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A Collective “Personality Right” in Favour of Wildlife Species

On how we can achieve sustainable
financing for biodiversity preservation

Master’s Thesis

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Abstract

Biomass studies from 2018 show that 96% of the mass of all mammals on Earth is composed of humans and their livestock, while all wild mammals together account for only 4%. 70% of the mass of all birds on Earth are those domesticated, mainly chickens. We are facing a biodiversity disaster, in the context of an environmental and climate emergency.

Traditional sources of conservation financing through tourism, philanthropist and donor agencies cannot keep up with the needs of local communities in order to preserve the remaining wildlife. While tourism provides much needed revenues, it has in itself a quite high carbon footprint, and it is not a constant, reliable source in the case of travel restrictions associated with a pandemic. In recent years, there have been some new financing initiatives that could incentivize the corporate world to contribute to wildlife conservation such as the Lion's Share fund and Rhino bonds, which for the time being have not delivered results at the needed scale. What we propose goes a step further. Recognizing collective "personality rights" to wildlife, triggering the payment of a 0.5% royalty fee on all products coming from companies that use wildlife logos, wildlife images on their products or in their advertising campaigns, would make a great contribution towards preserving those species while having a low impact on companies' profits and on the environment.

All revenues are to be collected into a worldwide fund, via subsidiary national agencies. They will be distributed following a destination principle, to the local communities most closely related to the respective wildlife species used on the product, so that locals can see a direct link between wildlife preservation and their welfare. This way, these often poor communities will not be tempted to raise herds, to cultivate land used by wildlife, to support poachers or to allow trophy hunting. Biodiversity-rich, healthy ecosystems will thus ensure that both people and wildlife can thrive.

Keywords: wildlife, biodiversity preservation, personality rights, local communities, sustainable financing, biodiversity and climate emergency

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List of Abbreviations

<i>OECD</i>	Organisation for Economic Co-operation and Development
<i>IP</i>	Intellectual property
<i>IPBES</i>	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
<i>MEA</i>	Multilateral Environmental Agreement
<i>NhRP</i>	Nonhuman Rights Project
<i>NGO</i>	Non-governmental Organization
<i>UN</i>	United Nations
<i>UNEP</i>	United Nations Environment Programme

Chapter I. Introduction

Nobody is thinking of using Madonna's image in major advertising campaigns without paying her, but there are perhaps thousands of companies that use wildlife animals on their products or services, as their logos or in their marketing campaigns without any benefits accruing to those animals.

An ever increasing number of scientists and researchers are warning that the planet is heading towards a dangerous tipping point that will have catastrophic impacts for all of us and the world around us. With biodiversity dropping at an alarming rate, with an average decline of 60% in population species over the last 40 years alone¹, finding new ways of preserving the existing wildlife is a must. A must not only for the sake of those species, but for the benefit of humankind as well.

Preserving wildlife is of utmost importance. Protecting plant-eating animals, for example, could significantly diminish the frequency of destructive wildfires in woodland-grassland mosaic landscapes by reducing the amount of grass that fuels those fires.² Wildlife can also help forests to store carbon more efficiently: elephants may actually fight climate change,³ as well as a plethora of other wildlife.⁴ Many species of trees rely on animals to carry and further disperse their seeds. Red squirrels carry hazelnuts and hoard the seeds in hidden caches. In the tropics, forest elephants, chimpanzees, hornbills, toucans and a cohort of other characters eat tree fruits, helping them to disperse their seeds. Carnivores keep herbivore populations healthy and fit. Wild animals also play a key role in enhancing the health and fertility of soil by improving its nutrients. The extinction of these species caused by poaching and habitat loss may have negative

¹ WWF (2020) Living Planet Report 2020 - Bending the curve of biodiversity loss. Almond, R.E.A., Grooten M. and Petersen, T. (Eds). WWF, Gland, Switzerland.

² For instance, in mixed bush-savanna habitats white rhinos act as fire prevention officers; see Jane Wiltshire, Ian A. W. Macdonald, *Why are rhinos important for ecosystems?*, Africa Geographic, May 2020.

³ Fabio Berzaghi et al., *Carbon stocks in central African forests enhanced by elephant disturbance*, Nat. Geosci. 12: 725–729, 2019.

⁴For instance, summaries of scientific studies are explained to the general public: <https://www.theguardian.com/environment/2021/jan/28/how-much-is-an-elephant-worth-meet-the-ecologists-doing-the-sums-aoe>; <https://ww2.kqed.org/quest/2014/01/14/sea-otters-urchins-kelp-climate-change/>; <https://www.nationalgeographic.com/environment/2019/09/how-much-is-a-whale-worth/>; <https://www.theguardian.com/commentisfree/2014/jul/08/whale-poo-reverse-climate-change>; <https://www.lifegate.com/people/news/pleistocene-park-siberia-climate-change>.

impacts not only on the tree populations that depend on them for seed dispersal and genetic diversity, but also on the fertility of the land worldwide.

Animals have also an important medicinal value as they provide valuable knowledge to researchers and medical practitioners. For instance, the venom from cobra is an important ingredient in making the medications for leprosy while lobsters can be used as antifungals. Amphibians are especially important for modern medicine as their skin is used in painkillers, high blood pressure medication and to block HIV transmission and treat antibiotic resistant bacterial strains.⁵ They are intensely studied as their ability to regrow limbs might shed some light on how to improve tissue regeneration and growth.⁶ Other megafauna species such as, for instance black, brown and polar bears, could provide medicine with solutions to diseases such as renal diseases, osteoporosis, type 1 and 2 diabetes and even obesity. In a similar way, the fast-growing antlers of the giant moose and other deer species may provide medical solutions for nerve growth and even limb regeneration.⁷

As the United Nations' Food and Agriculture Organization states, wild animals are also a nutrient rich food source. For example, many coastal and inland populations rely on fish as the most accessible source of protein. The recently released Dasgupta Review highlights the impact of climate change on economically significant biodiversity.⁸ For some communities throughout Africa for instance, bushmeat represents a vital part of their diet for a complex combination of reasons dictated by lack of alternative sources, financial limitations, preference and cultural values.⁹ Consuming wild meat, to the extent that it is available and safe, including through re-wilding, could also help cut down on food miles and the carbon footprint of food production making it a win-win for us and the planet.

⁵ Dennis RA Mans, Jennifer Pawirodihardjo, Meryll Djotaroeno and Priscilla Frierson (2020) *Exploring the global animal biodiversity in the search for new drugs -Amphibians 7*: DOI: 10.15761/JTS.1000411.

⁶Song Fengyu, Li, Bingbing and Stocum, David. (2010). *Amphibians as research models for regenerative medicine. Organogenesis*. 6. 141-50. 10.4161/org.6.3.12039, p.148.

⁷ Eric Chivian and Aaron Bernstein, *Sustaining Life, How Human Health Depends on Biodiversity*, OUP, 2008.

