**Mira Moldawer: A Book Proposal – Law**

Author: Mira Moldawer

Book Title: Persona Authorship as a Vehicle of Cultural Control:

Publicity Rights and Intellectual Property Paradigms

1. **Personal Information**

Full name and nationality: Mira Moldawer, Israel.

Present and previous appointments of relevance:

Attorney at Law (from 1987 to this day).

Director and Senior Acting Instructor, Beit Zvi, School of the Performing Arts, Israel (from 1981 to this day).

2021 – 2024: Ph.D. (Summa Cum Laude), Harry Radzyner Law School, Reichman University, Israel. The Ph.D. was supervised by Prof. Lior Zemer, Dean of Law School and Head of Law, Technology, and Business Innovation Program. The supervising committee included Prof. Roberta Rosenthal Kwall, Raymond P. Niro Professor of Intellectual Property Law; Founding Director of the Center for Intellectual Property Law & Information Technology, DePaul, College of Law, and Prof. Dov Greenbaum, director of the Zvi Meitar Institute for Legal Implications of Emerging Technologies, and an adjunct professor in Molecular Biophysics and Biochemistry at Yale University.

The examination committee included Prof. Shlomit Yanisky-Ravid, Visiting Professor of Law at Fordham University, School of Law, Senior Law Faculty Member at the Ono Academic College, Law School, Israel, and the founder and director of the Shalom Comparative Research Institute, Eliyahu Law and Tech Center at Ono, and Prof, and Lior Barshack, Professor of social and legal theory at Reichman University, and recently a visiting professor at Centre Marc Bloch (Berlin) and Birkbeck College, London.

2021 – 2019: MA Thesis Program in Law, Technology and Business Innovation, Harry Radzyner Law School, Interdisciplinary Center Herzliya (Summa Cum Laude)

1986 – 1982: LL.B. Tel – Aviv University.

1981 – 1979: Instructors Course, Drama Centre, London, U.K.

1977 – 1973: B.F.A in Theatre & Directing, Tel Aviv University, Israel (Cum Laude).

Publications:

ORCID Number: 0000-0002-7989-6406.

1. Mira Moldawer, *“What is an Author” of a Persona? The Taming of the Shrew—Rephrasing Publicity Right*, 20 Va. Sports & Ent. L.J. [i] (2021)
2. Mira Moldawer, *Myths and Clichés: The Doctrinal Myopia of Publicity Right*, 22 UIC Rev. Intell. Prop. L. 50 (2022).

<https://repository.law.uic.edu/cgi/viewcontent.cgi?article=1522&context=ripl>

1. Mira Moldawer, *Cassandra's Curse or Cassandra's Triumph: Three Tales of Intellectual Property Revised*, 43 Loy. L.A. Ent. L. Rev. 111 (2023).

<https://digitalcommons.lmu.edu/elr/vol43/iss2/2>

1. Mira Moldawer, *The Shadow of the Law Versus a Law with No Shadow: Pride and Prejudice in Exchange for Generative AI Authorship*, 14:2:5 The Seattle Journal of Technology, Environmental & Innovation Law (SJTEIL) (2024), <https://digitalcommons.law.seattleu.edu/sjteil/vol14/iss2/5>
2. Mira Moldawer, *Publicity Rights and Copyright Law Conjoined Authorship as a Red Herring,* 45 Loy. L.A. Ent. L. Rev. (forthcoming, 2024).
3. Mira Moldawer, *Elvis Act: From authorship to Ownership in Intellectual Property Law,* The Texas Intellectual Property Law Journal (forthcoming, 2024).
4. Mira Moldawer, *Authorship in the Crossfire between Publicity Rights and Generative AI: What can We Learn from Greek Tragedy?* The Marquette Intellectual Property Law Review (forthcoming, 2025).
5. Mira Moldawer, *The Language Games of Denied Authorship to Generative AI,* The Southern California Interdisciplinary Law Journal (forthcoming, 2025).
6. **The Book**

Proposed title: Persona Authorship as a Vehicle of Cultural Control: Publicity Rights and Intellectual Property Paradigms.

Language: English.

Subjects: Intellectual Property, especially copyright and trademark laws, and publicity rights; Generative AI; persona/celebrity culture; philosophy; cultural studies.

