THE IPR UPDATE

NEWS LETTER

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1. BOMBAY HIGH COURT UPHOLDS PERPETUAL MUSIC RIGHTS IN DIGITAL REALM

In a landmark judgment that provides crucial clarity on the legal enforceability of music rights in the digital age, the Bombay High Court has ruled that a perpetual assignment agreement for musical works is not limited to physical mediums. The single-judge bench of Justice Manish Pitale dismissed a suit filed by the plaintiff, Rupali P. Shah, finding that the defendants' exploitation of a film's musical catalogue on non-physical platforms was protected under a perpetual agreement that granted rights "by any and every means whatsoever." This ruling sets a significant precedent for India's music industry, affirming the validity of decades-old contracts in a new technological landscape. In a landmark judgment that provides crucial clarity on the legal enforceability of music rights in the digital age, the Bombay High Court has ruled that a perpetual assignment agreement for musical works is not limited to physical mediums. The single-judge bench of Justice Manish Pitale dismissed a suit filed by the plaintiff, Rupali P. Shah, finding that the defendants' exploitation of a film's musical catalogue on non-physical platforms was protected under a perpetual agreement that granted rights "by any and every means whatsoever." This ruling sets a significant precedent for India's music industry, affirming the validity of decades-old contracts in a new technological landscape.

The Case and its Disputed Rights

The dispute originated from a catalogue of songs from seven films produced between 1963 and 1983 by the plaintiff's father, O.P. Ralhan. Through a series of agreements, Ralhan had assigned the rights to these works to the predecessor of Defendant 2. Following her father's death, the plaintiff, as the successor in title, sued for copyright infringement, claiming the defendants' use of the songs had become unauthorized after the agreements' specified period expired. Crucially, the plaintiff's core legal argument later shifted to the contention that the original assignments were intended to cover only physical mediums like gramophone records, and therefore, the exploitation of the works on digital platforms constituted infringement.

The defendants, in response, maintained that the assignment of rights was perpetual and that the broad contractual language explicitly covered all forms of exploitation, including non-physical or digital mediums. They further argued that the plaintiff and her predecessor had accepted royalty payments for years, including for non-physical use, which demonstrated a long-standing understanding of the agreements' expansive scope.

The Court's Analytical Framework and Decision

The Court's analysis focused on two primary issues: whether the defendants had infringed upon the plaintiff's copyright and whether Defendant 2 possessed the perpetual right to exploit the music in any format. Justice Pitale found substance in the defendants' arguments and a lack of consistency in the plaintiff's claims. The Court's interpretation of the original agreement was central to its decision. It held that the time limit mentioned in the contract referred to the period of the works' creation, not the duration of the assignment itself, which was perpetual.

Furthermore, the Court meticulously examined a clause in one of the agreements which assigned the rights "by any and every means whatsoever." It was this broad and forward-looking language that proved decisive. The Court rejected the plaintiff's assertion that the agreement was limited to physical mediums, stating that the very phrasing was intended to encompass all future technologies, whether known at the time or not. The Court's decision was further bolstered by the conduct of the parties themselves; it noted that both the original owner and the plaintiff had accepted royalty payments over time, including for non-physical exploitation, effectively consenting to the broader application of the agreements.

Consequently, the Court found that the plaintiff had failed to prove infringement and that Defendant 2 held the perpetual rights to the musical works and could, in turn, license them to others, validating Defendant 1's use of the song. The suit was therefore dismissed, with the Court clarifying that the plaintiff was still entitled to royalties under the terms of the original perpetual agreements.

Reference:

https://www.scconline.com/blog/post/2025/07/02/assignment-of-music-rights-in-perpetuity-includes-exploitation-in-non-physical-mediums-bomhc/#:~:text=A%20Single%20Judge%20Bench%20of%20Manish%20Pitale%2C%20J.%2C,mediums%20including%20exploitation%20of%20works%20in%20non-physical%20mediums.

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2. USPTO RESTRICTS USE OF GENERAL KNOWLEDGE IN PATENT PETITIONS

Introduction

On July 31, 2025, the U.S. Patent & Trademark Office (hereinafter 'USPTO') issued a memo clarifying the requirements for inter partes review petitions, where a third party challenges validity of a U.S. Patent under 37 C.F.R. § 42.104(b)(4). The new guidance makes it clear that petitioners can no longer rely on general knowledge, including applicant admitted prior art (hereinafter 'AAPA') to fill in missing claim elements.