⁸Dasgupta, P. (2021), *The Economics of Biodiversity: The Dasgupta Review* (London: HM Treasury), Annex 4.1 Biodiversity Loss and Climate Change, available at:

<https://www.gov.uk/government/publications/final-report-the-economics-of-biodiversity-the-dasgupta-review>

⁹ Food and Agriculture Organization of the United Nations (1997) - *Wildlife and food security in Africa*. Yaa Ntiamo-Baidu, FAO, Rome, Italy

Preserving wildlife would offer numerous therapeutic benefits as well. A thriving, wildlife-rich environment benefits both physical and mental health. A lot of people are drawn to landscapes that are peaceful, have a historic significance and contain wildlife. Natural habitats which present flourishing wildlife populations also serve as valuable spaces for people to interact with wildlife, from observing animals on general game-viewing experiences to interacting with them in sanctuaries, practicing wildlife photography and watching wildlife films or documentaries. Countries with large populations of wild animals are known to attract a larger number of tourists, which is the case for regions such as the Amazon, or countries such as Kenya, Tanzania, and Costa Rica. Wildlife also provides the world important spiritual benefits, with sacred places and species playing an important role in many people's lives¹⁰.

Despite progress to conserve nature and implement policies, an Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) report compiled by 145 expert authors from 50 countries over the past three years, found that global goals for conserving and sustainably using nature cannot be met by current trajectories, and goals for the proximate future may only be achieved through transformative changes across economic, social, political and technological factors.¹¹ According to the IPBES 2019 Global Assessment Report on Biodiversity and Ecosystem Services, 1 million species are threatened with extinction worldwide. Amongst them, megafauna and trophy individuals in particular are in the highest danger. They will be the first to disappear. By 2024, the human population will reach 8 billion. Biomass studies from 2018 show that 60% of the mass of all mammals on Earth is made of livestock and 36% of humans, leaving all wild mammals together to an incredibly low 4%. Domesticated birds, mainly chicken, have a biomass of about three times bigger than that of wild birds. These high numbers of genetically undiversified domestic animals make them, and us, highly vulnerable to pandemics.¹²

There have been some attempts to initiate those changes through initiatives like the Lion's Share fund, a fund that gathers donations from advertisers that use images of an animal in their ad campaigns or the 50 million Rhino Impact Bond, the world's first financial instrument

¹⁰ https://wwf.panda.org/wwf_news/?360235%2Fworld-wildlife-day

¹¹ IPBES 2019 Global Assessment Report on Biodiversity and Ecosystem Services <https://ipbes.net/global-assessment>.

¹² Yinon M. Bar-on, Rob Philips and Ron Milo, *Biomass distribution on Earth*, PNAS June 2019, 2018115(25)6506-6511, <https://www.pnas.org/content/115/25/6506>, quoted by <https://www.ecowatch.com/biomass-humans-animals-2571413930.html>

working toward the conservation of a species at the risk of extinction. But with the spike of the Covid-19 pandemic, already scarce funding has become even scarcer and the projects could not bring the improvements they have envisioned. So how can we solve the under-financing issues?

We believe that by granting collective “personality rights” to wildlife species we could create a new way of funding the preservation of those species that are used by companies in their advertising, on their products, services or logos. A royalty of 0,5% shall be paid for all products placed on a country’s market, irrespective of their origin, if those products come from companies using wildlife images. All revenues are to be collected into a fund administered by a national agency and distributed to local communities to support them in protecting the existing species. This would bring a great contribution towards preserving our biodiversity while keeping a low impact on the companies. We want to promote full transparency, with the agencies being open for independent third party audits and giving the contributing companies advisory status. We hope that through this initiative we open the path towards innovative ways of financing the local communities and conservation of our biodiversity, as the situation is rapidly worsening day by day.

Chapter II. Current challenges

1. Lack of a World Environment Organization

There are 15 specialized agencies at the United Nations, each focusing on particular issues such as food and agriculture, health, Intellectual Property but no such agency focuses on the environment. In 1972 the United Nations Environment Programme (UNEP)¹³ was created, but despite several calls for a global ‘umbrella body’ made by various countries along the years, delegates failed to uphold the proposal to turn UNEP into a specialised agency. The creation of such an agency could provide a voice for environmental sustainability, secure funding and build a coherent and cohesive approach to working within the UN system and meeting the needs of individual countries.

Up until today, the main instruments available under international law for countries to collaborate on a broad range of global environmental challenges are international conventions and treaties on environment and natural resources also known as Multilateral Environmental Agreements (MEAs). Currently there are over 250 Multilateral Environment Agreements in force¹⁴, but UNEP is, on the whole, unable to help implement policies or deal with compliance/non-compliance issues. It has far fewer offices than other agencies and a budget that cannot even compare to most of the UN’s specialized agencies.

Amongst the global environmental issues that MEAs are designed to tackle include: loss of biological diversity, trade in endangered species, adverse impacts of Climate Change, depletion of the ozone layer, hazardous waste, marine pollution and so on. Countries are taking action but an international environment organization could provide support in coordinating their efforts and monitoring their progress. A specialised agency for the environment, if given proper powers and funding, disposing of legal instruments reflecting a high level of environmental ambition, and a working dispute settlement system, could provide greater regional presence and measurable results.

¹³ <https://www.unep.org/>.

¹⁴ https://www.wto.org/english/tratop_e/envir_e/envir_neg_mea_e.htm

All of this draws attention to the ugly but real truth: the environment is not given the same or even higher status as labour, intellectual property or even maritime affairs and tourism, despite the world being in the middle of an ecological crisis.

2. Animal rights

Our proposal is independent of the recognition of animal rights but we believe it provides for a good context to see how society's perception about animals has changed over time.

For a long time, animals have been categorized as 'legal things', seen as mere objects of the rights of legal entities, over which legal persons could claim property rights. With this in mind, animals, and the advocates of their interests, often don't have legal "standing" to bring lawsuits in their own defence. Granting animals "legal personhood" is one way the law could recognize animals as living beings with interests, or rights, of their own. Over the past decades, the way nonhuman animals were seen by states and courts started shifting.

In 2000, New Zealand became the first nation to pass legislation¹⁵ officially prohibiting research on great apes. Subsequently, several European countries including Sweden, the Netherlands, Austria completely banned testing on great apes. Following the trend, in 2002 Germany granted rights to animals through an amendment to the constitution¹⁶, stating that animals, like humans, have the right to be respected by the state and to have their dignity protected. In 2007 the Balearic Islands, an autonomous region of Spain, passed the world's first legislation granting legal personhood rights to all great apes. Later in 2008, the Spanish parliament's environment committee approved resolutions for chimpanzees, gorillas and orang-utans to gain some statutory rights which were up until then only applicable to humans.¹⁷

In December 2014, a court in Argentina granted the orang-utan Sandra non-human person rights. Two years after that, the chimpanzee Cecilia was granted legal personhood by Judge María Alejandra Mauricio. The ruling reads that "In the present case we are not stating that sentient beings - animals - are the same as human beings, and we are not raising to a human category all existent animals or flora and fauna, we are recognizing and confirming that primates

¹⁵ New Zealand Animal Welfare Act 199.

