Disposability of Personality Interests: Reconstructing the Legal Framework through a Two-Layer Fiduciary Model

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Introduction

Emerging Challenges to the Inalienability of Personality Rights

Traditionally, personality rights have been understood as inherently personal and inalienable, thereby precluding acts of disposition such as assignment, inheritance, or renunciation.[1] For instance, Article 59 of the Japanese Copyright Act explicitly affirms the inalienability of moral rights, and judicial precedents, as well as legal practice, have consistently reinforced this position, systematically rejecting the alienability of personality interests.[2] Personality rights are therefore conceived as rights that protect intrinsic personal values, distinct from property rights and claims, and thus not intended to be transferred or circulated as commodities.[3]

Nevertheless, two converging developments have necessitated a reevaluation of this premise of "inalienability." First, personal attributes such as names, likenesses, voices, and physical features are increasingly commodified through contracts and licensing agreements. Judicial recognition of publicity rights and standardized contractual practices concerning the use of celebrities' names and likenesses exemplify the growing economic valuation and transactional circulation of certain personality interests.[4] Second, advances in artificial

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1) Kiyoshi Igarashi, Jinkakuken-ron [A Study on Personality Rights] 10 (Ichiryūsha 1989).

2) Copyright Act, Law No. 48 of 1970, art. 59 (Japan); *Gallop Racer Case,* Saikō Saibansho [Sup. Ct.] Feb. 13, 2004, Hei 13 (ju) no. 866, 58 Saikō Saibansho minji hanreishū [Minshū] 311 (Japan); *Pink Lady Case,* Saikō Saibansho [Sup. Ct.] Feb. 2, 2012, Hei 21 (ju) no. 2056, 66 Saikō Saibansho minji hanreishū [Minshū] 89 (Japan); Agency for Cultural Affairs, *Overview of the Copyright System* 12 (2024), https://www.bunka.go.jp/seisaku/bunkashingikai/kondankaito/todofuken_shiteitoshi/pdf/r1401522_11.pdf (last visited Apr. 30, 2025); Digital Archive Society, *Portrait Rights Guidelines* 2–3 (Apr. 2021), https://hoseido.digitalarchivejapan.org/shozoken/ (last visited Apr. 30, 2025).

3) Kiyoshi Igarashi, Jinkakuken-hō gaisetsu [Outline of Personality Rights Law] 13 (Yūhikaku 2003); Hiroshi Saitō, Jinkaku kachi no hogo to minpō [Protection of Personality Values and Civil Law] 32 (Kobundō 1986); 5 Masanobu Katō, Shin minpō taikei—jimu kanri, futō ritoku, fuhō kōi [New Civil Law Treatise vol. 5: Management of Business, Unjust Enrichment, and Torts] 188–90 (Yūhikaku 2d ed. 2005).

4) Masanobu Katō, *Jinkakuken to chosakusha jinkakuken—songai baishō, sashitome, shobun kanōsei* ↗

intelligence (AI) and computer-generated imagery (CGI) have enabled realistic reproductions of deceased individuals' likenesses and voices, raising complex questions concerning posthumous management and proxy decision-making, particularly when prior consent is ambiguous or unavailable.

Conceptual Ambiguities and the Objectives of This Study

The present study distinguishes between "personality rights," narrowly defined as legally protected entitlements, and "personality interests," a broader category of personal values and attributes that potentially underlie such rights.

Although both terms are widely employed, scholars have pointed out that they lack either precise theoretical definitions or structural clarity, often encompassing diverse interests such as reputation, privacy, and self-determination.[5] In particular, Ken Mizuno critically highlights that the ambiguity inherent in terms like "personality interests" and "personality rights" hampers coherent doctrinal analysis and breeds inconsistency in case law and practice, especially in privacy- and defamation-related tort litigation.[6]

Against this backdrop, issues have emerged that can no longer be adequately addressed by the rigid notion that personality rights are absolutely inalienable. Tomohisa Ishio, for example, argues that the legal significance of "disposition" must be reassessed, especially in licensing agreements for names and images. He further asks whether the parties may exercise a discretionary right of cancellation (*nin'i kaijo-ken*) in such agreements.[7] Moreover, Yuriko Haga and Ayuko Hashimoto have clarified both the semantic multiplicity of the term "disposition" and the limits of its institutional permissibility in discussions surrounding agreements not to exercise authors' moral rights and other forms of consent.[8]

↘ *o chūshin ni* [*Personality Rights and Moral Rights of Authors: Focusing on Damages, Injunctions, and Alienability*], 87(3) Hōritsu Jihō 88, 92–94 (2015); Yuriko Haga, *Chosakusha jinkakuken no shobun kanōsei no junkyohō ni tsuite* [*On the Applicable Law to the Disposability of Authors' Moral Rights*], 60 (1) Kanazawa Hōgaku 147, 157–64 (2017).

5) For example, Yoshiyuki Hashimoto defines personality rights as "the totality of interests concerning personality attributes that must be protected against third-party infringements to enable the free development of personality." He then argues negatively concerning the functional utility of general personality rights, noting that they represent merely "a collective concept encompassing personality interests recognized as legally protectable, without directly leading to legal protection for specific individual interests." Yoshiyuki Hashimoto, in 15 Shin chūshaku minpō (Saiken 8) [New Commentary on the Civil Code (Obligations 8)] 259, 319–20 (Atsumi Kubota ed., Yūhikaku 2023).

6) Ken Mizuno, in 15 Shin chūshaku minpō (Saiken 8) [New Commentary on the Civil Code (Obligations 8)] 490, 526–27 (Atsumi Kubota ed., Yūhikaku 2023).

7) Tomohisa Ishio, *Jinkaku zokusei no kyakutai ni kansuru riyō keiyaku no nin'i kaijo-ken—furansu-hō ni okeru uji shōzō no riyō keiyaku no tekkai kanōsei o meguru giron to no hikaku (pt. 1)* [*The Discretionary Right of Cancellation in Contracts for the Use of Personal Attributes: A Comparative Analysis with French Law on the Withdrawal Possibility in Name and Image Use Contracts (Part 1)*], 64(1) Kanazawa Hōgaku 1, 4–6 (2021).

