

Protection of Publicity Rights in Japan: Current State and Issues

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Abstract

This study examines discussions on the legal nature and alienability of the right of publicity in Japanese law and clarifies two points.

First, traditionally, it was common to deductively derive the alienability of the right of publicity upon the determination of its legal nature. Consequently, from the perspective of understanding the right of publicity as a personality right, the conclusion that it is not alienable was derived as a logical necessity because of the strictly personal nature of personality rights. Meanwhile, some theories emphasize that alienability is not deductively determined and affirm the right's alienability while still treating it as a personality right.

Second, discussions have begun on alienability conditions for the right of publicity. Some theories invoke general principles of the Civil code whereas others examine conditions that emphasize the fact that the object of the right derives from personality rights.

Keywords:

Personality rights, Publicity rights, Alienability, Pink Lady Case, Legal nature

I. INTRODUCTION

A person's name and likeness, among others, may possess the power to attract customers, which promotes the sale of products. The right to use this commercial appeal exclusively is called the "right of publicity," which, despite being derived from personality rights, is positioned as a right that protects the economic value of the likeness itself as opposed to the right to one's name or likeness, which protects personality rights. While no statutory provision explicitly recognizes a right of publicity under current law, the Supreme Court's February 2, 2012, judgment (Minshū vol. 66, no. 2, p. 89, hereafter the "Pink Lady Case") acknowledged the right of publicity for the first time.¹⁾

Persons whose likenesses typically possess commercial appeal are entertainers and athletes (hereafter "entertainers"),²⁾ and it is not uncommon for them to entrust the management of their right of publicity to their talent agencies.³⁾ The problem, however, is the legal structure that allows entertainers to entrust such management to others. Exclusive contracts between entertainers and their agencies occasionally stipulate that the former's right of publicity belongs to the latter,⁴⁾ which could be interpreted as a transfer of that right. However, if the right of publicity is derived from personality rights, and is inalienable, then doubts⁵⁾ arise as to whether the transfer of that right should be impermissible.⁶⁾

Against this context, this study examines whether the right of publicity can be the subject of a transfer and, if so, under what conditions it is permissible. Section II provides an overview of conventional discussions on the legal nature and alienability of the right of publicity. Section III

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- 1) Supreme Court (Feb. 2, 2012), Saikō Saibansho minji hanreishū [Minshū], vol. 66, no 2, p. 89.
 - 2) Even ordinary persons (not only celebrities) have the right of publicity if their name/likeness has commercial appeal. See Tatsuhiro Ueno, Hitono Paburishiti (The Right of Publicity of a Person), in Katsumi Yoshida et al., eds., *Zainotayōka to Minpōgaku* (Diversification of Goods and Civil Law) (Shojihōmu, 2014), p. 399, p. 416.
 - 3) Tatsuhiro Ueno, *Supōtsu Senshu to Paburishiti Ken* (Athletes and the Right of Publicity), *Hōgaku Kyōshitsu*, no. 478 (2020), p. 56, pp. 58-59.
 - 4) Toshiaki Kobayashi, *Geimei, Gurūpu-mei to Paburishiti-ken* (Stage Names, Group Names, and the Right of Publicity), *Jurisuto*, no. 1594 (2024), p. 35, p. 37.
 - 5) Naoki Koizumi, *Paburishiti-ken hogo no kinkyō* (Recent Developments in the Protection of the Right of Publicity), *Hōsō Jihō*, vol. 72, no. 3 (2020), p. 477, p. 484.
 - 6) Motoyuki Nakashima, *Hankai* (Case Comment), *Hōsō Jihō*, vol. 65, no. 5 (2013), p. 1179, pp. 1211, 1213-1214, denies the alienability of the right of publicity.

discusses noteworthy recent developments and examines their theoretical significance. Finally, section IV organizes these discussions and analyzes the remaining issues.

II. TRADITIONAL THEORIES

Until now, scholars have engaged in lively debate on the legal nature of the right of publicity—that is, whether it is a property right or a personality right—as its theoretical construction has been viewed as a decisive determinant of consequences such as alienability.⁷⁾

Subsection 1 summarizes the view of the right of publicity as a property right (hereafter the “property rights theory”). Subsection 2 discusses the right’s treatment as a personality right (hereafter the “personality rights theory”). Finally, subsection 3 analyzes features of the conventional discussion. This chapter covers the period up to the Pink Lady Case.