¹⁶ Basic Law for the Federal Republic of Germany, Article 20a.

¹⁷ <https://www.theguardian.com/world/2008/jun/26/humanrights.animalwelfare>.

are non-human legal persons and they possess fundamental rights that should be studied and listed by state authorities.”¹⁸

Meanwhile, the NonHuman Rights Project (NhRP) argued in front of the Appellate Division of the New York State Supreme Court that Tommy and Kiko, two caged chimpanzees, are “autonomous, self-determining beings” and thus had a right to the common-law writ of habeas corpus. New York’s highest court rejected the argument, denying an appeal of a lower court’s refusal to grant writs of habeas corpus to the two caged chimps. Judge Eugene Fahey, in a surprising concurring opinion, wrote that the legal question at the heart of the case, whether all animals should be treated as mere property or things, is far from settled. The lower court’s conclusion “that a chimpanzee cannot be considered a ‘person’ and is not entitled to habeas relief is in fact based on nothing more than the premise that a chimpanzee is not a member of the human species,” he wrote in his opinion. “In elevating our species, we should not lower the status of other highly intelligent species. Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her? This is not merely a definitional question, but a deep dilemma of ethics and policy that demands our attention.”¹⁹ He continues to say that courts should not focus on whether chimpanzees are “persons” or bear legal duties but focus on whether the animals have a right to be free, protected against arbitrary cruelties and enforced detentions visited on them. “While it may be arguable that a chimpanzee is not a “person,” there is no doubt that it is not merely a thing.”²⁰

NhRp brought a similar claim in regards to Happy, a 48-year-old elephant who for the past decade has been held separately from the other elephants in a one-acre enclosure at the Bronx Zoo. Happy’s representatives demanded recognition of her legal personhood and her right to bodily liberty, and called for her to be transferred to an elephant sanctuary. In her decision²¹, Judge Allison Y. Tuitt agreed that “Happy is more than just a legal thing, or property. She is an intelligent, autonomous being who should be treated with respect and dignity, and who may be

¹⁸ Tercer Juzgado de Garantías, EXPTE. NRO. P-72.254/15, “Presentación efectuada por A.F.A.D.A respecto del chimpancé “Cecilia”- Sujeto no humano”, p. 36.

¹⁹ State of New York Court of Appeals, Motion No. 2018-268, Fahey, J. concurring opinion.

²⁰ Ibid

²¹ Supreme Court of the State of New York, Index No 260441/19, Judge Allison Y. Tuitt.

entitled to liberty” but had to dismiss the habeas corpus petition being bound by the legal precedent set by the Appellate Division.

While in the US the NhRP is working on an appeal on Judge Tuitt’s decision, in a recent decision, the Islamabad High Court in Pakistan affirmed the rights of nonhuman animals and their entitlement to protection under the Pakistani constitution. The case before the court was threefold, involving an elephant, Kaavan, held in solitary confinement at Marghazar Zoo, a rescued bear who had been forced to “dance” and perform tricks, and the killing of stray dogs. In his ruling, Chief Justice Athar Minallah remarks that the current Covid-19 pandemic is “an opportunity for humans to introspect and relate to the pain and distress suffered by other living beings, animal species, when they are subjugated and kept in captivity and denied the conditions and habitats created for their survival by the Creator, merely for momentary entertainment.”²² Chief Justice Athar Minallah asked whether animals have legal rights and found that, “the answer to this question, without any hesitation, is in the affirmative.”

While our proposal is independent of the recognition of animal rights, we believe this short overview presents a different way we can look at animals, a way that was totally unacceptable in the past and even unthinkable. Nowadays people are starting to be more aware of the importance of the beings around them and how their preservation is vital for our future and our planet’s future, an aspect which is at the core of our initiative.

3. Funding issues and alternative solutions

The recent COVID-19 pandemic has shown the world just how vulnerable preservation initiatives are to disruptions. Protected and conserved areas are essential to protecting natural habitats, wild species and the livelihoods of local communities in all parts of the world as well as maintaining a healthy ecosystem. Travel restrictions and closures of protected areas in many countries in response to the pandemic have led to dramatic losses of income from tourism for many local communities living in or near such areas. As a result, certain communities have been forced to supplement limited food supplies from the wild, and the news alerted an increase in poaching and other illegal activities that have emerged from multiple protected areas as conservation efforts have been halted or reduced.

²² Islamabad High Court, W.P. No.1155/2019 Islamabad Wildlife Management Board through its Chairman Versus Metropolitan Corporation Islamabad through its Mayor & 4 others, p. 4.

It is not all negative. While travelling restrictions impacted tourism and lockdowns restaurants, the planet has seen an improvement in air quality, less water pollution and noise, global decline in greenhouse gas emissions as well as reductions in other drivers of global warming due to a decrease in high-flying aircraft and maritime shipping. Despite the temporary improvements to the environment, the financial issues will only continue to get more drastic as funds will head towards different sectors such as health, tourism or transport in order to reboot the economy, leaving environment and wildlife preservation to the mercy of private donors.

In the following sections we will present and briefly analyse some of the more creative financing initiatives that tried to fill in the gap.

A first initiative is the world's first financial instrument dedicated to saving a species at risk of extinction, namely the \$50 million "Rhino Impact Bonds". The number of black rhinoceros has drastically dropped over the past 150 years, and in the last 30 years the species was brought very close to extinction. The Zoological Society of London claims that the biggest current threat to black rhino populations is the illegal trading of rhino horn products, which are worth millions, making conservation efforts an uphill battle against the economic tide. Lack of funding makes those efforts even harder but the company Conservation Capital together with the Zoological Society of London hope to change that. The rhino bond (or Rhino Impact Investment) is a five-year, \$50 million bond linked to the populations of African black rhinos in five sites across South Africa and Kenya. The bond is based on an "outcome payments" model: a concept where investors receive financial returns only on the successful and measurable completion of the objective. Investors will pay an upfront cost for buying the bond and they will be paid back their capital and a coupon if the population of African black rhinos increases in five years. The yield on the bond will be subject to the growth of the rhino population. The Rhino Impact Bond aims to supply \$40m-\$50m of upfront capital to help cash-poor government-funded sites fight back against poachers.²³

In an article published by the International Monetary Fund, a group of specialists have developed a valuation framework for natural resources and applied it to African forest elephants.²⁴ African forest elephants have a tremendous social and market value. Ralph Chami

²³ <https://www.cnbc.com/2019/07/18/what-is-a-rhino-bond-here-is-all-you-need-to-know.html>.