8) Yuriko Haga & Ayuko Hashimoto, *Chosakusha jinkaku-ken no shobun ni tsuite no joron-teki kentō* [*An Introductory Examination of the Disposition of Authors' Moral Rights*], 59(1) Kanazawa Hōgaku ↗

These scholarly discussions suggest a theoretical need to recognize narrowly tailored exceptions for certain components of personality rights, while still preserving the conventional view that such rights are inherently personal and non-transferable. The present study, therefore, aims to provide a systematic examination of the core issues surrounding the alienability of personality rights. Specifically, it addresses two central questions:

1. Which components of personality interests, if any, are disposable?
2. Under what conditions and limitations should such dispositions be recognized?

By systematically organizing existing scholarly arguments, this paper seeks to clarify the theoretical foundations and limits of disposition, thereby contributing to the ongoing reconstruction of personality rights theory.

Methodology and Structure of the Article

This study combines three complementary methods. First, it undertakes doctrinal analysis of statutory provisions and leading Japanese case law on the (in)alienability of personality rights. Second, it adopts a comparative lens, juxtaposing Japanese materials with French, German, and U.S. doctrine and jurisprudence in order to test the portability of competing models of "disposition." Third, it selects and analyzes representative reported decisions from 1990 onward, tracing the emergence of license-based practices for names, likenesses, and other personal attributes. The argument unfolds as follows. Section 1 clarifies the polysemy of "disposition" and its limiting principles. Section 2 maps the internal architecture of personality interests and proposes a taxonomy of disposability. Section 3 evaluates existing institutional responses in Japan and the selected foreign jurisdictions. Section 4 advances a normative model—the Virtual Persona Right (VPR)—featuring a two-layer scheme (dignity versus value) under fiduciary management. Section 5 outlines a phased legislative roadmap for integrating VPR into Japanese private law.

1. The Polysemy and Legal Structure of "Disposition"

1.1. The Polysemous Nature of "Disposition" and Its Theoretical Clarification

When considering the permissibility of "disposition" regarding personality interests, it is essential first to recognize the inherently polysemous nature of the term "disposition" and to undertake careful doctrinal disaggregation. Contemporary academic discourse, while maintaining the principle that personality rights are, in essence, inalienable, distinguishes multiple forms of disposition, acknowledging theoretical permissibility for narrowly defined categories.

↘95, 121–25 (2016).

Masanobu Katō, for instance, construes "disposition" as a limited restriction of rights —such as non-exercise, authorization, or consent—as opposed to "transfer" (the shifting of ownership). While acknowledging the possibility of dispositions of personality rights within limited contexts, he argues that the scope and limitations of such dispositions require rigorous analytical scrutiny.[9] This perspective is predicated on the principle of inalienability of personality rights but admits that actions such as consent to non-exercise or temporary authorization can be institutionally permissible.

Katō's analysis thus recognizes that limited, revocable, and precisely framed dispositions may be valid when they do not extinguish the right itself. Any doctrinal model embracing such exceptions must therefore articulate clear criteria—object, purpose, duration, and parties—to prevent erosion of the fundamental link between the right and its holder.

1.2. Institutional Responses and Limiting Principles of Disposition Regarding Moral Rights of Authors

This conceptual distinction is particularly evident in the context of authors' moral rights. For example, Article 20(1) of the Japanese Copyright Act, concerning the "right to preserve integrity," explicitly uses the phrase "against the author's will"; by converse implication, it is generally understood that modifications are permissible if they accord with the author's consent.[10] Similarly, with respect to the "right of attribution," practical conventions have emerged whereby authors routinely consent to the omission of their names when their works are included in edited compilations—an arrangement that can likewise be regarded as a form of disposition.[11]

On the other hand, the permissibility of such dispositions requires that their scope and limits be precisely defined. Haga and Hashimoto argue, with regard to agreements on the non-exercise of authors' moral rights, that comprehensive or perpetual dispositions may violate public policy. They emphasize that valid consent must clearly specify the content of rights, the purpose of use, the duration, and the parties involved.[12] Accordingly, compliance with these four parameters constitutes the decisive test for determining whether a particular disposition of moral rights is legally sustainable.

In practice, image-use contracts typically specify conditions such as the medium, geographic scope, duration, and permitted modifications. For instance, standard clauses in talent image-use contracts explicitly stipulate terms as follows: "Party A (the talent) grants Party B (the company) permission to use the photographic data listed in the schedule exclusively in domestic newspaper and magazine advertisements and on the official website,

9) Katō, supra note 4, at 90–91.
10) *Id.* at 93.
11) *Id.* at 94.
12) Haga & Hashimoto, supra note 8, at 122–24.

without modification, from April 1, 2024, to March 31, 2025."[13] This contractual template vividly illustrates how the theoretical prerequisites identified above are already being operationalized in day-to-day practice.

This alignment between theoretically required conditions and actual contractual practices indicates that the disposition of personality interests is permissible but only within clear, contractually defined limits.

1.3. Positioning the "Right of Withdrawal" and the Typology of the Concept of Disposition

Further, Ishio positions "disposition" within a consent-based contractual framework, arguing that the possibility of withdrawal in use agreements signifies the practical limitation of such disposition.[14] This represents an innovative theoretical approach, placing the holder's continuing power to revoke permission at the core of disposability, rather than treating disposition as mere non-exercise or restriction of rights.

In practice, the significance of withdrawal rights has been highlighted in important judicial decisions. For instance, in the *Onyanko Club* Case, Sup. Ct. (Japan), 2 Feb. 2012, 2145 *Hanrei Jihō* 72, a celebrity who had initially consented to the contractual use of her name and image subsequently sought to withdraw consent. The court recognized, within certain limits, the binding nature of contractual consent, thereby curtailing the scope of unilateral withdrawal. This decision lends concrete support to Ishio's emphasis on the significance of withdrawal rights as a practical boundary of disposability.

Considering these discussions, it is evident that the act of "disposition" cannot be interpreted uniformly and thus requires classification into the following categories:

- **Transfer** (loss of rights by the transferor and acquisition by the transferee):
  Because of the inherently personal nature of personality rights, their transfer is generally impermissible.
- **Abandonment** (unilateral relinquishment of rights):
  Generally impermissible; personality rights are inherently inalienable and survive even the holder's declaration of renunciation. Only a strictly delimited, revocable non-exercise of a specific interest may be agreed upon.[15]

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13) This sample contractual clause has been drafted by the author, drawing on standard provisions commonly found in portrait-use agreements.