Book summary:

Persona authorship has become a fundamental element in our cultural environment. The question of who the author and the lawful owner of the persona text are has been debated by ample scholars, all of whom agree that exclusive ownership in persona texts is illegitimate, complex, and poses insurmountable difficulties to copyright. Persona authorship, as this book argues, serves as a vehicle for cultural control and as such limits the social and cultural platforms on which we create. The primary function of publicity rights is to prevent unauthorized commercial exploitation. The legal doctrine of publicity rights raises many questions regarding the normative boundaries of persona authorship, especially the recent legislative flood, attempting to control Generative AI (“Gen AI”) unauthorized replicas.

Three interfacing and interrelated arenas are relevant to every discourse on publicity rights and their engagement with IP paradigms: text, authorship, and vocabulary. First, while recognized as our cultural text in cultural studies, the persona is not acknowledged as a “writing” within the Copyright Clause of the US Constitution, as it fails to comply with the fixation threshold essential for copyrightability. Therefore, the right of publicity is not subordinate to the preemption doctrine; its posthumous duration may be longer in the relevant states than its copyright law counterpart.

Second, two theoretical levels created publicity rights authorship as a legal hybrid. The first level relates to publicity rights per se and covers contradictory approaches that vary from dignitary interests to unjust enrichment and unfair competition due to their legal history. The second level shares the legal infrastructure of copyright law authorship due to *Zacchini v. Scripps-Howard Broadcasting Co*.'s legacy, as the only publicity rights case that reached the Supreme Court of the United States.

This book innovatively analyzes the right of publicity rights conjoined authorship through the lens of the “if value, then right” (“IVTR”) principle, as a doctrinal vehicle to demonstrate how deconstructing each of its components and their interfacing relations led to different concepts of authorship in Western culture.

The “if” component questions to whom authorship is attributed. Only when the author was regarded as the inner source of inspiration did human authorship start, as until then, inspiration belonged to God, as preached by Plato. Strangely enough, authorship is currently denied to Gen AI because it does not cross the “if” threshold.

The “value” component of current authorship is answered by the unprecedented originality of the author, as relatively new concepts constituted in the Enlightenment era. However, this book argues that originality as the central doctrinal vehicle of copyright law is inseparable from the false narrative of artistic neutrality, as its interpretation depends on the idiosyncratic artistic taste of the occasional judge.

The “then” component attempts to supply justifications for authorship as a property right but fails to do so, especially while denying it altogether to Gen AI. Thus, while trying to negate Gen AI due to penumbral legal thinking anchored neither in the U.S Constitution nor in the Copyright Act, proving Ludwig Wittgenstein's theory of language games as part of the constant battle of cultural control.

Consequently, authorship is left with the “right” component of the IVTR principle, which is getting stronger thanks to the DMCA, greatly enhanced by the recent legislation concerning Gen AI. In short, authorship evolves into ownership. In addition, because publicity rights are primarily commercial, the fair use doctrine, which was meant to restrain authorship, fails to do so, contributing to its boundless authorship as demonstrated by the recent ELVIS Act of Tennessee.

Third, the vocabulary arena discusses how postmodern vocabulary offered new concepts of authorship by the dismantlement of the previous hierarchy between the source and its representations. This new vocabulary seeped into trademark law adjudication. Trademark law focuses on two prongs that finally protect the same interest protected by copyright law: the expression. The first prong evolved from the classic triadic meant to identify the source of goods and distinguish it from others. Yet, trademarks morphed into commodities in their own right, evolving into “expressive genericity.”

The second prong, the dilution doctrine, deals with the weakening—or degrading—of the trademark to distinguish only one source, either through “blurring” or “tarnishment,” thus resembling the protection of the original versus its copy. Both prongs were interpreted by trademark law adjudication to better solve publicity rights conjoined authorship in three crucial areas: the parody/satire dichotomy, the hybrid speech, and the First Amendment.

From authorship’s perspective, the same public that transformed a trademark sign into a generic sign, rendering it unentitled to protection, is the same public that encoded the persona into its language, thus rendering it an uncopyrightable idea. Hence, the three arenas can be converged by importing trademark law generic use into copyright law idea/expression dichotomy to improve the balance between persona authorship and cultural control.