²⁴ Ralph Chami et al., *The Secret Work of Elephants*, Finance and Development Magazine, IMF, 2020. <https://www.imf.org/external/pubs/ft/fandd/2020/09/how-african-elephants-fight-climate-change-ralph-chami.htm>.

and others claim that these elephants fight climate change by contributing significantly to natural carbon capture. While moving through the forest and foraging for food, elephants reduce the density of smaller trees and plants, leading to an increase in the proportion of larger trees, which leads to more carbon being stored in the forest. That increase in carbon storage is significant and quite valuable. The authors calculated the carbon value of a single forest elephant at \$1.75 million and the ivory of an elephant killed by poachers at only about \$40,000. Others claim that Fabio Berzaghi and Ralph Chami have adopted a conservative approach considering a market price for carbon at one third of that stated by the IMF. Thus, only from that perspective alone, an elephant alive is worth exponentially more than a trophy hunted or poached elephant.²⁵

The article moves on to discuss the win-win opportunities (for the government, private sector, local communities and global partners) that could arise if the benefits of individual natural resources such as elephants and a healthy ecosystem in general are coupled with a legal framework that appoints stewards of these resources and establishes their rights and obligations. The scientists then suggest a debt-for-nature swap as many countries that foster forest elephants are highly in debt. The amount of debt relief would be determined by the value of the elephants' services, using market prices. They encourage that the money saved be used for elephant preservations but could also be used to create public-private partnerships that would help build markets such as tourism and insurance, and these markets would ultimately provide steady employment and income in local communities, leading to ownership and sustainability of conservation efforts.

Another strategy, similar to our proposal, is the Lion's Share Fund.²⁶ The idea comes from film director, Christopher Nelius, and Rob Galluzzo, founder of FINCH, a production company based in Australia. The initiative proposes that brands which use images of animals in their ad campaign (animas can be real, a cartoon, or computer-generated) donate a small percentage of paid media to The Lion's share fund. Afterwards, the UN Development Programme, its co-founder, will manage the fund and conservation impact through its vast network of NGOs, civil society and governments on the ground worldwide. The Fund aims to raise \$100 million a year within four years. While we support the idea, we believe that the UN-administered fund open for voluntary participation is not enough. In order to make it more

²⁵ See also George Dian Balan, *The World As It Once Was* (2020), *Dian's Biodiversity Vision*, pp. 237 – 260.

²⁶ <https://www.thelionssharefund.com/>.

effective, the companies' participation should be compulsory, the scope should be broader and the money raised should follow a destination principle.

We acknowledge the ongoing challenges our planet is facing and the importance of a fast and sustainable improvement. While we consider the issues of animal rights and lack of an environmental organization to be very pertinent, we must be pragmatic and admit the main issue is the lack of sustainable financing. We have looked at some of the financing initiatives circulating at the moment and in the following chapter we would like to present our proposal.

Chapter III. The proposed solution

It must be stated upfront that this solution does not depend upon the outcome of recognizing rights to animals. This solution puts people from local communities first, as they will directly benefit from these funds, but also, ultimately biodiversity and the whole of humankind will benefit as well.

A royalty of 0.5% shall be paid for all the products placed on a country's market, irrespective of their origin, if those products come from a company that uses wild animals as their logo, wildlife images on their products or as part of their advertising campaigns. As we have no doubt seen on television commercials or in magazines, food packaging and clothes, animals star in nearly 20% of all ads. Unfortunately, almost 90% of the most popular animals that appear in ads are rapidly heading towards extinction. Majestic creatures such as elephants, tigers, rhinos and lions (“charismatic megafauna”) are threatened by illegal trafficking, trophy hunting, shrinking habitats and climate change. Through this proposal, we hope to bring out a new way of funding in order to maintain, restore and improve critically endangered biodiversity, habitats and ecosystem services while also trying to promote the importance of a more sustainable living and compassionate mindset.

We believe this measure should be incorporated in national legislations, should have clear provisions and effective, proportionate and dissuasive sanctions to reach the ultimate goal of providing critical and much needed support to local communities at the frontline of biodiversity conservation that have been severely impacted by COVID-19 restrictions and also, even more importantly, ensure a continuity of funds.

1. The design of the measure

There are various categories of companies affected by this measure and we will group them as follows: brands that use wildlife as part of their logo, brands that use wildlife images on their products, brands that use wildlife in their ad campaign and finally service providers.

First, a large variety of products, ranging from alcoholic beverages and cigarettes to food, clothes, cars and others are coming from companies using wildlife as part of their logo/trademark.

For the tobacco industry, some of the best-selling cigarette brands bear wild animals as their logos - Marlboro, a pair of lions, Camel, a one-hump dromedary and Winston, a flying eagle, as well as some of the cigar brands Arturo Fuente, lions, and San Cristobal, a colorful parrot. Another tobacco based product, namely dipping tobacco (moist snuff) sold by one of the biggest brands - Grizzly - has a grizzly bear as its logo.

The alcohol industry holds a large percentage of wildlife based logos. From popular *vodka* brands such as Smirnoff (eagle), Finlandia (deer), Beluga (beluga whale), Żubrówka (bison), *beer* brands like Löwenbräu (lions), Tecate (eagle), Ursus (bear), Tusker (African elephant), Chang (Asian elephant) to *rum* brands such as Bacardi (bat), Bundaberg (polar bear), Bayou rum (crocodile), Wild Tiger (tiger), Naked Turtle White Rum (turtle), *gin* brands Monkey 47 (monkey) Elephant Gin (elephant), Gin Bordiga (flamingo), *whiskey* brands Glenfiddich (deer) Old Camp Whiskey (wolf) and other liquors such as Jägermeister (deer) Scorpion Mezcal (scorpion) to even wine companies Red Kangaroo, Yellow tail (kangaroos), we have seen it all.

Moving on to the food industry, some major supermarket chains such as Auchan (songbird) and Delhaize have wildlife images incorporated in their logos, as well as some well-known restaurant chains Red Lobster (lobster), Panda Express (panda), Buffalo Wild Wing (bison) and Chuck E Cheese (mouse).

Several big brands in the automotive industry would be unrecognizable without their wildlife logos - Dodge with the bighorn ram, Jaguar with the leaping jaguar, Peugeot and Holden with lions, Porsche with the stag antlers and for agricultural machineries, John Deere with the deer logo.

Some popular clothing lines owe also their popularity to wildlife: Lacoste benefits of the image of the crocodile and Puma of a leaping puma, Abercrombie & Fitch got hold of the moose, Ben Davis is a gorilla, Paul Frank uses a cartoon monkey face, and the Hunting World bag manufacturer is represented by the elephant.

Two other quite vast industries have a big presence of wildlife images in their branding: Hunting and Sports. From companies that sell hunting clothes and boots, sleeping bag, tents (Stone Glacier is using a bighorn ram as a symbol), rifle scopes and binoculars (Swarovski Optik uses a hawk), ammunition (American Eagle uses the eagle), bow & archery equipment (Trophy Ridge uses the deer, Bear Archery uses a bear), knives (Knives of Alaska uses a bear) to

those who organize guided hunts (RMOOC uses deer, Galantis a bear), they all use wild animals when promoting their products.

