Law Review* 1199,1242 (October 1986).

value of an unpermitted taking”²⁵⁷ Thus, although theoretically available to any individual, since the right requires some commercial value in the image as a precondition, the claim rarely arises outside the celebrity realm.²⁵⁸

At this point, it is important also to underline, that the role played by the cultural intermediaries, in the creation of celebrity persona, and the activities undertaken by them to achieve this end; is distinct and separate from the economic value – the marketing component, that the celebrity possesses.²⁵⁹ Firms that invest in celebrities to associate with their brands, seek qualities such as likeability, credibility, attractiveness etc and thus it is the celebrities, that facilitate public diversion to a new brand or help in the repositioning of an existing brand.²⁶⁰ Building on Rein *et al*'s thesis²⁶¹, an exposition of the several methods in which individual's images are used in advertising can be enumerated thus²⁶²:

- i. “tools of the trade” endorsements – endorsements that are related to the field in which the celebrity is active. For example, sportspersons endorsing sporting gear²⁶³ and apparel, actors endorsing cosmetic products and luxury accessories²⁶⁴ etc.
- ii. “non tools” endorsements - these are when celebrity images are used with goods or services, completely unrelated to and outside of the celebrity's usual range of activities and field of expertise. For example, recently, online bus-ticketing platform, redBus announced that it had signed on, former Indian cricket captain, Mahendra Singh Dhoni as its brand ambassador.²⁶⁵ Prakash Sangam, redBus CEO was quoted as saying “*Dhoni is the epitome of a king in his domain and a go-getter, a kindred spirit that connects well with redBus values. At redBus, we believe in empowering bus operators and passengers through our technology solutions and enhancing the bus travel experience*”²⁶⁶
- iii. “grabbing the attention”: Rein *et al* identify that another major use of celebrity photographs and images is only when they act as an attention-grabbing ploy for manufactured goods. These are not real endorsements, falling short of a formal deal or contract, and the link, or the true lack thereof, between the product and the celebrity

²⁵⁷McCarthy, *Supra* note 255, at § 1:3 (2nd ed).

²⁵⁸Robert P. Merges, Peter S. Menell and Mark A. Lemley, *INTELLECTUAL PROPERTY IN THE NEW TECHNOLOGICAL AGE 1020* (Wolters Kluwer Law & Business, 2010).

²⁵⁹ Halpern, *Publicity Rights*, 2012, *Supra* note 30, at p. 325.

²⁶⁰ P.K.Abdussalam and B. Johnson, *Celebrity Endorsement In India: Pattern And Trends*, Vol 7, Iss. 2(1) *Indian Journal of Commerce and Management Studies* 19 (May 2016)

²⁶¹ Irving Rein *et al*, *HIGH VISIBILITY*, *Supra* note at 52 (Mc Graw Hill, 3rd edition, 2006)

²⁶² Huw Beverley-Smith, Anshar Ohly and Agnes Lucas-Schloetter, *PRIVACY, PROPERTY AND PERSONALITY : CIVIL LAW PERSPECTIVES ON COMMERCIAL APPROPRIATION 2* (Cambridge University Press, 2005)

²⁶³Digbijay Mishra and K Shriniwas Rao, Virat Kohli strikes Rs 100-crore deal with Puma, *Times of India*, (Feb 20, 2017), http://timesofindia.indiatimes.com/articleshow/57243206.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

²⁶⁴Anjan Sachar, L'Oréal Paris confirms Deepika Padukone as their new global ambassador, *Vogue.com* (March 25, 2017) <https://www.vogue.in/content/loreal-paris-confirms-deepika-padukone-as-their-new-global-ambassador/>

²⁶⁵Saumya Tewari, redBus appoints Mahendra Singh Dhoni as brand ambassador, *LiveMint.com* (April 15, 2019) <https://www.livemint.com/industry/advertising/redbus-appoints-mahendra-singh-dhoni-as-brand-ambassador-1555321742450.html>