The Register of Copyrights Report of July 2024, and the United States Patent and Trademark Office, *Name, Image, and Likeness Protection in the Age of AI,* Transparency Stakeholder Listening Session of August 5, 2024, prove how ownership of digital replicas keeps devouring authorship, as publicity rights authorship on which infrastructure they are based were never solved. Not only law define our culture, but as proved by celebrities' culture, culture defines the law. As celebrities are our new cultural text, currently remodeled by their users, the exaggerated control given to them in terms of Intellectual Property (“IP”) rights limits our identity, and freedom of expression.

Assessment of the work’s fit with existing literature:

Generally speaking, the recurring challenge in current discourse concerning the arenas of text, authorship, and vocabulary, is that cultural studies and legal studies each focus on their idiosyncratic chosen scholars, especially regarding postmodern thinking, which is essential to this research on authorship. As a result, a common frame of thinking and glossary are missing. Thus, before absorbing lessons from interdisciplinary research, the scope of each area is already weak, as each area is an island of its own. The innovative contribution of this research is an interdisciplinary glossary that can better reconcile the persona/celebrity phenomenon as our cultural text and publicity rights authorship.

Regarding the persona as our cultural text as the first arena, most legal studies, even those heavily influenced by postmodern vocabulary, tend to mention Michel Foucault or Roland Barthes, but not Derrida, for example, whose concepts they employ. Even Rosemary Coombe’s seminal book, The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law (1998) quotes Michel de Certeau and John Fiske regarding the participation of the public in persona authorship but ignores Stuart Hall, who greatly inspired postmodern vocabulary, which revolutionized the public/audience and gave it due credit for its making and consumption of the persona. Likewise, it cannot be explained coherently why some scholars will dwell on Jean Baudrillard solely, ignoring others, who are no lesser, including Guy Debord, who, theoretically is his predecessor. Scholars relate to Michael Bakhtin but not to Julia Kristeva, who further developed the former’s dialogical approach in her “intertextuality” concept. The point is not only to amalgamate a comprehensive glossary regarding cultural studies but also to analyze its development and influence on IP law, through a comparative study of copyright and trademark law.

The IVTR principle, through which I offer to analyze the right of publicity rights authorship as the second arena, is commonly invoked in current scholarship, usually related to the incentive approach in copyright law. While some scholars relate to this principle in a broader sense, regarding not only the incentive approach in copyright law but the legal axiom of authorship, by and large, according to which value is the Siamese twin of ownership, the other components of the equation are still missing. Although much criticized, the vicious cycle of rendering the right to value to render value to the right can never be broken unless we deconstruct this principle by analyzing its ingredients.

The innovative approach to what constitutes authorship is done in this research by the IVTR as a doctrinal vehicle to demonstrate how deconstructing each of its components and their interfacing relations led to different concepts of authorship in Western culture, as none of the components of the IVTR principle is static. Ironically, this principle is evoked today regarding Gen AI authorship. Accordingly, the question posed is not who is entitled to authorship (i.e., how human authorship is construed); it is what is entitled to authorship (i.e., AI).

In addition, while phrased in the current scholarship in terms of “if value, then right,” each component is discussed separately, dwelling especially on the “value” or “right,” but ignoring the nexus of each component in its relation to the whole. For example, the “if” component, which questions to whom authorship is attributed, is omitted when either “value” or “right” is discussed individually. However, crossing the threshold of attribution as a starting point for discussing authorship was the revolutionary thinking of the Enlightenment era, which still designs copyright law paradigms. Until then artists did not possess value of their own, as inspiration was attributed to eternal sources.

Likewise, while a whole spectrum of legal theories attempts to justify the right of publicity, as the “then” component of the IVTR principle, other components are usually left out of focus. By asking why the persona should benefit solely from secondary authorship created by its users, the question of who is attributed as its author is not discussed. Even if regarded as an organizing principle, the IVTR principle is doing much more by showing how each of its components reflects one another. The interfacing components of the IVTR principle did not evolve symmetrically. In terms of authorship, this book attempts to show that the disproportion between the evolution of each component of the IVTR principle and their eternal interfacing conflicts is what makes publicity rights so dangerous in terms of cultural control, best reflected by the current legislation concerning digital replicas.

Regarding the third arena of vocabulary, this book attempts to demonstrate that different vocabulary used in each branch of IP reflects contradictory perceptions of exclusivity or alterity regarding what constitutes authorship. The Enlightenment unifying principle, according to which all different components are the basis of a single principle, is easily understood in its exclusive concept of authorship: one transcendental truth operates in binary language. Therefore, once an author is acknowledged as such, he is supposed to be as original as Adam, and no inspiration is allowed, as the vocabulary of either/or morphs inspiration into plagiarism.