The sports industry, especially in the US, has a big contribution. The five major sports in the US football, baseball, basketball, ice hockey and soccer have a high percentage of teams that are named after animals. And why is that? We believe it easier to rally people behind images, all the more so behind powerful or large animals or otherwise impressive qualities. In the US NFL (National Football League) almost half of the total number of teams have a wild animal mascot: Arizona Cardinals; Atlanta Falcons; Baltimore Ravens; Buffalo Bills; Carolina Panthers; Chicago Bears; Cincinnati Bengals; Denver Broncos; Detroit Lions; Indianapolis Colts; Jacksonville Jaguars. Los Angeles Rams; Miami Dolphins; Philadelphia Eagles; Seattle Seahawks. For baseball, there are four teams in the American League named after animals: Baltimore Orioles; Detroit Tigers; Tampa Bay Rays; Toronto Blue Jays and four teams in the National League: Arizona Diamondbacks, Chicago Cubs, Miami Marlins, St. Louis Cardinals. Out of the 30 NBA (National Basketball Association) teams, eight bear animal logos: Atlanta Hawks, Charlotte Bobcats, Chicago Bulls, Dallas Mavericks, Memphis Grizzlies, Milwaukee Bucks, Minnesota Timberwolves, New Orleans Pelicans, Toronto Raptors. Anaheim Ducks. Almost the same situation with ice hockey teams: Boston Bruins, Buffalo Sabres, Florida Panthers, Phoenix Coyotes, Pittsburgh Penguins, San Jose Sharks. Out of 122 professional sports teams in North America 39 are named after animals. Can we imagine how our planet's biodiversity would recover if they would bring a small contribution towards the preservation of the species they so proudly associate with?

Second, a great deal of companies use wildlife images on their product as such, although those images are not part of their logo or trademark. From cartoonish animals printed on cereals like Frosties with the tiger, Nesquik with the rabbit, Cookie Crisp with the wolf and other food items or Christmas clothing items with polar bears and reindeers, swimwear with fish, flamingos, dolphins to real life animal designs printed on books, puzzles, T-shirts and many others. There is another popular industry that makes animal shaped objects for kids and not only such as toys, pyjamas, Halloween or birthday parties costumes, fluffy shoes, hats, coffee or tea mugs, even plates, pillows and lamps.

Third, a large number of wild animals are used as part of a brand's advertising campaigns through greeting cards, visual arts, T.V. and print adverts. These roles in which animals are

portrayed are for example as a symbol, allegory, loved one, savoir, threat, victim, tool, imaginary person, object of wonder, or nature. Some of the most famous examples are the Coca-Cola polar bears, the Guinness toucans, the gecko lizard for Geico, the Duracell bunny, the Magnum double chocolate ice cream commercial in which a variety of wild animals appear (black panther, tiger, eagle, leopard, wolf, bison, lion), the John Lewis Trampoline Christmas Advert where the foxes, badger, squirrel and hedgehog are jumping on the trampoline, and additionally a great number of Super Bowl commercials. But why do companies so often use animals in their advertising? Some studies have shown that advertising uses the human-animal relationship in order to leverage different associations with brands. The history and strength this relationship has, even from a basic human biological standpoint, allows for a much deeper connection to occur between the consumer and brand.²⁷ It doesn't matter if the animals are real or computer generated (CGI) they just need to loosely resemble a human or human-like behaviour to achieve a connection with the consumer. This process of anthropomorphizing assures a consumer's feeling of connection between themselves and the brand thus enhancing consumer's brand engagement. They also make the brand claims more believable and relatable. Whether a fluffy teddy bear for fabric softener (Snuggle), some cool soda-sipping polar bears or some very bitter crows, animal attributes and personalities can communicate a brand message. Animals are also much more captivating and memorable compared to simple names or phrases hence bringing easier recognition of the brand. Take the GEICO Gecko²⁸ as an example. The now-famous "spokes-animal" was chosen based on namesake to not only help consumers recall the brand, but to teach audiences how to pronounce the name, helping these companies build lasting positive relationships with viewers.

Moving on to a slightly different category now, that of service providers. Several airline companies use different birds as part of their logo (Carribbean Airline, Lufthansa, Turkish Airlines, Air Madagascar, Tarom) or kangaroos (Qantas Airline). Another industry is the hospitality industry, with hotel chains such as Ritz Carlton, Red Lions, MGM Grand having lions as part of their branding. Moving on to other service providers such as TV networks (NBC has the representative peacock), web browsers (Mozilla Firefox has a fox as their logo), web portals

²⁷ Braunwart, Natasha, *Animals in Advertising: Eliciting Powerful Consumer Response, Resulting in Enhanced Brand Engagement* (2015). University Honors Theses. Paper 151. <https://doi.org/10.15760/honors.187>.

²⁸ <https://www.geico.com/living/commercials/gecko-journey-across-america/>.

(MSN uses a butterfly), apps (Twitter uses a bird, Evernote an elephant, PickMonkey a monkey face) banks (ING Bank uses a lion) and even security (Gorilla Security).

Lastly, the royalty should apply to all products of the aforementioned categories, even if the animals used are part of an extinct species, such as the case of Mammut outdoor company or the game producers Mammoth Interactive, who use a woolly mammoth as a logo. This is in the nature of the anti-circumvention rule, making it impossible for companies to switch to extinct animal logos in order to avoid paying the contribution to the fund.²⁹ The money raised will bring funds towards preserving the closest living relatives of the extinct species. In our example with the above-named brands, the money collected could be used in saving the last elephants with big tusks in Asia and Africa, taking into account the urgency of each situation.

We have also considered the possibility that collection could potentially be zero, in the extreme situation where all companies would stop using wildlife species in their logos, on their products or in their advertising campaigns. We believe that to be very unlikely as most brands take pride in their image, stand by their values and they recognize the huge impact the affiliation to a wild animal has on the public, and therefore on their sales.

2. Proportionality of the measure

Recognizing collective “personality rights” to wildlife species and thus setting off the payment of a 0.5% royalty fee on all products coming from companies that use wildlife logos, wildlife images on their products or in their advertising campaigns, would make a great contribution towards preserving those species. While 0.5% may seem an insignificant amount on its own, if we take into consideration the vast number of products sold with animal images printed on them and the large amount of brands that have wildlife based logos, all the revenues collected would add up to a significant amount.

For most of the above mentioned companies, the wild animals used in their branding is what sets them apart from their competitors, what makes their brand recognizable and consumers attracted to it. Let’s take Frosted Flakes cereals for example. The fun and energizing commercials putting Tony the Tiger in the spotlight stimulate children into asking their parents to buy the cereals. Their famous catchphrase “Have you got what it takes to be a tiger?” or “Let your great out” establish a connection between being a great competitor and eating frosted flakes

²⁹ Balan, *The World As It Once Was* (2020), p. 239.

for breakfast. A ranking website where people can vote on the “Best kid’s cereals” places Frosted Flakes in the top.³⁰ Would it be the same without its iconic cartoon tiger? We do not trust it would.

Another important aspect of our proposal is that it provides for a sustainable way of financing those species. While safaris and other types of wildlife tourism have the beneficial side of bringing money to local communities, they also impose a lot of costs on the environment due to carbon emissions from airplanes, cars and other means of transportation. If we were to make a cost benefit analysis of our proposal, we claim that the benefits outweigh the costs. We believe that recognizing “personality rights” of wild animals would not impose any extra costs on the environment in regards to pollution as companies are already producing those items and people are constantly buying them. The benefit would now be that a very small portion from selling those products would benefit the local communities and also help us preserve our crumbling biodiversity.