Background

Previously, the Patent Trial and Appeal Board (hereinafter 'PTAB') used to permit petitioners to rely on various sources, such as expert testimony, common knowledge, and AAPA, to address gaps in prior art when challenging patents, hence allowing a certain amount of flexibility.

Under the new memo, this approach will no longer be accepted. Petitioners must now specifically identify where each element of the challenged claim is disclosed in the prior art patents or printed publications they cite. If a petition relies on general knowledge to supply missing elements, the PTAB may deny its institution.

Analysis

The USPTO clarified that while general knowledge cannot be used to replace missing claim elements, it may still be relied upon to:

i.Demonstrate the motivation to combine prior art references, or
ii.Show the level of understanding of a person skilled in the art.

This development, however, appears to conflict with the Federal Circuit's recent decision in Shockwave Medical v. Cardiovascular Systems, which held that AAPA can be used to supply missing claim elements without violating 35 U.S.C. § 311(b). This difference in interpretation may lead to future disputes and further judicial clarification.

The updated requirements will apply to all IPR petitions filed on or after September 1, 2025.

Conclusion and Opinion

The USPTO's new guidelines significantly raise the standard for inter partes review petitions. Petitioners must now ensure that every claim element is directly mapped to specific prior art references. In my opinion, this change will make it more challenging to file petitions based on incomplete records and will encourage thorough, well-supported filings.

Reference:

https://www.reuters.com/legal/legalindustry/uspto-restricts-prior-art-that-can-be-used-inter-partes-reviews-2025-08-22/

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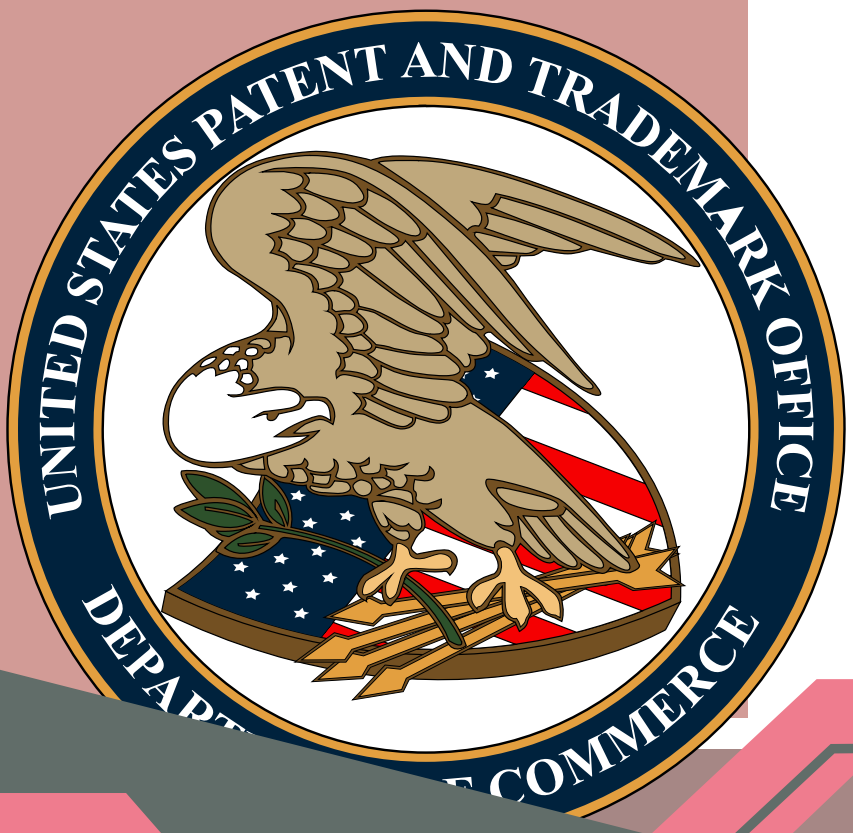

3. SUPREME COURT REJECTS 'BLENDERS PRIDE' PLEA AGAINST 'LONDON PRIDE': BALANCING BRAND IDENTITY AND FAIR COMPETITION

The Supreme Court of India recently delivered an important ruling on trademark law that shows how consumer sophistication can shape the outcome of disputes. In Pernod Ricard India Pvt. Ltd. v. Karanveer Singh Chhabra (No. 10638 of 2025, decided 14 August 2025), Pernod Ricard, the manufacturer of the whisky brand Blenders Pride, tried to get sales of a rival brand of whisky blocked under the name London Pride. The company stated that due to the similarity of the use of the term Pride, and that packaging is similar, there was a likelihood of confusion. An interim relief had been denied by the Commercial Court (2020) as well as the Madhya Pradesh High Court (2023). The Supreme Court, with Justices J.B. Pardiwala and R. Mahadevan presiding, agreed with those findings and ordered the trial court to resolve the case within four months.