²⁶⁶ *Ibid.*

persona is strained and difficult to comprehend for the consuming public. For example, in the voice-copyright/voice likeness advertisements for right of publicity case of *Bette Midler*²⁶⁷, when a voice likeness of Ms Middler was used in an advertisement without authorisation, McCarthy explained that “*in many cases where there is no explicit “endorsement,” the function of the identity of a famous person-identified by picture, voice or otherwise- is to attract attention to the ad. That is of very real and tangible value to an advertiser...*”²⁶⁸ As a more recent example, it came to be reported in late April 2019, that GoDaddy came down hard on over 15000 sub-domain names that were luring unsuspecting consumers into buying fake items. The news reports, that most of these subdomains carried false endorsements by using unauthorised images of global celebrities like Jennifer Lopez and Gwen Stefani, seemingly having themselves consumed the diet pills, supplements, *etc.* on sale.²⁶⁹ A masterstroke of this kind of marketing ploy was used by Lux to commemorate its 75th Anniversary, getting “the” SRK into its advertisement campaigns traditionally dominated by female celebrities²⁷⁰. SRK’s involvement marked a significant milestone as it was the first time a male celebrity endorsed this beauty soap²⁷¹, which has historically been associated with female Bollywood stars like Madhubala, Aishwarya Rai, and more recently, Kareena Kapoor. The campaign was not just a marketing strategy but also a celebration of Lux's long-standing association with Bollywood glamour, reinforcing its tagline as the “beauty soap of the filmstars”²⁷² As SRK’s been branded a *female icon*²⁷³ -in a departure from its usual portrayal of female stars SRK was chosen as the ideal endorser to revitalize the Lux brand – here depicted in his most feminine role, sitting in a bathtub surrounded by petals.²⁷⁴ Hindustan Lever’s senior executive Ashok Venkatramani declared that the company wanted to portray the new “metrosexual male”: - “*Instead of showing SRK as a macho man riding a horse like the Marlboro man, the idea was to portray the metrosexual male who had a soft touch. SRK has been portrayed as a different kind of male who is different from the rest of the stars. He is shown as a soft guy who is in touch with his*

²⁶⁷ *Bette Midler v. Ford Motor Co.*, 849 F2d 460 (9th Cir. 1988)

²⁶⁸ J. Thomas McCarthy, *Public Personas and Private Property: The Commercialization of Human Identity*, 79 Trademark Rep. 681, 683 (1989).

²⁶⁹ Harpreet Singh, GoDaddy Shuts Down 15,000 Subdomains Used for Online Scams, Resets Account Passwords, Gadgets360, NDTV (April 29, 2019) <https://gadgets.ndtv.com/internet/news/godaddy-shuts-down-15000-subdomains-from-hacked-websites-used-for-online-scams-2030165>

²⁷⁰ Sanjeev Wadhvani, Lux - Shah Rukh Khan Bathtub, Uploaded by Sanjeev Wadhvani, YouTube (Jan 3, 2012) https://www.youtube.com/watch?v=_lf7_AcsIqI

²⁷¹ Tenzin Zompa, ‘Meri Khubsurti ka Raaz...’: The Shah Rukh Bath-Tub Ad That Made Lux Soap Bold & Beautiful, The Print (Aug. 22, 2021), <https://theprint.in/feature/brandma/meri-khubsurti-ka-raaz-the-shah-ruk-bath-tub-ad-that-made-lux-soap-bold-beautiful/718993/>

²⁷² Exchange4Media Staff. Lux Gets Shah Rukh Khan to Woo the Beauties as It Turns 75, Exchange4Media, (Sep 10, 2005) www.exchange4media.com/marketing-news/lux-gets-shah-ruk-khan-to-woo-the-beauties-as-it-turns-75-17796.html

²⁷³ Bhattacharya, DESPERATELY SEEKING SHAH RUKH, *Supra* note 115 at p.44 [Kindle Edition] (“*When we talked about Shah Rukh’s celebrity, each one had a common thing to say: he is a female icon. ‘He is a women’s hero,’ said Mayank Shekhar, whose reviews have been published across the mainstream press. Another critic said, ‘No one has the effect on women, of all ages, that he does.’*”) and at p. 52 (“*He isn’t a feminist icon, but certainly a female one*”.)

²⁷⁴ Julien Cayla, Following the Endorser's Shadow: Shah Rukh Khan and the Creation of the Cosmopolitan Indian Male, 9 Advertising & Soc’y Rev. (2008), <https://doi.org/10.1353/asr.0.0000>

emotions”²⁷⁵. The only other time this was attempted by a large female-centric brand, that this researcher has come across, is when Victoria’ Secrets used Nobel Laurette Bob Dylan and his song – *Love Sick*²⁷⁶ in a video commercial in 2004²⁷⁷, interestingly only a year prior to Lux’s use of SRK.



Therefore, it is clear that celebrity lends value to the product or service that its associated with. This was recognised early on, by the Second Circuit court²⁷⁸ itself, when it for the first time enunciated the *right of publicity* as an economic right, that: *“This right might be called a ‘right of publicity.’ For it is common knowledge that many prominent persons (especially actors and ball-players), far from having their feelings bruised through public exposure of their likenesses, would feel sorely deprived if they no longer received money for authorizing advertisements, popularizing their countenances, displayed in newspapers, magazines, busses, trains and subways. This right of publicity would usually yield them no money unless it could be made the subject of an exclusive grant which barred any other advertiser from using their pictures”*²⁷⁹ In a later case, the Ninth Circuit observed further that, *“Television*

²⁷⁵Quoted in Purvita Chatterjee, Coup Lux Khan, Hindu Business line, (Sep 29, 2005) <http://www.thehindubusinessline.com/catalyst/2005/09/29/stories/2005092900160300.htm>

²⁷⁶ Alli Patton, Remember When Bob Dylan Was in a Victoria’s Secret Commercial?, Am. Songwriter (Apr. 2023), available at <https://americansongwriter.com/remember-when-bob-dylan-was-in-a-victorias-secret-commercial/>.