Considering the severity of the situation with the fast pace degradation of our planet’s environment and biodiversity and the low impact the royalty would impose on a company’s revenues, we claim the measure to be proportional and necessary in achieving our proposed goal - preserving and saving our planet’s diversity while helping the local communities.

3. Administration of funds

All revenues are to be collected into a worldwide fund, via subsidiary national agencies. Those agencies will separate the funds following a destination principle: funds obtained from a species used in the logo, print on clothing items or decorations, or the species used in advertising campaigns will be destined for, will go into the preservation of that particular species. For each box of Frosted Flakes sold, the funds collected will be used to save and conserve endangered tigers, for each polar bear Christmas sweater, money will be used for polar bears and so on. If for one species, the funds will surpass the amount needed to ensure proper preservation for that animal, the money will be redistributed towards their closest relative. As a large number of companies are using lions as part of their branding, but not so many use jaguars or leopards, we would expect that the “excess” funds would be relocated towards the latter, as they are the

³⁰ <https://www.ranker.com/list/best-kids-cereal/ranker-food>.

closest species to the lion. Priority will be given to critically endangered and endangered populations or species, making sure that the urgent and pressing situations are funded first.

At the same time, one should not lose sight of the fact that most of the animals used by companies are “charismatic megafauna”, which are very often keystone species: by protecting them, it is in fact protected the whole ecosystem they belong to, including a plethora of other lesser known animal and plant species.

One very important aspect of our proposed measure are the final beneficiaries of the funds, namely the local communities in the proximity of the species for which the funds are raised. We believe that by creating a direct link between wildlife preservation and the community’s welfare, better and longer lasting results can be achieved. We are aware that around the globe all too often wildlife and the rural poor compete for scarce land. Increasing conflicts between humans and wildlife end up with tragic results, people risking their lives in order to defend their property from marauding wildlife, while wildlife species are being eliminated at an alarming rate. This measure aims at finding practical and beneficial ways for people and nature to thrive together.

By funding the local communities and involving them in the conservation process, it will make them less tempted to raise herds or cultivate the land used by wildlife, and it will prevent them from supporting poachers or allowing trophy hunters. The same thought is shared by first lady of Kenya, Margaret Kenyatta and the Administrator of the UN Development Programme, Helen Clark, who together launched a conservation program in Kenya: “Combating poaching will not succeed unless communities are empowered to help prevent its alarming upsurge.”³¹ They suggest investing in eco-tourism and conservancy, thus bringing people an alternative to killing wild animals, all of which would be possible with the funds raised by implementing our proposal.

We aim for full transparency in regards to the way funds are used, by keeping the companies involved and other interested parties informed on a regular basis about the evolution of each project. Apart from that, all contributing companies will be granted advisory status and the agency will be open for an independent third-party audit, this way creating a transparent and trustworthy environment.

³¹<https://www.ke.undp.org/content/kenya/en/home/ourwork/environmentandenergy/successstories/Working-with-Local-Communities-to-Conserve-Wildlife.html>.

4. Insuring compliance

As we have mentioned before, we believe this proposal should be incorporated in national laws in order to best achieve its purpose and it should provide for effective, proportionate and dissuasive sanctions. We envision the enforcement mechanism with the companies paying their contribution to the fund as a pre-condition for placing their products on the market. If they do not pay the contribution, they would not be able to place their products on the market and have them on hold in their warehouses. Nonetheless, if they still decide to place their products, the law should provide for a penalty system which would entail paying the initial contribution plus late payment penalties.

Ubi remedium, ibi jus (where there is a remedy, there is a right). If companies do not pay their contribution to the fund, they are precluded from placing their products on the market, running their marketing campaigns that contain wildlife species and so on.

We are aware that this proposal could impact both large corporations and small ones that use wild animals in their branding but our proposal provides for no *de minimis*, meaning that each will have to bring their contribution, regardless of their size.

We are also taking into account the fact that some countries bear the names of animals (Turkey, Peru) and some feature animals on their flags. For the time being, our proposal targets private operators and aims at having them comply with the initiative first. We leave the possibility of expanding the area for a different paper.

Chapter IV. Legal assessment

1. The legal status of personality rights

Personality rights are usually considered to consist of two types of rights: the right of publicity and the right to privacy.

The right of publicity, as defined by the International Trademark Association, is “an intellectual property right that protects against the misappropriation of a person’s name, likeness, or other indicia of personal identity such as nickname, pseudonym, voice, signature, likeness, or photograph, for commercial benefit.”³² The right to privacy, or the right to be “left alone”³³ as Justice Louis Brandeis puts it, is a right that protects the individual against governmental and private actions that threaten the privacy of that individual.

In most civil law jurisdictions, as opposed to the common law ones, there are specific civil code provisions that protect an individual’s image, personal data and other types of private information. From these general and broad privacy rights, some exceptions have been carved out in regards to public figures (celebrities, politicians) and the news. In common law jurisdictions, no federal statute recognizes the right of publicity, as personality rights have developed out of common law concepts of property, trespass and intentional tort, thus making personality rights the result of various court interpretations. There are states or jurisdictions where some aspects of personality rights have statutory recognition.

While in the past the focus was mainly on the protection of the inviolate personality against intrusions by third parties and on the recovery of non-economic damages arising from the infringement of dignitary interests, the emphasis is now on the exploitation of the commercial value of personality and compensation for profits foregone (or restitution of unlawfully earned profits) as a result of the unconsented use.³⁴

³² <https://www.inta.org/topics/right-of-publicity/>

³³ Warren, Samuel D., and Louis D. Brandeis. “The Right to Privacy.” *Harvard Law Review*, vol. 4, no. 5, 1890, pp. 193–220. *JSTOR*, www.jstor.org/stable/1321160. Accessed 20 Mar. 2021.

³⁴ D. Lefranc, *L'auteur et la personne* (libres propos sur les rapports entre le droit d'auteur et les droits de la personnalité), in D. chr., 1926 (2002).

As there is no internationally recognized personality right, we will take a look at some jurisdictions and their codifications of such rights. We will try to present the two ways through which personality rights can be achieved in some jurisdictions, either through case law in some countries or through laws enacted by the parliament in others. In our case, we believe personality rights for wildlife species should be firmly stipulated in the law, with clear provisions and enforcing mechanisms.

i. United States

In the United States, the right of publicity has no recognition at the federal level as it is largely protected by state common or statutory law. Because the right of publicity is primarily governed by state law, as opposed to federal law, the degree of recognition of such right can vary from one state to the other and there is no uniform approach between the states regarding the understanding of the right of publicity, its post-mortem availability, or transferability. The right of publicity is evolving rapidly and, at the moment, around twenty-four states have enacted statutes that protect such rights.³⁵

The right of publicity, thus the right to control the commercial exploitation of one's own personality, is rooted in the right of privacy and economic exploitation. The term 'right of publicity' was first introduced by Judge Jerome Frank in the famous *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* case in 1953. The court explained that the right of publicity was independent from the right to privacy. The court noted that 'this right might be called a "right of publicity". For it is common knowledge that many prominent persons... far from having their feelings bruised through public exposure of their likeness, would feel sorely deprived if they no longer received money for authorizing advertisements, popularizing their countenances, displayed in newspapers, magazines, busses, trains and subways. This right of publicity would usually yield them no money unless it could be made the subject of an exclusive grant which barred any other advertiser from using their pictures'³⁶ *Haelan Laboratories* was relevant to many personalities who previously attempted a claim for embarrassment and injury to personal

³⁵ <http://rightofpublicity.com/statutes>.