14) Ishio, supra note 7, at 115–18.

15) Japanese courts treat personality interests as inalienable and therefore void any comprehensive waiver, construing individual "consents" only as revocable agreements not to exercise a narrowly defined facet of the right. *See Kyoto Student Photograph Case,* Saikō Saibansho [Sup. Ct.] Dec. 24, 1969, Shō 40 (a) no. 1187, 23 Saikō Saibansho minji hanreishū [Minshū] 1625 (Japan); *Court-Photo Case,* Saikō Saibansho [Sup. Ct.] Nov. 10, 2005, Hei 15 (ju) no. 281, 59 Minshū 2428 (Japan); *Pink Lady Case,* Saikō Saibansho [Sup. Ct.] Feb. 2, 2012, Hei 21 (ju) no. 2056, 66 Minshū 89 (Japan). *Accord* Igarashi, supra note 3, at 13; Katō, supra note 4, at 90–92. *See also* Junko Fujikawa, *Chosakusha jinkaku-ken o seigen suru keiyaku* ↗

- **Consent/Authorization** (approval of specific uses or infringement acts):
  Permissible, provided that the specific personality interests involved, scope, purpose, and duration are explicitly defined.[16)]
- **Non-exercise agreements** (contracts withholding the exercise of rights):
  Acceptable only where conditions such as the subject matter, duration, and counterparties are clearly stipulated.
- **Restrictions on withdrawal rights** (issues concerning contractual bindingness):
  Any contractual clause that entirely excludes the right to withdraw consent must be construed narrowly, given the fundamental principle of self-determination.[17)]

As demonstrated above, "disposition" is a multi-layered legal act that must be classified and contextualized in relation to personality interests. Accordingly, substantive analysis must be undertaken to identify precisely which interests constitute "disposable personality interests."

2. Structure of Personality Interests and the Scope of Their Disposability

2.1. Classification of Personality Interests and Distinction Regarding Their Disposability

In discussing the "disposability" of personality interests, it is essential to re-examine the internal structure of those interests in parallel with categorizing acts of disposition. In particular, a clear substantive distinction must be drawn between personality interests that may legitimately be made objects of disposition and those core interests that, by contrast, must remain inviolable and inalienable.

On this point, Katō distinguishes between "absolute" and "relative" personality rights. He defines interests of high inviolability—such as life, bodily integrity, and personal freedom—as absolute, while categorizing more flexible interests—such as name, image, and privacy—as relative[18)]. Regarding the latter category, Katō acknowledges that disposi-

↘ *to kōjo ryōzoku-ron* [*Contracts Limiting Moral Rights and Public Policy*], 3 (1) Kokusai Kōkyō Seisaku Kenkyū 135, 136–37 (1998); Saitō, supra note 3, at 10; Keizō Yamamoto, *Jinkakuken* [*Personality Rights*], in Minpō no sōten [Issues in Civil Law] 44–47 (Takashi Uchida & Atsushi Ōmura eds., Yūhikaku 2007). For a minority view permitting only narrowly tailored, revocable waivers, see Yoshiyuki Tamura, Chosakuken-hō gairon 338–41 (Yūhikaku 1998).

16) *See* Katō, supra note 4, at 92–96.

17) For a cautious interpretation of clauses that completely exclude withdrawal rights, see Haga & Hashimoto, supra note 8, at 121 (arguing for a limited structure that preserves withdrawal possibilities and warning that comprehensive waivers may violate public order and morality); see also Ishio, supra note 7, at 118–21 (comparatively examining the theoretical basis for voluntary termination rights in use agreements).

18) Katō, supra note 4, at 88–91.

tion is permissible only under narrowly defined conditions. This classification provides a significant guideline for analyzing the disposability of personality interests.

2.2. Diverse Scholarly Perspectives on the Disposability of Personality Interests

Shigeto Yonemura proposes reconsidering the inherent personal nature of personality rights and advocates classifying personality interests in finer detail according to factors such as attribution, the possibility of proxy exercise, and economic exploitability.[19] In recent years in particular, personal attributes—such as names, likenesses, voices, and physical characteristics—have been reconstituted and reused through artificial intelligence (AI) and computer-generated imagery (CGI) techniques. Although these attributes are now increasingly recognized as economic assets under the right of publicity, they also create tension between their commercial value and non-economic facets such as personal integrity and identity preservation.

Against this background, Yuriko Haga argues—using moral rights in copyright law as an illustrative case—that it is untenable to regard personality interests with an economic dimension as categorically non-disposable. Even so, she explicitly rejects wholesale transfers or permanent renunciations of such interests, citing potential conflicts with public policy and morality.[20] Shiho Yamaguchi, examining the provisions on personality rights and the informed consent regime in the Argentine Civil and Commercial Code, shows that respect for autonomy is clearly established in legislation. This framework, however, privileges the active exercise of personality rights rather than their disposition or transferability.[21]

Turning to Japanese law, Kazunari Kimura critically examines the concept of personality rights in Japanese jurisprudence, noting its tendency to serve as an umbrella concept encompassing various loosely connected interests in case law and judicial practice. He underscores the necessity of theoretical clarification and systematic reconstitution of these interests.[22] Kimura's analysis suggests that clearly defining the structure of personality

19) Shigeto Yonemura, *Jinkaku-ken no kenri kōzō to "isshin-senzokusei" (pt. 1)* [*The Structure of Personality Rights and Their Inherent Personal Nature (Part 1)*], 133(9) Hōgaku Kyōkai Zasshi 1311, 1327–40 (2016); id. (pt. 5 (concl.)), 134(3) Hōgaku Kyōkai Zasshi 407, 466–68 (2017). Yonemura particularly discusses the interests of deceased persons and publicity rights, and proposes a three-tiered classification of personality interests—attribution, the possibility of proxy exercise (during life or post-mortem), and their economic exploitability—in order to relativize the traditional notion of *isshin-senzokusei* (inherent personal nature).

20) Haga, supra note 4, at 161–64.

21) Shiho Yamaguchi, *Aruzenchin-hō ni okeru Informed Consent no seisei to sono minji-hōteki igi* [*The Emergence of Informed Consent in Argentine Law and Its Significance in Civil Law*], 131 Hōgaku Seijigaku Ronkyū 104–11 (2021).