²⁷⁷ Cleveland Live Music, Bob Dylan - Love Sick - Victoria's Secret ad 2004 with Adriana Lima Venice Italy, Uploaded by Cleveland Live Music, YouTube, (May 1, 2021) <https://www.youtube.com/watch?v=EEnOwNws5yY>

²⁷⁸ Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866 (2d Cir. 1953) (hereinafter ‘Haelan’)

²⁷⁹ *Id.* at 868.

and other media create marketable celebrity identity value. Considerable energy and ingenuity are expended by those who have achieved celebrity value to exploit it for profit. The law protects the celebrity's sole right to exploit this value whether the celebrity has achieved her fame out of rare ability, dumb luck, or a combination thereof²⁸⁰

Thus, without going into concerns for the public domain vis-à-vis rights emanating from commercialisation of celebrity personality, as well as moral and ethical questions of commercialisation of individual identity,²⁸¹ this section can be summed up with the assertion again, that the economic reality is that there lies economic value in images of persons, most likely celebrity persons.

C. Insights from legal theory: personality as ‘property’ versus ‘right of publicity’ as a stand-alone individual right (Some justifications for legal protection of celebrity personae)

Property is a seminal interest any legal system protects.²⁸² Thus, property rights, are justified by the larger societal benefits that they bring with themselves.²⁸³ Since the most widely cited texts in the legal theory of intellectual property,²⁸⁴ do devote considerable space to Lockean justifications for property rights, and by extension, intellectual property rights, the same is being taken as a starting point for this section. Dubbed the “labour justification” for property rights, Locke advocates that each person is entitled to property in one’s person, as well as in that which she has created, as labour was expended in its creation.²⁸⁵ Locke began his justification of the right to private property, when derived from investing labour into creating from resources that were otherwise held in common, by first recognising that there is a right to property in one’s person itself. He posited, “...every man has a ‘property’ in his own ‘person’. This nobody has any right to but himself. The ‘labour’ of his body and the ‘work’ of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this ‘labour’ being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where

²⁸⁰ *Vanna White v. Samsung Electronics America, Inc.*, 971 F.2d 1395, 1399 (9th Cir. 1992) cert. denied, 508 U.S. 951 (1993)

²⁸¹ Sheldon W. Halpern, *The Right of Publicity: Maturation of an Independent Right Protecting the Associative Value of Personality*, 46 *Hastings L.J.* 853, 857 (1995).

²⁸² Beverley-Smith et al, *Supra* note 262, at p.48.

²⁸³ Justin Hughes, *The Personality Interest of Artists and Inventors in Intellectual Property*, 16(81) *Cardozo Arts and Entertainment Law Journal* 81 (1998).

²⁸⁴ Justin Hughes, *The Philosophy of Intellectual Property*, 77 *Geo. L. J.* 287, 296-329 (1988); William Fisher, *Theories of Intellectual Property in NEW ESSAYS IN THE LEGAL AND POLITICAL THEORY OF PROPERTY* 168-199 (Stephen Munzer, ed., Cambridge University Press, 2001); Peter Drahos, *A PHILOSOPHY OF INTELLECTUAL PROPERTY* 47-84 (1996, Dartmouth Publishing, 2016 ANU eText version); Catherine Walsh, *The Justifications Underlying Personality Rights*, 24 *Ent. L.R.* 17 (2013).

²⁸⁵ John Locke, *TWO TREATISES OF GOVERNMENT* 288-96 (Peter Laslett ed., 1988) in David Tan, *Beyond Trademark Law: What the Right of Publicity Can Learn from Cultural Studies*, 25 *Cardozo Arts & Ent. L.J.* 913 (2008) at p.928, f.n.no. 75.

there is enough, and as good left in common for others.”²⁸⁶ In fact, it has been argued that²⁸⁷ the seminal 1890 Harvard Law Review article by Professors Warren and Brandeis, that is cited as having laid the foundations of the right of privacy as a distinct right in USA²⁸⁸ as well as the root wherefrom the right of publicity was derived in the *Haelan* case²⁸⁹, also begins with its roots in the Lockean theory of private property and then goes on to establish some attributes of personality protectable as property.²⁹⁰