³⁶ [Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.](#), 202 F.2d 866 (2d Cir. 1953).

dignity, when what they actually wanted was to be compensated for the value of their image.³⁷ Melville B. Nimmer explained shortly thereafter that a celebrity should have a separate right of publicity because "although the well-known personality does not wish to hide his light under a bushel of privacy, neither does he wish to have his name, photograph, and likeness reproduced and publicized without his consent or without remuneration to him."³⁸

At a national level, the only time the United States Supreme Court ruled on this matter was in the case *Zacchini v. Scripps-Howard Broad. Co.*, where the Court acknowledged that a performer had an economic interest in a performance and that the First Amendment did not prevent a state from granting relief to a plaintiff when the news broadcasted the performance and diluted his economic interest. The Court identified that the right of publicity was different from the traditional right of privacy. The rationale underlying the right of publicity is in "protecting the proprietary interest of the individual in his act." The Court focused "on the right of the individual to reap the reward of his endeavors."³⁹

Nowadays, even though the right of publicity is understood as the right of a celebrity or personality to use, control and forbid the illegal usage of their identity, it is not only limited to that group of people. Most commonly it is indeed associated with celebrities, but the majority view is that every person, regardless of how famous, has a right to prevent unauthorized use of their name or image to sell products.

ii. United Kingdom

As opposed to the United States, the United Kingdom has recognized neither a general right to privacy protecting interests in anonymity nor an independent right of publicity directed to the economic interest. Instead, unauthorized use of a person's image must be challenged under existing intellectual property rights and related laws such as passing off, trade mark infringement, data protection, breach of confidence or advertising regulations.

The U.K. has been showing development towards a right of publicity based in property by giving personalities the ability to sue for unauthorized use of their name. The U.K. Code of

³⁷ Michael Madow, *Private Ownership of Public Image: Popular Culture and Publicity Rights*, 81 CAL. L. REV. 125 (1993) p.172-173

³⁸ J. Thomas McCarthy, *Melville B. Nimmer and the Right of Publicity: A Tribute*, [34 UCLA L. REV. 1703, 1704 \(1986-1987\)](#)

³⁹ [Zacchini v. Scripps-Howard Broad. Co.](#), 433 U.S. 562, 97 S. Ct. 2849, 53 L. Ed. 2d 965 (1977).

Broadcast Advertising provides that there should be a right against unwarranted use of a personality's identity in certain commercial contexts⁴⁰. In case law, personal endorsements were first held to be protected by the doctrine of the "tort of passing off,"⁴¹ but are now protected as economic interests in the personality⁴².

The Court of Appeal in *Douglas v. Hello! Ltd*⁴³. upheld a licensee's ability to sue for unauthorized exploitation of the image the licensee obtained from the celebrity. The famous couple Michael Douglas and Catherine Zeta Jones gave exclusive rights to publish their wedding photos to OK! Magazine but despite anti-paparazzi measures used at the ceremony, the rival magazine Hello managed to get the photos from the wedding and published them. Both the couple and OK! Magazine sued Hello for breach of confidence. The court ruled in favor of the claimants, stating that the Douglases arranged the ceremony so as to impose an obligation of confidence and to control the information. This tort shows the influence of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the UK and also shows that U.K. law recognizes that the personality has a property-based right to license a part of his identity to someone who will be using it for commercial exploitation.

Another concept, protecting commercial rights to control the usage of one's personality is the tort of passing off. According to the House of Lords decision in *Reckitt & Colman Products Limited v Borden Inc*, in order to succeed in a passing off claim, a claimant shall prove: the goodwill or reputation of the claimant, misrepresentation, and damages caused to the claimant.⁴⁴ The classic approach does not universally apply to all the cases of infringement of the right of publicity. In the *Lyngstad v. Anabas* case⁴⁵ the famous Abba musical group was unsuccessful in claiming that their rights were infringed when their name and images were used for the defendant's merchandise. The court ruled that Abba was not itself arranged into a likewise

⁴⁰ The UK Code of Broadcast Advertising [BCAP] § 6, available at https://www.asa.org.uk/type/broadcast/code_section/06.html

⁴¹ Huw Beverley-Smith et al., *Privacy, Property and Personality: Civil Law Perspectives on Commercial Appropriation 1-2* (Cambridge Univ. Press 2005) p.15

⁴² *Id.*, p.26.

⁴³ *Douglas v. Hello! Ltd.*, [2005] EWCA (Civ) 595, [2006] Q.B. 125 (Eng.).

⁴⁴ *Reckitt & Colman Products Ltd. v Borden Inc.* [1990] 1 WLR 491

⁴⁵ *Lyngstad v Anabas* [1977] F.S.R. 62.

business activity in the UK and was not eligible for protection.⁴⁶ In the 2003 case *Irvine v. Talksport, Ltd*⁴⁷, this practice was challenged. That was one of the first UK cases in which a passing off action succeeded in a false endorsement case. Earlier claims had failed due to a lack of a common field of activity or no real possibility of confusion.

iii. Germany

Personality rights recognised by German law are encoded in Title 1, Section 12 of the *Bürgerliches Gesetzbuch (BGB)*, the German *Civil Code of 1900* which prohibits the unauthorised use of another person's name⁴⁸; article 22 of the *Kunsturheberrechtsgesetz (KUG)*, *Act on Copyright in Works of Visual Arts of 1907*, which provides that a person's portrait may only be exhibited or disseminated with the depicted person's consent.⁴⁹ Alongside the moral rights granted by copyright legislation, these rights, to one's name and to one's image, are known as 'specific personality rights' (*besondere Persönlichkeitsrechte*).

Post World War II, the Basic Law granted protection of dignity to all humans (*Menschen*) due to their unique individual status as opposed to the previous focus on racial identity⁵⁰. The Basic Law declares in its first article (Art 1(1)) that human dignity is "inviolable, and it is the duty of the state to respect and protect it, meaning that the State cannot take it away or destroy it. Thus human dignity is the general basis for the right of personality. Though a civil law system, the Federal Supreme Court and Federal Constitutional Court have played critical roles in developing the right of personality through their interpretations of the Basic Law and the Civil Code, the *Bürgerliches Gesetzbuch* in the post war period.