1. Property Rights Theory

Property rights theory focuses on the fact that the ability to attract consumers has economic value and considers the right of publicity as a property right (akin to a real right). Kōji Abe argues that the right of publicity concerns the property aspect of a person’s name and likeness and is “a kind of property right” despite the name and likeness having personal and property aspects.⁸⁾ Furthermore, property rights theory posits that, because the right of publicity is “a kind of property right,” alienability is recognized.⁹⁾

This theory has historical significance in legal doctrine in that it clarifies that names, likenesses, and other elements originating from a person have property value. However, if the right of publicity is conceived as entirely detached from the person, then once the person transfers their right

7) Tamotsu Takakura, *Paburishiti-ken (The Right of Publicity)*, in *Chiteki zaisan wo meguru shomondai (Issues Concerning Intellectual Property)* (Hatsumei Kyōkai, 1996), p. 473; p. 480 n.13 (“The debate over whether it is a personality right or a property right is, in itself, meaningless; it is merely a discussion deployed to justify alienability and inheritability.”).

8) Kōji Abe, *Paburishiti no kenri to futō ritoku (The Right of Publicity and Unjust Enrichment)*, in Tomohei Taniguchi et al. eds., *Shinpan Chūshaku Minpō (18) Saiken (9) (Commentary on the Civil Code (New Edition))*, vol. 18: Obligations (9) (Yūhikaku, 1991), p. 564, p. 578.

9) Abe, *supra* note 8, pp. 578-579.

of publicity to another, they would not be granted relief “unless it constitutes an invasion of privacy or defamation, regardless of the form of use.”¹⁰⁾ For instance, “even if their personal elements are utilized in a way the person did not anticipate, such as in commercials for energy drinks or wigs, which may not be defamatory,” the person would have to tolerate it. This has been criticized as problematic from the viewpoint of the person’s protection.¹¹⁾

Some views have remained within a property-based framework but with slight modifications. For instance, some position the right of publicity as “not a complete property right but as a right that has become independent from the framework of personality rights while still having aspects of them”¹²⁾ or as a “special property right with personal elements.”¹³⁾ These perspectives argue that it is difficult to “separate the property value from the person”¹⁴⁾ and can be seen as having caused the emergence of personality rights theory.¹⁵⁾

2. Personality Rights Theory

Personality rights theory regards the right of publicity as a personality right, positioning it as protecting the commercial value derived from personal elements such as one’s name or likeness. Although this theory acknowledges that the right of publicity protects property value, it emphasizes that this value derives from the personality and thus denies its alienability.¹⁶⁾

Amid frequent discussions on the legal nature of the right of publicity, the Pink Lady Case emerged, generally considered to have adopted personality rights theory.¹⁷⁾ It acknowledged the right of publicity, stating,

10) Hiroshi Hanamoto, *Jinkakuken no zaisanken-teki sokumen* (The Proprietary Aspect of Personality Rights), *Dokkyo Law Review*, no. 45 (1997), p. 241, p. 246.

11) Osamu Watanabe, *Jinkaku merukumāru no riyōken* (The Right to Use Personal Identifiers), *Hōgaku*, vol. 60, no. 6 (1997), p. 1298, p. 1318.

12) Shigeo Ōya, *Jinkaku-ken to Paburishiti-ken* (Personality Rights and the Right of Publicity), *Tokkyo kenkyū*, no. 10 (1990), p. 4, p. 8.

13) Hiroshi Saitō, *Shimei · shōzō no shōgyōteki riyō ni kansuru kenri* (Rights Concerning the Commercial Use of Names and Portraits), *Tokkyo kenkyū*, no. 15 (1993), p. 18, p. 24.

14) Saitō, *supra* note 13, pp. 24-25.

15) Hanamoto, *supra* note 10, p. 246.

16) Hanamoto, *supra* note 10, pp. 250-252.

17) Nakashima, *supra* note 6, p. 1185; Ueno, *supra* note 2, p. 407.