Interestingly however, civil law jurisdictions trace the evolution of *personality rights* to even before the law review article by Warren and Brandeis, - instead, the idea of larger rights under what is perceived as a *personality rights umbrella* – rooted in the inviolability of the human person and their inherent dignity, were posited in 1877²⁹¹. Gareis introduced the concept of a general right to personality²⁹², which was later expanded by Gierke²⁹³ and Kohler²⁹⁴. They suggested that this general right could evolve into specific personal rights such as those related to physical integrity, freedom, and dignity. Gierke highlighted that personality rights are private, non-economic, and deeply tied to the individual's identity, ending with the person's death, thus non-transferable and not inheritable²⁹⁵. While Gareis and Gierke viewed human intellectual output as part of personality rights, Kohler made a distinction, arguing that intellectual creations should be seen as separate from personality, classifying them as intellectual property—a distinct legal entity.²⁹⁶ Dornis in fact traces the

²⁸⁶ John Locke, TWO TREATISES OF GOVERNMENT 116 (Lonang Institute, 2011, Kindle Edition)

²⁸⁷ Refer Jennifer E Rothman, *The Inalienable Right of Publicity*, 101 Georgetown Law Review 185, 187 (2012)

²⁸⁸ Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy* 4 Harv. L. Rev. 193 (1890). It is believed that Roscoe Pound said that the Warren & Brandeis article did “nothing less than add a chapter to our law.” Cited as Statement of Roscoe Pound to William Chilton in 1916, quoted in A. Mason, *Brandeis: A Free Man's Life*, 70 (1946) in McCarthy, *Supra* note 255 at § 1:11, at f.n.no. 3; Peter L. Fletcher & Edward L. Rubin, *Privacy, Publicity, and the Portrayal of Real People by the Media*, 88 (8) Yale L.J. 1577, 1581 (1979) (“...the authors attempted to establish that the right of privacy was part of the existing common law; in the process of searching for this right, they succeeded in inventing it.”)

²⁸⁹ Halpern, *Publicity Rights*, *Supra* note 30, at p.322 (“The recognition by Judge Frank of a ‘right of publicity’ did not take place in vacuum...the lineage of this right can be traced to an 1890 law review article by Louis Brandeis and Samuel Warren”).

²⁹⁰ Warren and Brandeis, *Supra* note 288, at pp. 205, 207.

²⁹¹ Johann Neethling, *Personality Rights: A Comparative Overview*, 38 Comp. & Int'l L.J. S. Afr. 210 (July 2005).

²⁹² Carl Gareis, *Das juristische Wesen der Autorrechte, sowie des Firmen- und Markenschutzes*, 35 *Archiv für Theorie und Praxis des Allgemeinen Deutschen Handels- und Wechselrechts* 185, 197 (1877) [The legal nature of author rights, as well as company and trademark protection, in *Archive for the theory and practice of general German commercial and bill of exchange law – Translated using Google Translate, from German*] cited in T.W. Dornis, ‘Civil Law History: Germany and Europe’, in *TRADEMARK AND UNFAIR COMPETITION CONFLICTS: HISTORICAL-COMPARATIVE, DOCTRINAL, AND ECONOMIC PERSPECTIVES*. Cambridge: Cambridge University Press (Cambridge Intellectual Property and Information Law), pp. 6–75.

²⁹³ Otto von Gierke, *Deutsches Privatrecht*, vol. I: *Allgemeiner Teil und Personenrecht* § 85 III 2, at 757, § 82 V, at 714–715 (1895)[“ German private law, vol. I: General part and personal law” – Translated using Google Translate from German] in Dornis, *Supra* note 292. See also Neethling, *Supra* note 291.

²⁹⁴ Josef Kohler, *Das Recht des Markenschutzes mit Berücksichtigung ausländischer Gesetzgebungen und mit besonderer Rücksicht auf die englische, anglo-amerikanische, französische, belgische und italienische Jurisprudenz* 73 (1884) [“The law of trademark protection with consideration of foreign legislation and with particular regard to English, Anglo-American, French, Belgian and Italian jurisprudence” — Translated using Google Translate from German] in Dornis, *Supra* note 292. See also Neethling, *Supra* note 291.

²⁹⁵ Dornis, *Supra* note 292.

²⁹⁶ Dornis, *Supra* note 292.

personality justification for trademark rights – an **intellectual property** right to even earlier – “**R. Klostermann’s 1869 treatise on intellectual property law:**

*The law of firm and trade marks is founded on a ground quite different from the intellectual property in inventions and trade samples. It is not a product of intellectual labor, through which the firm sign or the trademark is brought into existence, but an **emanation of the personality, as the expression of which it represents itself***²⁹⁷. Over time, as appreciation of the complexities involved in trademark and unfair competition laws, especially regarding ensuring the accuracy of market information, grew in civil law nations – theoretical justifications too modernised, vis-à-vis private intellectual property rights emanating from larger persona interests. This shift highlighted the importance of protecting individual rights²⁹⁸. For instance, in his 1839 treatise on political economy, Rau emphasized that self-evaluation and the marketing of product quality, including the use of personal names or marks, served to protect consumers from deception and to encourage sales by establishing trust in product quality²⁹⁹ - all functions that trade marks perform in their modern understanding – and it is these functions that trademark legislations granting sovereign monopoly over a proprietor’s distinctive source and quality denote signs - protect. By the early nineteenth century, notions of maintaining consumer trust and product quality were already significant topics of theoretical discussion. Leuchs in 1827 argued that trademarks effectively replace public expert oversight because the responsibility to preserve a mark's reputation by maintaining product quality incentivizes the trademark owner. A reputable mark, he suggested, lays the groundwork for widespread sales and could lead to a beneficial monopoly, prompting further improvement in product quality.³⁰⁰ The evolution of these