Postmodern vocabulary regards the writer and the reader as mutual concepts, as one concept is meaningless without the other. Not only is the current monolithic perception of originality challenged, but the orthodox semiotic is turned upside down. The outcome was a representation crisis as no more text (signifier) can be attributed to only one particular meaning (signified).

While much scholarship is dedicated to criticism of the originality concept in copyright law through postmodern approaches, this book attempts to trace the false myth of originality already existing in Hegel's writing as one of the Enlightenment's framers of authorship embedded in copyright law, in contrast to the postmodern alternative vocabulary for originality and authorship morphing from theory into practice in trademark law adjudication. The innovative point offered in this book analyzes how vocabulary, language games, and penumbral thinking can best explain why Gen AI is still denied: why current legislation is building only risk models regarding the symptoms of an ignored source. Thus, offering a bridge between cultural phenomena such as Elvis Presley, and Princess Diana, and Gen AI.

Book purpose, scope, and aim:

The book attempts to trace the evolvement of the persona as our cultural text through understanding fame and the evolution of fame from rewarding achievements to fame as an achievement per se. Thus, focusing on the contradiction between its cultural and legal perceptions, as demonstrated by the false narratives of fixation as demonstrated by the blonde myth in Western culture since Helene of Troy, regardless of fixation, on the one hand, and the legal fixation still required while technologically unnecessary, on the other hand.

Due to the current legislative flood concerning Gen AI, authorship has been caught in a crossfire between publicity rights as a legal hybrid since its inception, and the ideology of denying authorship to Gen AI, based more on prejudice than on legal infrastructure. This book attempts to decipher authorship's existence to diminish its exaggerated legal power regarding the persona/celebrity cultural control over our identity and myths. On the one hand, the public is not getting its due in the persona's creation as a cultural text. In contrast, the whole concept of authorship is devoured by ownership, namely the enhanced trait of publicity rights as property rights. The innovative doctrinal tool used is the tracing of postmodern vocabulary, and its evolution from theory into practice through analyzing trademark law adjudication concerning the unsolved problems of publicity rights conjoined authorship with copyright law, and its enhancement by the new legislation concerning digital replicas.

Keywords: publicity rights, authorship, copyright law, trademark law, Gen AI, digital replica, originality, fixation, preemption.

The unique selling points of the book:

This interdisciplinary book might appeal to the legal community as its primary market, and to everyone interested in cultural studies and philosophy as the undercurrents that define the law, as its secondary market. Therefore, it suits research institutes, universities, professional bodies such as the American Bar Association (ABA), practitioners, and stakeholders all over the relevant professional spectrum.

In the same breath, the book's appendixes provide an analysis of the language and the audience through different stages of Western culture: from Greek tragedy to Gen AI; from Nietzsche to Borges, and their possible perceptions of authorship and originality, which might interest larger audiences. Thus, combining legal analysis with the contradictory approaches of philosophy and literature.

A special part is dedicated to digital NIL (Name, Image, and Likeness) authorship, dwelling on the current legislative flood that might interest stakeholders from every aspect of the Cen AI industry. For example, one of the book's chapters analyzes the recently held United States Patent and Trademark Office, *Name, Image, and Likeness Protection in the Age of AI,* Transparency Stakeholder Listening Session, (August 5, 2024), which demonstrates the pro and contra standpoints of each stakeholder, while the concept of authorship is still unsolved.

Potential overseas markets and translations:

This book might interest the EU as well as the American market, because it traces the development of the EU Digital Single Market Directive (“DSM”), heavily influenced by the Digital Millennium Copyright Act (“DMCA”), yet, enhancing its mechanism. In addition, as part of the analysis of the pride and prejudice regarding Gen AI, this book dwells on the EU AI Act, as well. In addition, in terms of comparative law, one of the appendixes discusses publicity rights in Israeli law as a legal transplant.

Current stage:

The first draft is completed. The Ph.D. was adapted to a book format, and a new chapter and appendix were added, based on new publications, and fresh material especially composed for a comprehensive analysis.

Status of the manuscript: complete draft.

Text's length assessment:

Text length: about 250 pages (with footnotes) plus 33 pages of bibliography.

In total: 131,876 words (including footnotes, and bibliography), 283 pages approximately.