22) Kazunari Kimura, *Waga kuni ni okeru jinkaku-ken gainen no tokushitsu* [*The Characteristics of the Concept of Personality Rights in Japan*], 34 Setsunan Hōgaku, 85, 86–88, 97–99 (2005); id. (pt. 2 (concl.)), 35 Setsunan Hōgaku 69, 106–07 (2006). Kimura criticizes the umbrella-like aggregation of heterogeneous interests under the rubric of personality rights in Japanese case law and argues that ↗

interests is an essential preliminary step to examining the scope of their disposability.

Furthermore, in structural terms, core elements—such as life and bodily integrity—which have traditionally been regarded as inviolable because of their inherently personal nature, require careful reconsideration of their legal status as objects of rights. For instance, although the human body is conventionally denied classification as a "thing" under civil law, recent theoretical discussions acknowledge that the body, while fundamentally embodying personality value, can, within certain institutional contexts, be legally conceptualized as a thing.[23] This perspective offers crucial insights for a structural understanding of personality interests.

2.3. Structural Classification of Personality Interests and a Theoretical Framework

A common theme emerging from these discussions is the recognition that the conventional approach—treating personality interests uniformly as "inalienable and non-transferable"—is increasingly inadequate in addressing contemporary legal realities. Instead, a more structured and flexible analytical method is necessary, one that decomposes personality interests into their constituent elements and examines the admissibility and scope of their disposition according to each element's characteristics. A theoretical classification might be structured as follows:

- **Spiritual Core** (Inviolable Essence of Personality):
  Interests related to life, bodily integrity, and inner freedom. Disposition of these core interests should not, as a general rule, be permissible.
- **Personal Attributes** (Elements of Individual Identification):
  Interests related to name, image, voice, handwriting, and other attributes used for personal identification. These could be subject to disposition under clearly defined conditions.
- **Personal Expressions** (Creative or Expressive Activities):
  Interests arising from expressive activities, including creative works and public statements—which may incidentally reveal personal data. These interests may be disposed of or otherwise utilized through contractual consent.
- **Personal Information** (Self-related Information and Privacy):
  Interests concerning private life or personal data (including data embedded in expressive works where its informational value predominates). If disposition is permissible, it must be strictly limited regarding the recipient, scope, purpose, and duration.

↘ the concept demands a systematic theoretical reconstruction.

23) Katsumi Yoshida, Bukkenhō I [Property Law I] 120–27 (Shinzansha 2023). Yoshida shows that the human body possesses a dual nature: it functions as a medium of personality, yet within the frameworks of property law it can also be analyzed as a "thing." This tension, he argues, provides a stimulus for re-examining the relationship between personality value and institutional structures.

By clearly separating personality interests into "disposable attributes," an "indisposable core," and intermediate categories, this structural analysis permits dispositions only within explicitly defined limits and conditions (such as scope, purpose, revocability, and duration). Accordingly, the paper develops a theoretical framework for the disposability of personality interests, using this structural approach as its point of departure.

By adopting this classification, debates on the disposability of personality interests can move beyond simplistic binary judgments of admissibility. Instead, the approach enables nuanced analyses that are attuned to specific contexts and to the character of the interests at stake. The ensuing conceptual framework therefore provides a foundational perspective for reconstructing the doctrine of personality rights.

3. Institutional Responses and Future Issues

3.1. Property-related Components of Personality Interests and the Intersection of Proprietary and Personal Values

As discussed above, certain components of personality interests may, under specific conditions, be legitimately disposed of. Attributes such as names, images, voices, and likenesses are already widely exploited through advertising and publishing contracts. In German law, although the principle of inalienability of the general right of personality is maintained, contractual arrangements concerning post-mortem personality interests are nevertheless recognized, indicating an emerging tendency to accept the limited disposability of their proprietary components. These developments fall within a domain that the traditional framework—which categorically treats personality rights as non-disposable—fails to capture adequately.

Additionally, legal discourse recognizes a category of "cherished objects" (*aichakuzai*)—tangible items that combine economic value with profound personal significance. Items strongly associated with personal memories, for instance, may give rise to claims for compensation exceeding their market price when they are damaged or destroyed. This practice indicates a system of legal protection that surpasses purely proprietary considerations and safeguards personality value.[24] A comparable conceptual framework can be extended to intangible personality interests, compelling a re-examination of the institutional mechanisms appropriate to their protection. In this light, it becomes necessary to assess the current challenges within Japanese law in concrete terms.

3.2. Current Status and Institutional Challenges under Japanese Law

Under existing Japanese law, no explicit statutory framework governs the disposability of personality rights. Consequently, agreements that affect such interests are assessed case

24) Katsumi Yoshida, Bukkenhō Ⅲ [Property Law Ⅲ] 1704, 1706 (Shinzansha 2023).

by case under general principles of private law—chiefly freedom of contract and public policy. When personal attributes such as names, likenesses, voices, or statements are licensed for advertising, publishing, or other commercial uses, academic commentary and judicial practice continue to dispute whether these attributes amount to transferable "rights" or remain inherently personal interests resistant to alienation. Judicial decisions are likewise inconsistent as to (i) how firmly contractual consent binds the right holder and (ii) whether unilateral withdrawal remains available.[25)]

Moreover, attributes such as names and likenesses simultaneously embody personal dignity and proprietary value. Contemporary debates on the right of publicity acknowledge this duality, treating such interests—though rooted in personality—as contractual objects to the extent of their economic worth. Katsumi Yoshida characterizes personality rights as a "vessel" that contains both dimensions, underscoring the importance of an institutional framework that reflects this two-tier structure.[26)] His insight, in turn, supports the need to evaluate the disposability of each component of personality interests on its own terms.

3.3. Fiduciary Management of Disposable Components

3.3.1. Rationale

Where personality interests possess a tradable, property-like dimension, their commercial exploitation inevitably creates an agency problem: the party controlling exploitation (an agent, talent agency, platform operator, or estate manager) may pursue profit in ways that conflict with the right holder's dignitary interests. A fiduciary model responds to that tension by superimposing legally enforceable duties of loyalty, care, and transparency on the managing party. Such duties are already familiar in trust, company, and agency law; transplanting them to the value layer of personality interests enables economic circulation while safeguarding the inviolable dignity layer. The fiduciary conception also offers doctrinal coherence: it treats the right holder (or her heirs) as the beneficial owner of the disposable component and the manager as a trustee-like figure who must account for use, avoid self-dealing, and facilitate withdrawal or modification of consent where circumstances materially change. Accordingly, fiduciary management supplies the normative and practical glue that allows limited disposability to coexist with the foundational inalienability of personality rights.