²⁹⁷ R. Klostermann, *Das geistige Eigenthum an Schriften, Kunstwerken und Erfindungen, nach Preussischem und internationalem Rechte*, vol. I (Allgemeiner Theil—Verlagsrecht und Nachdruck) 214 (1867) (“Dagegen beruht das Recht der Firmen und Fabrikzeichen auf einem wesentlich anderen Grunde als das geistige Eigenthum an Erfindungen und Waarenmustern, es ist nicht ein Product der geistigen Arbeit, durch welche die Firma oder das Waarenzeichen hervorgebracht wird, sondern ein Ausfluß der Persönlichkeit, als deren Ausdruck sich die Firma und das Waarenzeichen darstellt.”) and also in R. Klostermann, *Das geistige Eigenthum an Schriften, Kunstwerken und Erfindungen, nach Preussischem und internationalem Rechte*, vol. II (Patentgesetzgebung—Musterschutz—Waarenbezeichnungen) 389–390 (1869) (“Das Recht zum ausschliesslichen Gebrauche solcher Waarenbezeichnungen ist ein Vermögensrecht, welches seine Grundlage in dem Rechte der Persönlichkeit hat und am nächsten dem Rechte der kaufmännischen Firma verwandt ist. ... Auch in Bezug auf die Waarenbezeichnungen besteht ein solches Vermögensrecht nur kraft besonderer gesetzlicher Bestimmung. Nach den Grundsätzen des Gemeinen Rechts ist die unbefugte Anmassung fremder Waarenbezeichnungen und selbst der unbefugte Gebrauch einer fremden Firma nicht strafbar. Allein dieser Eingriff ist nunmehr durch die Gesetzgebung fast sämtlicher Staaten unter Strafe gestellt worden und es ist dringend zu wünschen, dass die noch vorhandenen wenigen Ausnahmen bald verschwinden und dass der Schutz der Waarenbezeichnungen in der weitesten Ausdehnung zum allgemeinen und internationalen Rechte erhoben werde.”) in Dornis, *Supra* note 292 at footnote 49, translated from German to English by T.W. Dornis (author)

²⁹⁸ Dornis, *Supra* note 292 at footnote 22.

²⁹⁹ Karl Heinrich Rau, *Lehrbuch der politischen Oekonomie*, vol. II—Grundsätze der Volkswirtschaftspolitik § 219, 350 (2nd edn., 1839) (“[D]en polizeilichen Zweck, um die Käufer vor Betrug zu schützen, als [auch] den volkswirtschaftlichen, den Absatz solcher Gewerkswaren vermöge des größeren Zutrauens, welches die Käufer in sie setzen können, zu befördern.” (Translation from German to English using Google Translate - Textbook of political economy, vol. II – Principles of National Economic Policy § 219, 350 (2nd edn., 1839) (“[T]he police purpose, to protect buyers from fraud, as [also] the economic purpose, the sale of such trade goods thanks to the greater confidence, which that buyers can put in them.”))

³⁰⁰ Johann Carl Leuchs, *Gewerb- und Handelsfreiheit; oder über die Mittel das Glück der Völker, den Reichthum und die Macht der Staaten zu begründen* 178 (1827) (“Fabrikzeichen ersetzen in gewisser Hinsicht die Schauanstalten, indem jeder durch gute Waare dafür sorgen muß, daß sein Zeichen sich in gutem Ruf erhält. Zugleich begründet ein solches in gutem Ruf befindliches Zeichen einen ausgebreiteten Absatz und begründet

policies by the mid-19th century suggested not just a stronger focus on the private rights involved in trademark protection but also introduced an element of personality rights protection³⁰¹. In 1844, Robert von Mohl, in a seminal treatise on administrative and police law, asserted that misusing another's trade name was an infringement of personality rights.³⁰² Although von Mohl did not advocate for a civil law remedy for this infringement, his acknowledgment of individual rights foreshadowed Josef Kohler's later theories on personality rights.³⁰³

A significant alternative to the Lockean concept of property is the personality-based justification. This perspective argues that property ownership is crucial for self-actualization, personal expression, and individual dignity and recognition³⁰⁴. Margaret Radin refers to this as the "personhood perspective"³⁰⁵, which centers on the idea that for adequate self-development and personal identity, one must have some level of control over external resources. The personality theory suggests that this control is optimally provided through property rights, which are seen as essential for an individual to fully function and develop as

dadurch ein nützliches Monopol, das um so mehr zu besserer Fabrikation auffordert." (Translation from German to English using Google Translate – Freedom of trade and commerce; or about the means of establishing the happiness of the people, the wealth and the power of the states – "In a certain respect, factory symbols replace the display establishments in that everyone has to ensure that their symbol maintains a good reputation through good goods. At the same time, such a sign with a good reputation establishes a widespread sales and thereby establishes a useful monopoly, which all the more encourages better production"))).