The Court's reasoning followed well-established principles of trademark law. It practically stressed that marks should be compared collectively. Besides sharing the same word Pride, the brands have different prefixes, which form different identity names. This reflects the anti-dissection rule: courts should not pull apart marks and focus on one fragment in isolation. The Court also noted that "Pride" is a laudatory term in the liquor trade, commonly used to signal prestige or quality. As such, Pernod Ricard could not claim exclusive rights to the word unless it had registered it independently, which it had not.

The Court also insisted that the kind of consumer is important. Both premium and ultra-premium whisky is costly and consumers are considered to be selective and cautious. Such consumers will have less tendency to be misled by a condition of shared word when the rest of the product branding and product packaging is differentiated. This consumer-focused approach reduced the likelihood of confusion significantly.

The judges also considered-but denied the use of-the doctrine of post-sale confusion, as a protection against the speculative danger that some purchasers might in future be misled by use of a product. They opined that it did not apply in the case. The Court did not allow Pernod Ricard to use hybrid pleading in which features of other brands like Imperial Blue were presented in conjunction with those of Blenders Pride in an effort to infer similarity.

The decision has sparked debate. The idea that consumers are always sophisticated can also undermine protection against subtle imitation, particularly in industries where advertising is prohibited. Others, however, see the judgment as a welcome check on corporate overreach, preventing large companies from monopolizing everyday words.

The ruling is notable in three respects First; it reaffirms that generic or descriptive terms cannot be enclosed by any single brand. Second, it demonstrates the ability of the courts to adopt the confusion test to suit the marketplace by taking into consideration the behaviour of the normal buyer in the segment. Third, it shows a propensity to approach adjacent doctrines such as post-sale confusion without fear and use them sparingly. Overall, the case balances: it saves what is really unique in a brand, whereas it leaves common terms untouched to the fair competition.

Reference:

https://economictimes.indiatimes.com/industry/cons-products/liquor/supreme-court-junks-pernod-ricards-plea-against-london-pride-whisky-trademark/articleshow/123307798.cms

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4. THE NINTH CIRCUIT'S APPROACH IN OPENAI, INC. V. OPEN ARTIFICIAL INTELLIGENCE, INC. (2024)

The case of OpenAI, Inc. v. Open Artificial Intelligence, Inc. and Guy Ravine (Ninth Circuit, No. 24-1963, 13 November 2024) arose from a dispute over the use of the name "OpenAI" and the domain 'open.ai.' OpenAI, established in 2016 and now synonymous with widely known AI products, contended that the defendants' adoption of 'Open-Artificial Intelligence' created a likelihood of confusion in violation of the Lanham Act. By mid-2022, OpenAI's DALL·E 2 had over a million registered users and was generating millions of images daily; ChatGPT followed in November 2022. The district court found that by September 2022 the mark 'OpenAI' had acquired secondary meaning in the marketplace, signifying to a substantial segment of consumers a single source of origin for AI tools. The defendants, by contrast, alleged they had released an AI Image Generator in November 2022, but the court accepted evidence that their site merely hosted the third-party Stable Diffusion program rather than an independent product.

At first instance, Judge Gonzalez Rogers of the Northern District of California granted a preliminary injunction, enjoining defendants from use of the contested marks. Applying Winter v. NRDC (555 U.S. 7 (2008)), the court held that OpenAI was likely to succeed on the merits, would suffer irreparable harm absent relief, that equities weighed in its favour, and that the relief, public interest supported the injunction. The court relied on Levi Strauss & Co. v. Blue Bell, Inc. (778 F.2d 1352 (9th Cir. 1985)) in holding that a plaintiff must demonstrate secondary meaning prior to the defendant's first infringing use. The finding that OpenAI had achieved such recognition by September 2022,(two months before the defendants' first use) , was supported by evidence of user volume, extensive publicity, and consistent brand association since 2016. The laches argument, based on OpenAI's delay in suing since its formation in 2015, was rejected with reference to Tillamook Country Smoker, Inc. v. Tillamook County Creamery Ass'n (465 F.3d 1102 (9th Cir. 2006)), which allows a trademark owner to defer enforcement until a junior user enters direct competition causing market confusion.