“A person’s name, likeness, etc. (hereafter collectively referred to as “likeness, etc.”) is a symbol of an individual’s personality. Therefore, the individual may assert, by virtue of personality rights, a right to prevent arbitrary use of their name or likeness. ... And, as a likeness, etc., may have the power to attract customers to promote the sale of goods and the like. The right to exclusively use this commercial appeal (hereinafter “right of publicity”) is based on the commercial value inherent in the likeness, etc. itself, and thus constitutes an aspect of the right derived from the personality rights.”¹⁸⁾

While the Pink Lady Case positioned the right of publicity as a personality right, it did not make any conclusions regarding its alienability. The research official’s commentary stated that alienability would be denied based on this judgment; that is, “if the personality rights theory is adopted, the right of publicity is exclusively personal to that individual, and it cannot be transferred.”¹⁹⁾

As discussed above, it is common practice for entertainers to entrust to their agencies the management of their right of publicity. Views recognizing the alienability of the right of publicity, such as property rights theory, were intended to meet this practical need.²⁰⁾ Then, how does personality rights theory respond to such practical demands? For example, scholars suggest that these demands be addressed “through concluding a license agreement for the use of publicity value and/or a delegation agreement for the administration of the use of publicity value.”²¹⁾ Thus, even if one stands on personality rights theory and denies alienability, practical demands may still be met.²²⁾

18) Supreme Court (Feb. 2, 2012), *Minshū*, vol. 66, no. 2, pp. 89, 92.

19) Nakashima, *supra* note 6, p. 1211.

20) See Hanamoto, *supra* note 10, p. 250.

21) Hanamoto, *supra* note 10, p. 250. Likewise, Kiyoshi Igarashi, *Jinkaku-ken-hō gaisetsu* (An Outline of Personality-Rights Law) (Yūhikaku, 2003), p. 189. Yoshio Shiomi, *Huhōkōihō I* (Dai 2-han) (Tort Law I 2nd ed.) (Shinzansha, 2009), p. 215, states that “the transfer of the right itself should not be recognized; it suffices to examine the validity of a (exclusive) license agreement as a contractual claim.”

22) In practice, for example, under the Standard Player Contract between professional baseball players and clubs, an exclusive license to use the player’s name and likeness is understood to be granted. See Naoki Koizumi, *Puro-yakyū senshu no shōzō-tō shiyō kyodaku kengen no shozai wo meguru tōitsu keiyakusho no kaishaku* (Interpreting the Standard Contract Concerning the Authority to License the Use of Professional Baseball Players’ Likenesses, etc.), *Gendai shakai to chosakuken-hō* (Kōbundō, 2008), p. 1, pp. 6-7.

3. Interim Summary

The discussion during this period has several characteristics.

First, property rights theory affirms alienability, while personality rights theory denies it. This implies that upon settling the legal nature, one could deduce the permissibility of alienability. A slightly more critical view could be that the legal nature was debated “to deductively arrive at the conclusion that each author considered desirable” on specific issues such as alienability.²³⁾

Second, whether one adopts property rights theory or personality rights theory, the consensus is that since personality rights are strictly personal, even if property value is recognized in property derived from personality, the alienability of property should be impermissible.

Third, even though property rights theory and personality rights theory are often treated as conflicting views, their practical difference is not that significant²⁴⁾ because, for example, entrusting the management of an entertainer’s right of publicity to an agency is considered achievable under both theories—albeit with different legal constructions. The real question pertains to the conditions that render the transfer or licensing of the right of publicity permissible.²⁵⁾ However, at that time, scholars did not necessarily focus on such a question.

III. RECENT DEVELOPMENTS

After the Pink Lady Case, certain views suggested there is room to affirm the alienability of the right of publicity while positioning it as a personality right.²⁶⁾ These views are noteworthy in that they critically discuss

23) Ueno, *supra* note 2, p. 405 n.11.

24) Atsushi Naitō & Sadayuki Tashiro, *Paburishiti-ken gaisetsu (Dai 3-han)* (Overview of the Right of Publicity 3rd ed.) (Bokutakusha, 2014), pp. 351-352.

25) Regarding this point, Rika Kumamoto offers a suggestive observation: “Rather than starting with a rights concept and deducing alienability from a theory of legal nature, a perspective that asks in what modes and for what durations a transfer would be valid is also useful.” See Yuriko Inoue et al., *Shinpojiumu Paburishiti-ken* (Symposium: The Right of Publicity), *Chosakuken kenkyū*, no. 47 (2021), p. 106 (remarks by Rika Kumamoto).