³⁰¹ Dornis, *Supra* note 292.

³⁰² Robert von Mohl, *Die Polizei-Wissenschaft nach den Grundsätzen des Rechtsstaates*, vol. III § 29, at 301 (2nd edn., 1845) ("*Nicht selten kömmt es im Gewerbsleben vor, daß von einem in keiner Weise dazu Befugten auf einer von ihm verfertigten Waare der Name oder das unterscheidende Verfertigungszeichen eines anderen Gewerbenden angebracht wird. Diese Handlung enthält nun aber nicht nur eine Täuschung des Käufers, welcher absichtlich über die Person des Verfertigers irre geführt wird; sondern sie ist auch ein entschiedenes Unrecht gegen Denjenigen, dessen Name fälschlich gebraucht wird. Einmal ist es eine Verletzung seiner Persönlichkeit, indem ein Anderer sich ohne sein Wissen und gegen seinen Willen für ihn ausgiebt, wenigstens bei bestimmter Gelegenheit. Zweitens wird es in der Regel eine Verläumdung gegen ihn seyn, indem wohl gewöhnlich eine schlechtere Waare, als er sie zu verfertigen pflegt, lügenhaft für die seinige ausgegeben wird. Endlich wird ihm in doppelter Beziehung in seinem Gewerbe geschadet. Einmal durch Verlockung eines Theiles seiner Abnehmer, welche sein Erzeugniß zu kaufen beabsichtigten und nun durch die falsche Ausschrift zu einem Fremden geführt werden; zweitens, und häufig noch weit bedeutender, durch die Verderbung seines Rufes, welcher unter der schlechtern auf seinen Namen gestellten Waare leidet.*" - Translation from German to English using Google Translate – "It is not uncommon in commercial life for someone who is in no way authorized to do so to affix the name or distinctive manufacturing mark of another trader to goods they have manufactured. This act does not only contain a deception on the part of the buyer, who is intentionally misled about the identity of the manufacturer; but it is also a decided injustice against the one whose name is used incorrectly. On the one hand, it is a violation of his personality if another person impersonates him without his knowledge and against his will, at least on certain occasions. Secondly, as a rule it will be a slander against him, since a worse product than he usually produces is usually falsely passed off as his. Finally he is being harmed in his trade in two respects. Firstly, by enticing some of his buyers who intended to buy his product and are now led to a stranger by the false description; secondly, and often even more significantly, by the spoiling of his reputation, which suffers from the inferior goods placed in his name.")).

³⁰³ Dornis, *Supra* note 292.

³⁰⁴ Hughes, *Supra* note 283.

³⁰⁵ Margaret Jane Radin, Property and Personhood, 34 Stan. L. Rev. 957 (1982).

a person. This is rooted in the works of Hegel.³⁰⁶ Hegel posited that a person possesses both an internal and external dimension. The internal is represented by one's will, while the external manifests as one's sphere of freedom. Hegel emphasized that self-actualization, understood as independence from others, is not achieved by retreating from the external world. Instead, it involves mastering it by projecting one's will into external objects, notably property. Thus, in Hegel's philosophy, property is vital to achieving a state of full self-actualization and freedom, serving as a fundamental expression of personality.³⁰⁷ However, critical of most American legal philosophers attributing an almost romanticism to Hegel's personhood necessitating a legal order protecting intellectual property, Schroeder instead offers an alternative, corrective critique.³⁰⁸ He argues and explains that Hegel maintained that property is essential for personhood but believed that it was up to practical reasoning to determine which specific property rights should be adopted by a state. He did not idealize the creative process associated with the generation of intellectual property. Contrary to common misunderstandings among American legal scholars, Hegel's philosophy does not support a first-occupier approach to property rights. More broadly, he completely dismisses any form of natural law, including any inherent right to property. Jeremy Bentham, recognized as the founder of modern utilitarianism, dismissed the idea of natural rights as "nonsense on stilts". In fact, according to Schroeder, Hegel went even further, labeling the term "natural rights" as contradictory. Thus, for Hegel, nature is not associated with freedom. Legal rights, in his view, are synthetic constructs designed as a means to break free from nature's deterministic chains and achieve freedom. Thus, rights are not just unnatural; they actively oppose nature. Hegel justified property on purely functional terms, focusing on its role within the modern state.³⁰⁹ Hegel's theory is appealing to the celebrity industry because a celebrity's persona is often, (though arguably unfortunately – as has been explained that the celebrity is the result and outcome of a collaborative exercise in celebrification at multiple levels of the marketing and branding chain) regarded as a "shell"³¹⁰ that is empty of substance, yet still attracts attention and influence. This concept is relevant to the celebrity industry because it highlights the superficial nature of fame, where individuals are often celebrated for their public image rather than their inherent qualities or achievements.³¹¹ For example, in the photo-shoot and persona piece for the Paper Magazine, written by Aishwarya Subramanyam, Hindi film actor and superstar in his own right - Ranveer Singh posed for nude photo portraits and yet, his dichotomy – of the silly, slapstick, loud public persona, and the dark, troubled, minimalist personal private persona – is illustrated and displayed in fleeting moments: *"This dichotomy in him is perfectly illustrated by the clarity in his separation of private and public. "I like minimalism in my spaces and maximalism in my appearance. You go to any space that's mine, it's completely sparse, painfully minimal. And I'm very protective of that. I've never*