On appeal, the Ninth Circuit affirmed, deferring to the district court's factual determination of secondary meaning. The majority rejected arguments that the injunction was impermissibly mandatory and clarified that courts are not bound by USPTO registration denials in assessing distinctiveness. Judge Collins dissented, faulting the district court for imprecision and for conflating popularity with legal secondary

meaning, drawing on Scott Paper Co. v. Scott's Liquid Gold, Inc. (589 F.2d 1225 (3d Cir. 1978)), which stresses that priority turns strictly on whether the plaintiff's mark had acquired secondary meaning at the moment of first use by the defendant.

The case is significant for trademark law in fast-moving technology markets. It affirms that descriptive terms, when attached to products achieving mass adoption, can quickly acquire protectible secondary meaning. It underscores that domain names closely aligned with established brands may generate actionable confusion. It clarifies that enforcement may be delayed until infringing conduct escalates into direct competition, without forfeiting rights. More broadly, it shows courts' readiness to adapt traditional doctrines of distinctiveness and confusion to industries where consumer recognition arises at exceptional speed.

References:

1. https://law.justia.com/cases/federal/appellate-courts/ca9/24-1963/24-1963-2024-11-13.html
2. https://www.reuters.com/legal/litigation/openai-wins-trademark-lawsuit-over-open-artificial-intelligence-2025-07-22/

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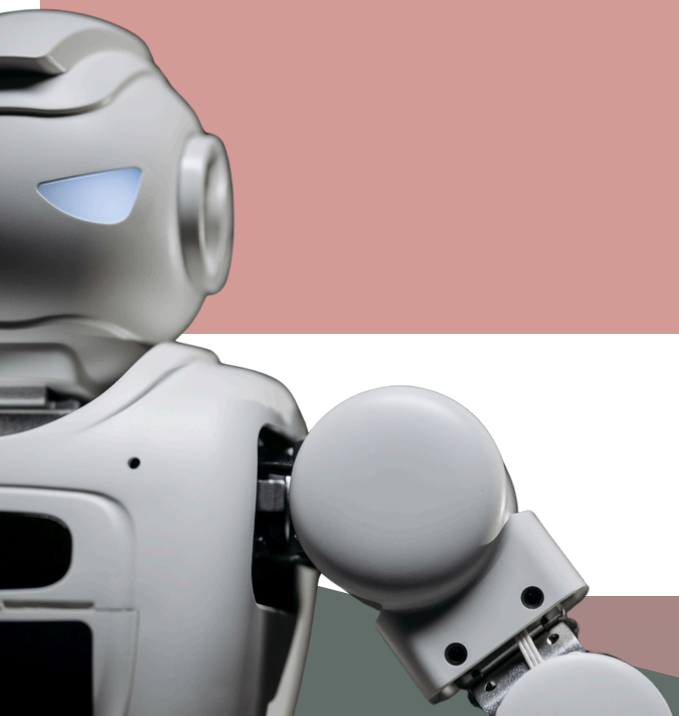

5. UAE-U.S. BILATERAL AGREEMENT: A NEW PARADIGM FOR GLOBAL INTELLECTUAL PROPERTY

The United Arab Emirates and the United States have formalized a significant bilateral agreement designed to streamline the patent granting process within the UAE. This accord establishes a framework where the UAE Patent and Trademark Office will recognize and leverage positive examination results from the U.S. Patent and Trademark Office (USPTO). This strategic alignment represents a critical step towards fostering a more efficient and coherent global intellectual property (IP) ecosystem. In an increasingly knowledge-based economy where intangible assets are central to value creation, this collaboration directly benefits innovators and businesses by reducing procedural barriers and increasing legal certainty, thereby modernizing the international IP landscape.