26) For example, Katsumi Yoshida, *Zai no tayōka to minpōgaku no kadai* (Challenges for Civil Law in the Diversification of Property), in Katsumi Yoshida et al., eds., *Zainotayōka to Minpōgaku* (Diversification of Property and Civil Law) (Shojihōmu, 2014), p. 2, p. 38, reads alienability affirmatively.

the premise of conventional arguments that rights derived from personality cannot be transferred at all because of their strictly personal nature. Following such perspectives, the discussion has progressed regarding the conditions under which the right of publicity may be assigned or licensed,²⁷⁾ and judicial precedents ruling on this point have also emerged.²⁸⁾

Given these developments in the legal nature and alienability of the right of publicity, subsection 1 surveys scholarly positions affirming alienability, subsection 2 examines recent case law addressing alienability and its conditions, and subsection 3 considers the features of the current theoretical landscape.

1. Recent Academic Theories

Influential recent views discuss the nature and alienability of the right of publicity based on the realization that it is inappropriate to apply a priori the conventional general attributes of personality rights across the board to all rights within the personality rights domain.²⁹⁾

For example, Shigeto Yonemura discusses the alienability of the right of publicity based on the recognition that personality rights contain property-like components. “A kind of paternalism” was observed behind the denial of alienability for rights to life and body, which have been considered the objects of protection for personality rights.

However, as the objects of protection for personality rights have become diverse, one must ask whether it is appropriate to uniformly deny the transfer of rights by paternalism with no regard to the nature of the object of protection. Because transferring a personality right’s “property-like component” does not jeopardize one’s existence as a person, the alienability of the right of publicity should be affirmed. Considering this, Yonemura then proposes a legal construction for transferring part of a personality right—namely, a “binding transfer,” that is, establishing a right of use (akin to a real right) over a portion of the personality right

27) Rika Kumamoto, *Furansu-hō ni okeru torihiki taishō to shite no shōzō-ken* (The Right to One’s Image as a Transaction Object in French Law), *Hōgaku Seiji-gaku Ronkyū*, no. 113 (2017), p. 105.

28) Tokyo District Court, Dec. 8, 2022, *Hanrei Times*, no. 1510, p. 229.

29) Shigeto Yonemura, *Jinkakuken no kenri kōzō to “isshin-senzokusei” (1)* (The Structure of Personality Rights and Their Inherent Personal Nature (Part I)), *Hōgaku Kyōkai Zasshi* vol. 133, no. 9 (2016), p. 1311, p. 1334.

and transferring that right to another.³⁰⁾

Masahiro Motoyama also affirms alienability based on similar grounds. That is, the property-like component within personality rights is precisely the right of publicity, and for this component, “the separation of subject and object” is the default in this domain, where the personal element is routinely exploited apart from the subject. There is nothing unnatural about this separation as it follows from the right’s essence; hence, alienability should be affirmed.³¹⁾

These recent discussions are characterized by a salient feature. Conventionally, if the right of publicity was understood as a personality right, its alienability was deductively denied. Meanwhile, recent views assert that even if this right were positioned as a personality right, the denial of its alienability is not immediately concluded, indicating that the discussion on the legal nature of the right of publicity is now treated as analytically distinct from that on its alienability. This clarification of the idea of separating legal nature and alienability is a significant achievement of recent discussions.³²⁾ The dominant view is that assignment is subject to certain limits; for example, it is problematic to interpret that the individual naturally loses the potential for use of their likeness and other elements through transfer.³³⁾

Two positions can be discussed with regard to transfer restrictions. First, some rely on general principles of the Civil Code. Yonemura, while affirming alienability in principle, argues that “depending on a comprehensive consideration of the relationship between the parties, the purpose of the contract, the course of dealing etc., a transfer contract or bequest

30) Shigeto Yonemura, *Jinkakuken no kenri kōzō to “isshin-senzokusei” (5) (The Structure of Personality Rights and Their Inherent Personal Nature (Part V))*, *Hōgaku Kyōkai Zasshi* vol. 134, no. 3 (2017), pp. 407, 458-461, 464-465.

31) Masahiro Motoyama, *Paburishiti-ken no kenri kōsei no tenkai to sono imi ni kansuru oboegaki (Notes on the Development and Significance of Constructions of the Right of Publicity)*, *Kokushikan Hōgaku*, no. 45 (2012), p. 57, pp. 79, 82-83.

32) Shigeto Yonemura, *Jinkaku-ken to Paburishiti-ken no hōteki seishitsu (The Legal Nature of Personality Rights and the Right of Publicity)*, *Chosakuken Kenkyū*, no. 47 (2021), p. 12, p. 18, notes that “if no general principle exists under which alienability of personality rights is automatically denied, the premise of the debate may change.”