³⁰⁶ See generally G. HEGEL, PHILOSOPHY OF RIGHT PP41-45 (T.M. Knox trans. 1967) (1821) (individual demonstrates ownership of property by imposing his will on it and thereby "occupying" it) in Hughes, *Supra* note 283 at footnote 4.

³⁰⁷ Kanu Priya, Intellectual Property and Hegelian Justification, 1 Nujs L. Rev. 359, 364 (2008).

³⁰⁸ Jeanne L. Schroeder, Unnatural Rights: Hegel and Intellectual Property, 60 U. Miami L. Rev. 453 (2006)

³⁰⁹ Schroeder, *Ibid* at p. 454.

³¹⁰ Savan Bains, Personality rights—should the United Kingdom grant celebrities a proprietary right in their personality? (Part II), 18 Ent. L.R. 205, 208 (2007)

³¹¹ Catherine Walsh, The justifications underlying personality rights, 24 (1) Ent. L.R. 17 (2013)

*shown the world my personal spaces. Never. Not a single picture of me in my house. When guests come over, I ask them not to take any pictures. You'll never see my house in AD. I just want there to be a space that I know is free of eyes. There are only a few spaces left like that for me*³¹² Thus, to sum up - in Hegel's theory, an individual's creations are seen as an outward expression of their character, granting them ownership rights over their work. If this interpretation is accepted for inventions or other creations, it logically follows that an individual's persona, name, personality traits, and image should also be viewed as an extension of their identity, warranting protection.³¹³

A better justification for the American version of this property-style right over personality indicia – that protects against unauthorised commercial use of persona attributes, is to look at Kantian philosophy to justify an autonomy-based right of publicity. In her seminal work, Alice Haemmerli does this by arguing that Kant's theory of property swiftly establishes a fundamental connection between personal autonomy and the right to own objectified identity.³¹⁴ In Kant's framework, property emerges from human freedom, where all things are capable of being possessed and utilised. If there were objects beyond our control or ability to utilize, it would impede freedom by restricting the will's interaction with such objects. Hence, Kant posits that every object willed can be considered potentially owned, forming the basis for his assertion that external objects can be legitimately viewed as personal property.³¹⁵ The paper thus proposes that the philosophical justification for the right of publicity is based on the concept of personal autonomy and property rights. It argues that individuals have a property right in their own identity and image because they have an innate right to control the use of their own person. This right is grounded in the principle of freedom and autonomy, which are essential to human dignity and personhood. The right of publicity is seen as an extension of the individual's freedom and autonomy, allowing them to control the use of their own image and objectifications of their identity. This philosophical justification emphasizes the moral and economic dimensions of personhood and property, rather than solely focusing on labour-based theories of property rights.³¹⁶

If we look at the preceding discussion, it is arguable that, advertising industry plays a key role in establishing a legitimate market for the commercial use of individuals' names, likenesses, and other aspects of their persona. This process led to a rapid evolution of legal doctrine, as judges increasingly at the turn of the 20th century accepted the idea that a person's identity could be treated as a commodity. By the second decade of the 20th century, the individual's right to control and exclude others from using their name and likeness was well-established. Over time, as this market for persona-based commercial exploitation expanded, judges further endowed the persona with additional property-like characteristics, such as the

³¹² Aishwarya Subramanyam, Ranveer Singh: the Last Bollywood Superstar, PAPER Magazine (July 21, 2022) <https://www.papermag.com/ranveer-singh-bollywood>

³¹³ Walsh, *Supra* note 311.

³¹⁴ Alice Haemmerli, Whose Who? The Case for a Kantian Right of Publicity, 49 Duke L.J. 383-492 (1999).