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25) See Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Aug. 29, 1989, Shōwa 63 (wa) no. 4652, 1338 Hanrei jihō [Hanji] 119, 121–23 (Japan) (holding that use of a customer's photograph beyond the contractually licensed scope constituted a tortious infringement of likeness); id. July 2, 2001, Heisei 11 (wa) no. 17262, LEX/DB 28061409 (finding that an all-rights assignment implied a waiver of the author's moral rights). See also Haga & Hashimoto, supra note 8, at 121–26 (highlighting the inherent tension between contractual waivers or non-exercise agreements and the personal nature of moral rights).

26) Yoshida, supra note 23, at 109–12 (emphasizing the coexistence of personal and proprietary values within personality interests such as names and likenesses, and discussing the institutional coherence of rights allocation and the enforcement of publicity rights).

3.3.2. Comparative Perspective

This subsection first examines Germany, then turns to France, and finally offers an overview of the United States. By expanding the focus stepwise from civil-law systems structurally closer to Japan to the more fiduciary-oriented common-law model, it aims to map the spectrum of national approaches to the commercial exploitation of personality interests.

i. Germany

German doctrine has long distinguished the *vermögenswerte Bestandteile des Persönlichkeitsrechts*—the commercially exploitable facets of personality—from the non-transferable core.[27] Celebrity likenesses are often administered through a *Treuhand* or *GbR,* structures that courts treat as fiduciary in nature.[28] The Bundesgerichtshof (e.g., *Marlene-Dietrich* and *Karl-May* cases) requires managers to account for revenues and to avoid exploitative self-dealing that would compromise the personality value of the right holder.[29]

ii. France

Although French law maintains the principle of inalienability (*inaliénabilité*) for personality rights,[30] courts permit heirs to authorize uses of a deceased person's image *in the intérêt moral de la famille.* Recent cases (e.g. *Belmondo,* 2022)[31] emphasize the heirs' obligation to act *dans le respect de la mémoire du défunt,*[32] thereby importing a limited fiduciary standard even within an otherwise non-disposable regime.

These jurisdictions, despite doctrinal differences, converge on the idea that where personality attributes are exploited for gain, the managing party must observe fiduciary-type obligations—providing a persuasive comparative rationale for adopting a similar framework in Japanese law.

iii. United States

Estate planning for performers such as Elvis Presley and Robin Williams shows an even more explicit fiduciary model.[33] State statutes on post-mortem publicity rights (e.g.,

27) Helena Guttmann, Die Vererblichkeit vermögensrechtlicher Bestandteile des Persönlichkeitsrechts 45–68 (Duncker & Humblot 2005); Martin Schultz, *Vermögenswerte Bestandteile des Persönlichkeitsrechts,* 8 Acta Univ. Szegediensis: Forum Publicationes Doctorandorum Iuridicorum 57, 60–65 (2018).

28) Schultz, supra note 27, at 60–65.

29) Bundesgerichtshof [BGH] [Fed. Ct. of Justice], 1 Dec. 1999, I ZR 49/97, BGHZ 143, 214 (Ger.) (*"Marlene Dietrich"*); Bundesgerichtshof [BGH] [Fed. Ct. of Justice], 5 Oct. 2006, I ZR 277/03, BGHZ 169, 193 (Ger.) (*"Karl May"*).

30) Code civil [C. civ.] art. 9 (Fr.); Cass. civ. 1re, 14 déc. 1999, No 97-15.756, Bull. civ. I, No 346, 222 (Fr.).

31) CA Versailles, 25 oct. 2022, No 21/01681 (Belmondo) (Fr.); TAoMA Partners, *Coup de projecteur sur l'originalité des photographies de plateau* (24 nov. 2022), https://taoma-partners.fr/coup-de-projecteur-sur-loriginalite-des-photographies-de-plateau/.

32) UGGC Avocats, *Le droit à l'image des défunts* (4 juil. 2022), https://www.uggc.com/le-droit-a-limage-des-defunts/.

33) Jennifer E. Rothman, The Right of Publicity: Privacy Reimagined for a Public World 176–82 (Harv.↗

California Civ. Code § 3344.1)[34] designate heirs or expressly appointed trustees as statutory "right holder," while licensing agents operate under trust-style duties of loyalty and reasonable care, subject to judicial supervision and disgorgement if breached. Scholarly commentary frames this as the "publicity trust," a device that balances monetization with preservation of personal legacy.[35]

3.3.3. Proposed Framework for Japanese Law

A workable Japanese model should embed the fiduciary concept within a two-layer architecture: the dignity layer (indisposable) remains fully protected by existing tort remedies, while the value layer (disposable components) is placed under a statutory or contractual fiduciary regime.

(1) Parties and Form

The entrustor (settlor) is the right-holder (or, post-mortem, the statutory heirs); the trustee may be a talent agency, digital-platform operator, or specially incorporated management vehicle. A written "personality-interest management agreement" should be required for validity, but a default fiduciary status would arise whenever a person commercially exploits another's personality attributes for profit.

(2) Core Duties

Borrowing from Trust Act 2006 and Civil Code arts 644-645, the trustee must

- act with loyalty by prioritizing the right holder's personal and economic interests;
- maintain due care in licensing, data security, and technological safeguards;
- provide periodic accounting and obtain informed consent before material changes;
- avoid conflicts of interest or obtain an advance written waiver.

(3) Oversight and Remedies

The right-holder (or heirs) would enjoy standing to seek (i) court-ordered disclosure of accounts, (ii) injunctive relief against unauthorized uses, (iii) disgorgement of profits, and (iv) replacement of the trustee for material breach. A summary procedure in the family court—analogous to art 871 of the Trust Act—could expedite appointment of a substitute trustee where necessary.

(4) Publicity and Third-Party Effect

To protect licensees acting in good faith, the agreement (or a summary thereof) should be registrable in an electronic "Personality-Interest Registry." Registration would confer

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↘ Univ. Press 2018) (describing the trust-based management of Elvis Presley's publicity rights and similar arrangements for Robin Williams); Elvis Presley Enters., Inc. v. Passport Video, 349 F.3d 622, 629-30 (9th Cir. 2003).