The Mechanism of Accelerated Patent Granting

The core of this agreement lies in its mechanism for procedural harmonization. Historically, securing patent protection in multiple jurisdictions has necessitated a series of distinct and often duplicative examinations, a process that is both costly and time-consuming for applicants. This new arrangement directly circumvents this redundancy by allowing the UAE to validate the rigorous and globally respected examination standards already applied by the USPTO. For an invention that has successfully undergone the U.S. patent grant process, the UAE patent office can now rely on this prior examination, thereby eliminating the need for a duplicative, independent review. This accelerated pathway is poised to substantially shorten the timeline from application to grant, directly addressing a primary logistical challenge for innovators operating across international markets and freeing up valuable resources for both the applicant and the patent office.

Strategic Implications for Innovation and Investment

This collaborative initiative carries profound economic and strategic implications. By fast-tracking patent protection, the agreement directly facilitates quicker market entry and commercialization for new technologies, particularly in high-growth sectors such as biotechnology, artificial intelligence, and clean energy. This is a powerful incentive for inventors, who are provided with a significantly higher degree of certainty that their innovations will be protected. Enhanced certainty builds confidence among innovators, encouraging increased foreign direct

investment and sustained growth in research and development within the region. Furthermore, a prompt patent grant enables quicker enforcement of intellectual property rights, offering a more robust legal framework to safeguard against infringement. The collaboration thereby positions the UAE as a more attractive destination for technology transfer and investment. Overall, this systematic approach is a model for how nations can collaborate to create a global IP framework that is not only robust but also conducive to rapid technological progress and economic diversification.

References:

UAE, U.S. forge agreement to expedite patent granting process | Asia IP

USPTO announces accelerated patent grant programs with Belize, Guatemala, and the United Arab Emirates | USPTO

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6. DELHI HIGH COURT ORDERS COMPLETE BLOCK ON SCI-HUB AND SCI-NET IN INDIA

Introduction

On August 19, 2025, the Delhi High Court ordered the blocking of Sci-Hub, Sci-Net, and their mirror websites across India. The decision, delivered by Justice Manmeet Pritam Singh Arora, came after allegations that these platforms continued to share copyrighted academic material despite earlier assurances to stop.

Background

In 2020, Alexandra Elbakyan, the founder of Sci-Hub, gave an undertaking before the court agreeing not to upload or provide access to copyrighted articles published after December 24, 2020.

However, Elsevier and other publishers discovered that Sci-Hub was still making available articles published after 2022 and had also introduced Sci-Net, a platform that allows researchers to request and upload paywalled papers. The publishers argued this was a clear violation of the 2020 undertaking.

Alexandra, in her email response, denied any deliberate violation. She claimed that any post-2020 uploads on Sci-Hub happened due to technical errors and further argued that Sci-Net is a separate project, not covered under the earlier undertaking.

Analysis

After reviewing the case, the court relied on the precedent set in UTV Software

Communication Ltd. v. 1337x.to & Others, which defined websites that consistently enable copyright infringement as ‘rogue websites’.

Applying this principle, the court classified Sci-Hub and Sci-Net as rogue websites and directed the Department of Telecommunications and the Ministry of Electronics and Information Technology to issue blocking orders. Internet Service Providers have been instructed to block these websites within 24 hours of receiving the notification.

Conclusion and Opinion

The blocking order will remain effective until further court directions. Alexandra's withdrawal from the case indicates that there may not be an immediate legal challenge.

In my opinion, while this order strengthens copyright enforcement, it also raises concerns about access to academic resources. Many students and researchers in India relied on Sci-Hub for free access to scholarly material. Without affordable alternatives, this decision may widen the knowledge gap in higher education.

Reference:

https://www.thehindu.com/sci-tech/technology/delhi-high-court-orders-sci-hub-to-be-blocked-in-india/article69967768.ece

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SCI-HUB

...to remove all barriers in the way of science

7. MAURITIUS JOINS ARIPO: EXPANDING THE AFRICAN IP MAP

Mauritius deposited its Instrument of Accession to the Harare Protocol of the African Regional Intellectual Property Organization (ARIPO) on 27 May 2025. With this step, Mauritius became the 21st member state under the Protocol, which provides a single application route for patents, utility models, and industrial designs across participating African countries. The accession will take effect on 27 August 2025, from which date Mauritius can be designated in ARIPO applications.