³¹⁵ Immanuel Kant, THE METAPHYSICAL ELEMENTS OF JUSTICE 44 (John Ladd trans. and ed., Library of Liberal Arts 1965) (1797) [hereinafter Kant, *Metaphysical Elements*] in Haemmerli, *Ibid* at p.417

³¹⁶ Haemmerli, *Supra* note 314.

ability to be alienated and passed on to heirs.³¹⁷ Thus, transformation of the right of publicity as a facet of *personality rights* - into a right rooted in commodification of the individual persona, aligns with predictions that while emerging from inherent dignitary and tort law considerations, this right today, at least in its most American enunciations has transitioned into a *property style interest* - once it became part of commerce – and was subject matter of license agreements. Initially shielded from unauthorised use, it was subsequently granted attributes like alienability and heritability. This hypothesis suggests that commodification is a process through which various forms of value can evolve into recognized property rights.³¹⁸

D. Concluding observations: Legal protections for the commodified individual and celebrity

Incorporating a celebrity in advertising and other commercial activities typically enhances consumer perceptions of a brand and influences their purchasing choices, an effect known in marketing research as the ‘positive halo effect.’ When consumers purchase products linked to celebrities, they are buying into the allure and lifestyle associated with fame, such as the glamour of a movie star or the success of a sports figure. These celebrity endorsements are designed to forge a connection between the product and desirable traits, suggesting that buying the product is a step toward embodying a certain aspirational lifestyle. This strategy is evident in the lucrative endorsement deals that well-known celebrities sign with major brands across various industries. Cultural theorists like Dyer have recognized the commodification of celebrity status, but it was Grant McCracken in 1989 who effectively linked socio-psychological insights with cultural studies on the semiotic impact of celebrities on consumption.³¹⁹ McCracken's analysis concluded that the celebrity “sign” is compelling to consumers because it embodies meanings that consumers find both persuasive and beneficial, setting a solid groundwork for further exploration into the influence of celebrities on modern consumer behavior.³²⁰ This highly commodified celebrity entity then proliferates and is consumed, thus becoming the subject of contract with each license for commodification – i.e. advertising, or non advertising commercial use. Using thus reverse extrapolative logic, these immensely valuable cultural resources, when they continue to be *traded* and *licensed* in law, as the subject of *legal contracts*, there is got to be a justification in the legal fiction somewhere for this resources functioning as property. Therefore, there exists a stable justification for both – *first* – protecting the proprietary interest in persona, through several possible rights under the larger personality rights umbrella, as will be discussed in the following chapters, depending upon the personality attribute and indicia sought to be protecte; and *second* – that this proprietary interest – in the economic associative value of the commercial commodification of personality indicia, **is not absolute**, as the identity itself is a

³¹⁷ George M. Armstrong Jr., The Reification of Celebrity: Persona as Property, 51 La. L. Rev. 443, 457 (1991)

³¹⁸ *Ibid* at p.467.

³¹⁹ Grant McCracken, Who is the Celebrity Endorser? Cultural Foundations of the Endorsement Process 16 Journal of Consumer Research 310 (1989)

³²⁰ Roobina Ohanian, „The Impact of Celebrity Spokespersons, Perceived Image on Consumers’ Intention to Purchase, 31 Journal of Advertising Research 46 (1991); B Zafer Erdogan, Celebrity Endorsement: A Literature Review 15 Journal of Marketing Management 291 (1999).

curated collaborative output, wherein the *audience* retains a right to *re-code*³²¹. Thus, theoretical justifications for the existence of a protection, always run parallel to theoretical, de-constructive counters, arguing for, and authorising *use* by the process of productive consumption, by the audience.³²² As to the nature of the *right of publicity stand-alone*, As Steven Hoffman noted, “*it is more accurate to think of [the right of publicity] as a sui generis mixture of personal rights, property rights, and rights under the law of unfair competition then to attempt, Procrustean-like, to fit it precisely into one of those categories.*”³²³

The next chapters shall discuss the possible rights that can seemingly protect different personality indicia.

³²¹ Coombe, *Supra* note 55; Michael Madow, Private Ownership of the Public Image: Popular Culture and Publicity Rights, 81 Cal. L. Rev. 125 (1993)

³²² Justin Hughes, “Recoding” Intellectual Property and Overlooked Audience Interests, 7 Tex. L. Rev. 923, 926 (March, 1999).

³²³ Steven J Hoffman, Limitations on the Right of Publicity, 28 Bulletin of Copyright Society 111, 112 (1980) *in* David Tan, The Contribution of Cultural Studies to Right of Publicity Laws: Evocative Identification, Associative Appropriation and Political Recoding, Unpublished PhD Dissertation, The University of Melbourne and Melbourne Law School, (April 2010) <https://rest.neptune-prod.its.unimelb.edu.au/server/api/core/bitstreams/83a2cfb2-1f70-5a3a-8556-ac5780b066e7/content>