33) Yonemura, *supra* note 32, p. 18. See also Atsushi Naitō, *Posuto · Pinku Redī jidai no Paburishiti-ken (The Right of Publicity in the Post-‘Pink Lady’ Era)*, *Chosakuken Kenkyū*, no. 47 (2021), p. 4, p. 9, which affirms alienability but is negative toward unlimited transfers.

may be voided as contrary to public order and morals.”³⁴⁾

Second, others suggest that because the right of publicity originates from personality rights, the validity of these contracts must be evaluated using criteria specific to this right rather than the general rules for contracts. For example, Rika Kumamoto, considering cases where the object of the right of publicity is a likeness, asserts that contracts that completely and perpetually deprive the likeness holder of the protection of their personality, such as one that allows the person permitted to use the likeness to use any and all of the holder’s likenesses, in any manner, and in perpetuity, are void.³⁵⁾ Kumamoto therefore proposes the following baseline: the method of use should be specified in terms of the scope of images covered, the medium of exploitation, the geographic scope, and the duration.³⁶⁾

These positions are not mutually exclusive; the second can be regarded as a refinement of the first. Discussions about the transfer of the right of publicity used to be all-or-nothing debates about its permissibility. Current discussions, however, while permitting alienability, have moved on to careful debates regarding the conditions for it, which can be considered an achievement of recent scholarship.

2. Trends in Judicial Precedents

Although the Pink Lady Case did not directly address the alienability of the right of publicity, the research official’s commentary denies alienability as a consequence of the judgment.³⁷⁾ Likewise, some judicial precedents have denied alienability even after the Pink Lady Case. For example, the Osaka High Court Judgment of November 16, 2017 (Hanrei Jihō no. 2409, p. 99), held that “the right of publicity constitutes one aspect of a right derived from personality rights, is a strictly personal and cannot be the subject of transfer.”³⁸⁾ This can be understood as an extension of the conventional mindset regarding personality rights and the right of publicity.

34) Yonemura, *supra* note 30, p. 461. See also Naitō & Tashiro, *supra* note 24, pp. 360-362.

35) Kumamoto, *supra* note 27, p. 128.

36) Rika Kumamoto, *Shōzō no shōgyōteki riyō ni okeru keiyaku kisei no arikata (ge)* (Regulatory Approaches to Contracts for the Commercial Use of Likeness (Part II)), *Hōritsu Jihō*, vol. 94, no. 10 (2022), p. 74, p. 78.

37) Nakashima, *supra* note 6, p. 1211.

38) *Hanrei Jihō*, no. 2409, p. 103.

Meanwhile, in its December 8, 2022, judgment (Hanrei Times no. 1510, p. 229), the Tokyo District Court made a noteworthy ruling that alienability could be affirmed as outlined below.

X is an entertainment agency that trains and manages celebrities in theater and music. On May 20, 1999, Y entered into an exclusive contract (hereafter “the Contract”) with F, a company in the same corporate group as X, and commenced entertainment activities using the stage name “C” (hereafter “the Stage Name”) with a CD debut in March 2000.

On March 18, 2004, F, X, and Y concluded a transfer agreement, and X succeeded to F’s position under the Contract. As a result, the contract document (hereafter “the Contract Document”) included the following content.

Art. 8: All rights arising from Y’s performance activities—including copyright, neighboring rights, rights to remuneration under the Copyright Act, and the right of publicity—shall, without limitation, originally belong to X.

Art. 10: During and after the term of this contract, Y shall not use, without X’s consent, the following stage names and appellations designated by X. “C”

On December 31, 2010, Y ceased entertainment activities using the Stage Name, but from around September 2015, Y was active under the name “D” and, from around 2018, under the name “E.” In March 2021, Y announced a resumption of entertainment activities using the Stage Name without X’s consent. X therefore sought an injunction based on Article 10.³⁹⁾

Ruling on the alienability of the right of publicity, the court in this case stated,

“Article 8 of the Contract Document stipulates that the right of publicity arising from Y’s performance activities originally belongs to X. On this point, if one emphasizes that the right of publicity is a right derived from personality rights and considers that the inalienability of

39) Hanrei Times, no. 1510, pp. 231-232.