The Harare Protocol, enacted in 1982 was aimed at reducing the complexity of obtaining patent and design rights in Africa. In a way, making a single filing through ARIPO is simpler than filing separately in multiple jurisdictions, although it applies only to member states. In the case of Mauritius, this accession represents the next step in a policy of harmonising the national IP law with international best practice, following its membership of the Patent Cooperation Treaty (PCT) in 2002. It will also reflect the ambition of the country to be a centre of innovation and investment in the Indian Ocean region.

The benefits for rightsholders are immediate. From the effective date, both new and pending ARIPO applications may include Mauritius, eliminating the need for separate national filings. This development is especially relevant to industries like pharmaceuticals, biotechnology, and fintech, where businesses often seek broad and cost-effective regional protection. By joining ARIPO, Mauritius is sending a clear signal that it intends to make IP processes more predictable, efficient, and investor-friendly.

However, there are limits. Mauritius has made no accession to the Banjul Protocol, the ARIPO system of regional trademarks. This means that brand owners will have to continue to protect at the national level in Mauritius or use the Madrid System. This leads to even further complexity, especially where small and medium-sized enterprises are concerned as a dual system is provided, i.e. regional integration in terms of patents and designs with national filing of trademarks.

Critics also raise that although the filing process under ARIPO is streamlined, its enforcement capabilities are unequally distributed among member states. A right on the paper does not necessarily mean that this right is an effective protection in practice. Courts, administrative agencies, and customs authorities vary in their ability to enforce rights, raising doubts about whether regional integration truly establishes a level playing field.

Despite that, the accession of Mauritius is an important step toward the establishment of African IP law.

It extends the jurisdiction of ARIPO, and improves the credibility of Mauritius as a contemporary jurisdiction on IP matters, and underscores the importance of intellectual property in financial terms to economic cooperation in the region. The adoption of the system by other states will depend on how well it is functioning on the ground in actualisation of rights and enforcement of those provided to the members.

As of 27 August 2025, the African IP landscape will expand, offering both opportunities for innovators and a test for ARIPO's capacity to deliver meaningful protection. For businesses and practitioners alike, Mauritius's move marks both progress and challenge in the ongoing effort to build a cohesive African IP framework.

Reference:

https://inventa.com/ip-news-insights/announcements/mauritius-joins-harare-protocol-new-chapter-regional-ip-protection

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ARIPO
African Regional Intellectual Property Org

8. DENMARK'S STAND AGAINST DEEPFAKES

Denmark has tabled a targeted amendment to its Copyright Act that would create two new neighbouring rights aimed squarely at AI-driven 'deepfakes'. Section 65a provides for a right shielding performing artists and artists' artistic performances from realistic digital imitations shared without consent, and Section 73a, grants the right protecting any natural person's physical traits (face, voice, body) from being made publicly available via realistic, digitally generated likenesses without consent. Both these changes call for a 50 years post-mortem; Section 73a carves out parody, satire, pastiche, power-critique and social critique, but withdraws that safe harbour where the deepfake amounts to misinformation posing serious risks to others' rights or vital interests. Remedies include takedown from the medium on which the content appears; the scheme is civil-enforcement-centric (damages/compensation), with criminal penalties expressly excluded by adjusting cross-references in sections 76 and 77. Section 65a's scope is limited to EEA nationals/residents, while Section 73a applies to all persons; entry into force is slated for 31 March 2026. The initiative followed a broad political accord after high-profile deepfake incidents and is now in formal consultation.

The rationale is twofold: to give individuals and performers an ex ante right to control digital replicas of identity and labour, and to provide a fast civil lever to compel removals, with platform duties effectively channelled through existing EU instruments (e.g., DSA) rather than new criminal rules. Policymakers present it as a European first that aligns personality control with copyright-style enforcement and protects creative industries from synthetic substitution.

Critique from scholars and practitioners is pointed. Commentators argue the bill uses copyright to solve a personality-rights and platform-governance problem "right idea, wrong legal framework". This causes a conceptual drift and fragmentation across the EU, it could re-cast deepfakes as a licensable market rather than a narrow wrong, and the "realistic" threshold and misinformation override are indeterminate and litigation-prone. Others worry about chilling satire and political speech if consent becomes the default, despite carve-outs.

Copyright law, since its origins, has been anchored in a precise insight to protect the expression of ideas, not persons themselves. It is grounded in the assumption that copyright safeguards creative works (literary, musical, artistic) and not the physical characteristics of an individual.

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Reference:

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