34) Cal. Civ. Code § 3344.1 (West 2024).

35) Mike Barnes, *Robin Williams Restricted Use of His Image for 25 Years,* Hollywood Rep. (Mar. 30, 2015), https: //www. hollywoodreporter. com/news/general-news/robin-williams-restricted-use-his-785292/; Stacey L. Dogan & Mark A. Lemley, *What the Right of Publicity Can Learn from Trademark Law,* 58 Stan. L. Rev. 1161, 1198-1200 (2006).

opposability to third parties, while unregistered interests would bind only the trustee and entrustor inter se.

(5) Legislative Placement

Given the cross-cutting nature of personality interests, a dedicated "Personality Interest Management Act"—linked by reference to both the Civil Code and the Trust Act—offers the clearest path. Alternatively, the Civil Code could be amended by inserting a new chapter after art 709 to codify the fiduciary duties and the registry mechanism. By superimposing these fiduciary rules on the disposable value layer, Japanese law can enable economic exploitation of personality attributes without compromising the inviolable personal core.

3.4. Supplementary Comparative Insights

This subsection builds on Section 3.3.2 by highlighting doctrinal debates (Hauser, Cornu), recent case law on the *Lizenzanalogie,* and reform proposals such as the U.S. termination right, all of which bear directly on institutional design.

From a comparative perspective, France recognizes the principle of the inalienability (*inaliénabilité*) of personality rights, established through judicial precedent[36] and academic doctrine,[37] even though the French Civil Code contains no explicit provisions to that effect. Personality interests—such as names, likenesses, and privacy—are regarded as inherently personal and, accordingly, neither transferable nor renounceable. Jean Hauser highlights the risk inherent in treating names purely as commercial commodities, for example as trademarks or business identifiers, whereby the personal dimension becomes severed from the individual, transforming it into an exclusively economic asset. Hauser consequently urges careful handling to prevent "depersonalization," cautioning against treating personality interests as mere property devoid of personal connection.[38] Similarly, Marie Cornu underscores the necessity of legal control over bodies exhibited in museums, viewing the human body as a site where personal and public values intersect—especially in extreme cases, such as the display of corpses or remains.[39]

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36) French jurisprudence consistently upholds that personality interests such as names and likenesses cannot be transferred or waived. *See* e.g., Cass. 1re civ., 27 févr. 2007, Bull. civ. I, No. 80 (Fr.) (reaffirming the non-transferable nature of a person's name and partially revising Cass. com., 12 mars 1985, Bull. civ. IV, n° 101 (Fr.)).

37) French scholarly consensus similarly supports the position of personality rights as inherently personal, non-transferable, and non-waivable. Jean Hauser emphasizes, for instance, that even when contractual use of a name is permitted, it must be strictly interpreted to preserve the principle of inalienability. *See,* e.g., Jean Hauser, *Le nom au double visage: patronyme, commerce et marques,* 2003 Rev. trim. dr. civ. 679 (arguing that contractual use of a name must be strictly construed to preserve inalienability); Grégoire Loiseau, *La propriété d'un nom notoire,* D. 2003, 2228 (proposing the concept of droits patrimoniaux dérivés de la personnalité, which allows limited disposability while safeguarding the noyau de la personnalité).

38) Hauser, supra note 28, at 683.

39) Marie Cornu, *Le corps humain au musée: de la personne à la chose?,* D. 2009, 1907.

In Germany, although the inalienability of the general right of personality (*Allgemeines Persönlichkeitsrecht*) remains the governing principle, certain attributes—such as names and likenesses—are recognized to contain proprietary components (*vermögenswerte Bestandteile des Persönlichkeitsrechts*), thus allowing for limited disposability.[40] For instance, the German Federal Court of Justice (BGH) has affirmed claims for damages equivalent to a notional license fee (*Lizenzanalogie*) in cases involving unauthorized commercial use of a celebrity's image,[41] signifying a legal framework in which personality rights are understood to have commercially disposable dimensions.[42] Recent scholarship further advocates distinguishing the personal aspects (e.g., honor and privacy) from the proprietary aspects (e.g., names and images), explicitly identifying the latter as "commercial personality rights" (*kommerzielles Persönlichkeitsrecht*) and urging their recognition as disposable property rights.[43] This German model—maintaining personality value at its core while accommodating contractual licensing and property-like dispositions based on economic interests—offers instructive guidance for Japanese law as well.[44]

In the United States, the right of publicity is extensively developed, creating a legal regime that explicitly treats personality attributes as transferable, proprietary rights that may be assigned or licensed. Recent developments include reform proposals advocating contract-termination rights for young celebrities who have assigned their publicity rights[45] and theoretical discussions urging the recognition of post-mortem personality attributes as distinct rights.[46] Additionally, practical issues concerning asset valuation and estate administration for post-mortem publicity rights have been identified.[47] These discussions provide valuable insights for Japan as it considers institutionalizing the disposability of personality rights.

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40) Thomas Vacca, *Das kommerzielle Persönlichkeitsrecht,* 10 ZGE 374, 374–75 (2018).

41) Bundesgerichtshof [BGH], Jan. 21, 2021 I ZR 207/19 *Urlaubslotto,* GRUR 2021, 643, paras. 15–20 (Ger.).

42) Sven Vetter, *Die Kommerzialisierung des Persönlichkeitsrechts im Spannungsfeld zwischen Persönlichkeitsschutz und Vermögensrechten,* Zeitschrift für Urheber- und Medienrecht 2022 ZUM, 418–19.

43) Vacca, supra note 31, at 375–76.

44) In Germany, personality rights (Persönlichkeitsrecht) are recognized both as constitutional rights (*Grundrechte*) and as general civil rights (*Allgemeines Persönlichkeitsrecht*), each primarily characterized by inalienability. However, Bundesgerichtshof [BGH], Dec. 1, 1999, BGHZ 143, 214 (Ger.) held that the post-mortem economic component of personality rights—comparable to the right of publicity—survives death and may be inherited and commercially exploited by the heirs. See Kimura, supra note 22, at 66–70; Shigeto Yonemura, *Jinkaku-ken no jōtoteki/sōzokusei—doitsu jinkaku-ken riron no tenkai o keiki to shite* [*The Transferability and Inheritability of Personality Rights: Insights from German Theory*], 2020 Shihō Nenpō 30–38.