personality rights applies as is to the right of publicity, then it would not be permissible for the right of publicity generated by an entertainer's activities to belong to someone other than that entertainer (through transfer, etc.), and the part of Article 8 of the Contract Document that stipulates the attribution of the right of publicity would naturally be invalid. However, given that the right of publicity is a right recognized with a focus on property interests distinct from personal interests, it is difficult at present to uniformly deny that the right of publicity may belong to a third party through transfer or other means."⁴⁰⁾

The court then ruled on the conditions under which a transfer is permitted:

"Even if alienability is in principle admissible, the Article 8 clause on the right of publicity must be tested against three factors: (i) the need to protect X's interests, (ii) the degree of disadvantage to Y, and (iii) the presence or absence of compensatory measures. If, in light of these factors, the clause restricts Y's interests beyond what is reasonable, it is socially unacceptable and void as contrary to public order and morals."⁴¹⁾

Applying these principles, the court concluded that

"the portion of Article 8 of the Contract Document concerning the right of publicity, even considering the purpose of recovering capital invested by X, unreasonably restricts Y's interests without adequate compensatory measures, and therefore is socially unacceptable and void as contrary to public order and morals, and that the right of publicity related to the Stage Name belongs to Y."⁴²⁾

Two points are significant here. First, the court, while based on personality rights theory, states that "it is difficult at present to uniformly deny that the right of publicity may belong to a third party through trans-

40) Hanrei Times, no. 1510, p. 238.

41) Hanrei Times, no. 1510, p. 238.

42) Hanrei Times, no. 1510, p. 239.

fer or other means.” This suggests some room to recognize the alienability of the right of publicity, and the significance of this judgment lies in this point.⁴³⁾ The court argues, as a reason for the potential affirmation of alienability, that “the right of publicity is a right recognized with a focus on property interests distinct from personal interests.” The rationale—focusing on proprietary interests distinct from personality—is consistent with recent scholarship (e.g., Yonemura).

Second, the presented framework for transfer also highlights the theoretical significance of this judgment.⁴⁴⁾ Although the court points out that the permissibility of a transfer requires an analysis of factors (i)–(iii), the relation between these factors and which is most important are not necessarily clear.⁴⁵⁾ Nevertheless, “the degree of disadvantage” to the holder of the right of publicity is notably listed as factor (ii). This suggests that the contract could be nullified if the degree of disadvantage to the individual is great and their protection is undermined, which resonates with Kumamoto’s approach that contracts comprehensively and permanently depriving personality protection are invalid.

3. Interim Summary

Recently, the view affirming the alienability of the right of publicity while standing on personality rights theory has become influential, causing scholarly attention to shift to the conditions for alienability, a topic theoretically distinct from the debate over the right’s legal nature. Therefore, scholars must reconsider the traditional framework—where a conclusion on alienability is deduced from the legal nature. This is a major development. Once alienability is deemed possible, the presence and content of limitations emerge as key issues.

In addition, the concept of “transfer” in recent studies differs from that in earlier debates. Conventionally, scholars discussing the transfer of the right of publicity seem to have conceived of it as similar to the transfer of general property—implying that the right could be transferred successively and might fall beyond the control of the subject of the right.⁴⁶⁾ In contrast, recent scholarship affirms only restricted forms of assignment

43) Maiko Fuchi, Hanpi (Case Note), *Shihō Hanrei Rimākusu*, no. 69 (2024), p. 14, pp. 16-17.

44) Fuchi, *supra* note 43, p. 17.

45) Kobayashi, *supra* note 4, p. 38, stating that “(iii) is likely to become an important factor.”

46) Watanabe, *supra* note 11, pp. 1318-1319.

and not unrestricted transfers.

Although scholarship and case law now engage with conditions on assignment, the discussion has only just begun, and further theoretical refinement must be conducted.

IV. CONCLUSION

This study surveyed traditional debates on the legal nature and alienability of the right of publicity and, considering recent scholarship and case law, examined whether alienability may be recognized and under what conditions.

Traditionally, the debate on the legal nature of the right of publicity was closely associated with the permissibility of its transfer; the adoption of personality rights theory led deductively to nonalienability. However, recent discussions are progressing toward recognizing alienability while acknowledging the right's derivation from personality. This study has analyzed the process by which the legal nature and alienability were theoretically separated and has shown some room for affirming alienability given the recent theoretical situation. It also provided a certain analysis of the conditions for transfer.

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