45) Thomas Wright, *Reformation of the Right of Publicity,* 9 Belmont L. Rev. 37 (2021).

46) Jennifer E. Rothman, *The Inalienable Right of Publicity,* 101 Geo. L.J. 185, 209–12 (2012).

47) Sharon L. Klein & Jenna M. Cohn, The Post-Mortem Right of Publicity: Defining It, Valuing It, Defending It and Planning for It, 47 ACTEC L.J. (2022).

3.5. Institutional Challenges in Response to Emerging Technologies

In Japanese practice, recent court decisions have emerged concerning the right of publicity associated with stage names and band names. Examples include rulings holding that provisions prohibiting the use of stage names after the termination of exclusive contracts are invalid as they violate public policy, and decisions recognizing that publicity rights related to a band's name belong to individual performers rather than to their management agencies.[48] These judgments necessitate a thorough reconsideration of traditional practices regarding the treatment of personality interests in exclusive contracts, with significant practical implications for future debates over the disposability of personality interests. Given the increasing commercialization of personality interests, it is imperative to establish clear theoretical and institutional frameworks that delineate permissible contractual restraints and define the scope of withdrawal rights.

Future tasks include the systematic categorization of personality interests by their constituent elements and the clarification of the rules governing their disposability. For instance, personality attributes such as names and likenesses require theoretical clarification regarding the scope of prior consent and subsequent withdrawal, the enforceability of contractual obligations, and the boundaries of non-exercise clauses. Furthermore, recent advances in artificial intelligence (AI) and deepfake technologies have created novel challenges related to unauthorized reproduction or generation of individuals' likenesses and voices. Koji Okumura highlights the difficulties associated with the protection of publicity rights for virtual personas — such as digital clones — generated by AI, raising critical discussions about posthumous utilization of personality attributes and issues concerning the validity of consent for AI-generated content.[49]

Given these technological advancements, there is an urgent need to design consent-acquisition procedures that accurately reflect individuals' intentions, and to develop rules to ensure their effectiveness at the institutional level.

3.6. Theoretical Clarification and Legislative Issues for Institutionalization

Finally, a specific legislative framework grounded in theoretical clarification is required to integrate the disposability of personality interests within the legal system.

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48) See Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Dec. 8, 2022, Reiwa 3 (wa) no. 13043, 1510 Hanrei taimuzu 229 (Japan) (holding that post-contractual non-competition clauses must be interpreted in light of the inherent, inalienable nature of personality rights); Chiteki Zaisan Kōtō Saibansho [Intell. Prop. High Ct.] Dec. 26, 2022, Reiwa 4 (ne) no. 10059, LEX/DB 25572538 (Japan) (recognizing that the economic value of a stage name is rooted in the members' personality rights and therefore cannot be unilaterally appropriated by a former management company).

49) Koji Okumura, *Seisei AI jidai no paburisiti-ken—joron (jō)* [*The Right of Publicity in the Age of Generative AI: Introduction (Part 1)*], 764 Copyright 33–44 (2024); id., *Seisei AI jidai no paburisiti-ken—joron (ge)* [*The Right of Publicity in the Age of Generative AI: Introduction (Part II)*], 765 Copyright 34–47 (2025).

As a final step, as a theoretical task, it is essential to reconstruct fundamental legal concepts such as "attribution," "object," and "value" so that they reflect the specific characteristics of personality interests. When personality interests are understood as objects of legal attribution, clarifying how these concepts should be adapted to their unique nature becomes crucial for discussing their disposability or transferability.

In this regard, Yoshida argues that property-law concepts such as ownership should be articulated through a triadic relationship of "subject–attribution–object," stressing that the legal recognition of value and the capacity for exclusive control are what confer functional asset status[50]. Building on Yoshida's insight, this article contends that, insofar as elements of personality interests embody social value and can be managed exclusively, a corresponding institutional framework should be devised to regulate their attribution and disposition with precision.

Second, concrete legislative measures are required. Personality rights should not merely serve as grounds for claims for damages or injunctive relief but should be explicitly positioned as fundamental values within the private-law order. From this perspective, it is essential to codify personality rights clearly within the Civil Code and to establish a coherent regulatory framework aligned with intellectual property laws. Specifically, legislation should (i) define the permissible scope of disposability, (ii) set rules governing the revocability of consent, (iii) specify the validity and limitations of non-exercise agreements, and (iv) clarify enforceability against third parties. Moreover, in light of societal contexts shaped by advances in AI technology, urgent legislative action is required to devise effective consent-acquisition mechanisms for the unauthorized generation and use of personality attributes, as well as for the management of personality interests after death.

Through these theoretical clarifications and concrete legislative proposals, it becomes possible to integrate the disposability of personality interests into Japanese law in an institutionalized form.

4. Virtual Persona Right (VPR) Model

4.1. Two-Layer Scheme (Dignity Layer / Value Layer)

Building on the comparative insights developed in the previous sections, this article proposes a novel "Virtual Persona Right" (VPR) model, which posits that personality interests are best analyzed through a two-layer structure.[51] The VPR model posits that personality interests are best analyzed through a two-layer structure. The dignity layer comprises non-disposable elements—life, bodily integrity, honor, privacy—that remain

50) Yoshida, supra note 23, at 2–4, 135–36.

51) See Yoshida, supra note 23, at 23–24 (outlining a dual-level schema that separates inalienable personal values from economically exploitable components, upon which this article builds to formulate the VPR two-layer model).

inalienable on grounds of public policy. By contrast, the value layer consists of attributes that carry economic worth, such as names, images, voices, likenesses, and biometric data; these may be licensed or inherited under strict conditions, provided such transactions do not erode the dignity layer. This bifurcation reconciles the traditional principle of inalienability with contemporary commercial practice, thereby supplying a doctrinal basis for partial alienability while safeguarding core personality values.

4.2. Institutional Requirements of the Fiduciary Duty

A workable VPR regime presupposes that any party entrusted with the commercial exploitation of another's personality attributes — whether a talent agency, digital-platform operator, estate trustee, or algorithmic-avatar service provider — stands in a legally recognized fiduciary relationship to the right holder.[52] The core of that relationship is a duty of loyalty, which obliges the fiduciary to prioritize the right holder's personal and economic interests and to avoid self-dealing unless fully informed written consent is obtained. Complementing loyalty is a duty of care, requiring the fiduciary to employ reasonable technological and contractual safeguards — such as watermarking, content-verification protocols, and AI-misuse detection — to prevent unauthorized reproduction or deepfake manipulation.

A third element, the duty of accounting, mandates transparent reporting of revenues, sublicenses, and data-analytics uses so that the right holder (or heirs) can verify compliance. Because the value layer of personality interests may evolve in unforeseen ways, the fiduciary must also facilitate a continuing power of withdrawal that allows the right-holder to revoke consent when subsequent exploitation conflicts with dignity-layer interests;[53] contractual provisions purporting to waive this power entirely should be regarded as void against public policy.[54] Finally, effective oversight mechanisms are essential: courts should be empowered to order disgorgement, injunctive relief, or the appointment of an independent manager in cases of material breach, and a public registry could be instituted to give effect against third parties while enabling judicial scrutiny of license terms. Together, these institutional requirements ensure that the economic circulation of personality attributes can proceed without eroding the normative primacy of the dignity layer.

4.3. Phased Legislative Roadmap

To translate the VPR model from theory into enforceable law, reform should proceed in three sequential stages that move from interpretive clarification to full statutory integration. Phase I (short-term) would focus on doctrinal anchoring. A supplemental

52) See Rothman, supra note 33, at 176–82; Dogan & Lemley, supra note 33, at 1198–1200.

53) See Ishio, supra note 7, at 25–26.

54) Yuriko Haga & Ayuko Hashimoto, *Chosakusha jinkaku-ken no shobun ni tsuite no joron-teki kentō* [*An Introductory Examination of the Disposition of Authors' Moral Rights*], 59 Copyright 221, 235–38 (2022).

provision could be added to the Civil Code clarifying that personality interests constitute a distinct legal category comprising a dignity layer and a value layer; concomitantly, administrative guidelines could guide courts to apply existing tort and trust principles—particularly fiduciary duties—when adjudicating disputes over the commercial exploitation of the value layer. This step would supply immediate doctrinal certainty without disturbing the current code structure.

Phase II (medium-term) would introduce a dedicated Personality Interest Management Act. The statute would codify the fiduciary duties set out in section 4.2, create a publicly searchable registry for licenses of value-layer interests (thereby rendering those licenses opposable to third parties), and prescribe mandatory form requirements—including withdrawal clauses—for non-exercise agreements and consent instruments. Coordination clauses would align the new act with intellectual property and data protection legislation, thereby avoiding normative overlap or lacunae.

Phase III (long-term) would consolidate scattered provisions into a single, integrated framework within the Civil Code. At this stage, Japan could establish cross-border enforcement mechanisms—such as recognition of foreign publicity judgments and streamlined injunctions against deepfake content hosted abroad, and alignment with emerging supranational standards like the EU AI Act (2024) and the UK Online Safety Act (2023), which require provenance disclosure for synthetic media and empower regulators to order deep-fake takedowns—and mandate periodic parliamentary review to keep pace with technologies such as neural rendering and volumetric capture. Taken together, these phases provide a realistic path for embedding the disposability of personality interests in Japanese private law while safeguarding the dignity layer and accommodating future technological change.

Conclusion

Theoretical Contributions and Clarifications of This Article

This article has highlighted the limitations inherent in the uniform application of the conventional principles of inalienability and non-disposability that have traditionally been associated with personality rights, thereby demonstrating the need for a new theoretical framework. Although the practical use and circulation of personality attributes—such as names and images—have expanded significantly in contractual contexts, traditional theories of personality rights have not sufficiently explored how these practices can be legally justified.

Accordingly, this article first disaggregates the concept of "disposition" into four legal modalities—transfer, waiver, consent, and non-exercise—and clarifies the legal character and permissible limits of each. It then analyzes the internal structure of personality interests by distinguishing three categories—"mental core", "attributive interests," and "information-

al interests"—and evaluates their disposability in light of their substantive features. The analysis demonstrates that personality interests are disposable only gradually and under specified conditions, underscoring the need for precise theoretical delineation of the circumstances and scope within which such dispositions can be permitted.

Additionally, this theoretical clarification rests on the premise that core private-law concepts—particularly "attribution" and "value"—must themselves be reexamined. Yoshida, for example, reconceptualizes property relations through a framework of "subject–attribution–object", insisting that an object's social value and the possibility of its exclusive control are what confer legal functionality.[55] To institutionalize personality interests as carriers of social value, it is therefore necessary to reconstruct this conceptual architecture at both the theoretical and statutory levels.

Comparative analysis reinforces this approach. French law, while upholding the principle that personality rights are inalienable, nevertheless permits narrowly circumscribed acts of disposition—such as consent and licensing—provided that strict, legally defined conditions are satisfied.

Future Challenges and Theoretical Prospects

This paper not only examines the disposability of personality interests; it also underscores the growing need for a deeper theoretical inquiry into the very concept of personality itself, a need made ever more pressing by rapid technological advances.

Building on the foregoing analysis, a central task for future research is to devise an institutional architecture that systematically integrates the disposability of personality interests. In particular, the required degree of specificity and revocability in consent, the precise delineation of interests eligible for disposition, and the extent to which such dispositions affect third parties should be examined within a unified framework encompassing contract, tort, and intellectual-property law.

More fundamentally, debates over the disposability of personality interests reach beyond the narrow issue of whether particular interests can be alienated; they compel a return to first principles about what counts as "personality" and who or what qualifies as a "legal person." Rapid advances in AI and other digital technologies only heighten the urgency of the core and peripheral dimensions of legal protection for personality interests.

Accordingly, this article lays the groundwork for a theoretical reconstruction of the disposability of personality interests and thus pushes the scholarly conversation forward. Future research should build on the framework proposed here to refine the doctrinal analysis of disposability under Japanese law and, in so doing, offer fresh perspectives to the wider body of legal theory.

In sum, by reconciling the traditional principle of inalienability with the realities of

55) Yoshida, supra note 23, at 2–4, 135–36.

today's data-driven economy, this article lays the conceptual and statutory groundwork for a Virtual Persona Right that safeguards dignity while enabling controlled monetization—offering a blueprint for both Japanese reform and comparative legal theory.