The fundamental right guarantees the protection of human dignity and the right to free development of the personality, protecting any person against the unauthorised use of specific aspects of their personality.⁵¹ One recognised aspect of an individual's personality is the right in

⁴⁶ Kateryna Moskalenko, *The Right of Publicity in the USA, the EU, and Ukraine*, 1 *Int'l Comp. Juris.* 113, 115 (2015).

⁴⁷ *Irvine v. Talksport*, [2002] 1 *WLR* 2355 (Ch).

⁴⁸ *Bürgerliches Gesetzbuch* found at https://www.gesetze-im-internet.de/englisch_bgb/index.html.

⁴⁹ *Kunsturheberrechtsgesetz* found at <https://www.gesetze-im-internet.de/kunsturhg/index.html>.

⁵⁰ Schwartz, Paul M., and Karl-Nikolaus Peifer, *Prosser's 'Privacy' and the German Right of Personality: Are Four Privacy Torts Better than One Unitary Concept?*, *California Law Review*, vol. 98, no. 6, 2010, pp. 1925–1987. *JSTOR*, www.jstor.org/stable/25799959.

⁵¹ BGH of 14 February 1958, *Herrenreiter*, BGHZ 26, 349.

one's own picture, as recognized by the Federal Court of Justice in the Marlene Dietrich case⁵² right that protects not only non-material but also commercial personality interests. Section 22 (1) of the Kunsturheberrechtsgesetz guarantees the freedom for an individual to determine how he presents himself to the public. The consent of the depicted personality is generally required, in order to use that image for advertising or commercial purposes. This right is, however, limited according to section 23 (1) no. 1 of the KUG for persons of contemporary history, whose images may be distributed or published without the individual's consent, provided that no legitimate interest is infringed.

German courts have an established three-step approach in cases concerning the right of personality⁵³. First, the court will decide which of the personality interests is at stake.⁵⁴ Second, the judges will consider whether a possible justification for the allegedly infringing behavior exists.⁵⁵ Third, courts will generally balance competing interests through an analysis that evaluates the nature and quality of the infringing activity, the kind of publication, and certain subjective factors, such as the malice or intent of the defendant.⁵⁶ This balancing approach also includes a proportionality test. Among the elements of this test is scrutiny of whether the invasion of the personality right is excessive in comparison to the benefits that it will achieve.⁵⁷

iv. China

Personality rights in China entail a collection of rights which offer protection to the natural attributes of a human being.⁵⁸ According to the revised provision on the causes of action in civil cases issued by the Supreme People's Court, personality rights refer to the right to a name, portrait rights, the right to reputation, the right to honour, the right to privacy, the right to marriage, personal liberty and the right to personal data.⁵⁹

⁵² BGH of 1 December 1999, Marlene Dietrich, BGHZ I ZR 49/97.

⁵³ Schwartz, Paul M., and Karl-Nikolaus Peifer, p. 1954.

⁵⁴ BGH, Marlene Dietrich.

⁵⁵ BGH of 23 June, 2009, Lehrerbewertung im Internet (www.spickmich.de), BHGZ VI ZR 196/08.

⁵⁶ Ibid.

⁵⁷ Schwartz, Paul M., and Karl-Nikolaus Peifer, p. 1955.

⁵⁸ Zhu GUOBIN, *The Right to Privacy: An Emerging Right in Chinese Law*, 18. Statute Law Review 1997(3), pp 208–214.

⁵⁹ Chen, Lei, *Debating Personality Rights Protection in China: A Comparative Outlook*, European Review of Private Law. 26. 31-56. (2018).

Personality rights in China, were regulated by a large number of statutory instruments, such as the Constitution of the People's Republic of China, the General Principles of Civil Law, the Tort Liability Law, the Consumer Protection Law, State Council regulations, ministerial and departmental circulars and Supreme People's Court's judicial interpretations.⁶⁰ Therefore, the Chinese legal and statutory framework on personality rights was quite fragmented. The right to reputation, for example, is a fundamental right guaranteed by the Constitution.⁶¹

On 28th of May 2020, China has promulgated its first ever Civil Code, which has come into effect on the first of January 2021. Part IV, entitled "Personality rights", as opposed to other parts in the Code, has no pre-existing law as its foundation. Instead, provisions that were fragmented in various laws were put together and supplemented by provisions in administrative regulations and court interpretations. Book 4 "Personality Rights"⁶² is divided into six chapters: I.General Provisions, II.The Right to Life, the Right to Bodily Integrity and the Right to Health, III.The Right to Name and Entity Name, IV.The Right to Likeness, V.The Right to Reputation and the Right to Honor, as well as the VI.Right to Privacy and the Protection of Personal Information. Article 990 defines personality rights as rights enjoyed by persons of a civil law, such as the such as "the right to life, the right to corporeal integrity, the right to health, the right to name, the right to trade name, the right to likeness, the right to reputation, the right to honor, the right to privacy, and the like." These rights cannot be waived, transferred or inherited (art.992) but the spouse, children or relatives of the deceased whose name, likeness, reputation, honor, privacy, remains, or the like are harmed, can request the actor to bear civil liability in accordance with law (art. 994). Article 995 confirms that plaintiffs are entitled to compensation and injunctions for the violation of personality rights and art. 1019 extends art.995 by stating that "no one may make, use, or publicize the image of the right holder without the latter's consent" unless otherwise provided by law. Exceptions to that rule, if done in a reasonable way, are listed by article 1020 and they include: personal use, art appreciation, education or scientific research, news reporting , government use with the required scope of their duties, images of public environments where it is inevitable that people will be present, and public interest. Article 1023

⁶⁰ Ibid.

⁶¹China's Constitution of 1982 with amendments through 2004, art 37.

⁶² <https://www.chinajusticeobserver.com/law/x/civil-code-of-china-part-iv-personality-rights-20200528> .

states the right to name and voice are also covered similarly by this section IV of Personality Rights with respect to image.

The new Civil Code is expected to have a more favourable impact on foreign personalities that are looking to safeguard their personality rights in China.

Now that we have briefly looked at various jurisdictions around the world, we can see that personality rights are embedded in both publicity and privacy rights. The idea behind these rights is that individuals should have a right to control when, where and how their image or likeness is being exploited as well as when their image should be kept away from the public. The rights are meant to protect the interests of the individuals and bring them some remuneration for being exposed to the public. The bottom line is that recognizing someone's publicity rights implies some sort of payment to their benefit. As nobody would consider using Madonna's image and not recognizing her intellectual property rights, we believe the same should be applied to the large variety of wild species used by brands as part of their logo, on their products or as part of their advertising campaigns. The nature of the right is similar and the interest protected as well. A majestic (big-tusked) elephant is indeed the equivalent of a celebrity like Madonna in the animal kingdom and a personality right is similarly justified. It is even more important now as our planet is rapidly degrading. Recognizing intellectual property rights for wild species would not only benefit the local communities around them but also help us to preserve the species, restore the environment and ultimately save our planet.

We have also considered the issue of how this intertwines with IP rights. We claim that even IP rights holders should still pay the contribution to the fund. A brief example will clarify our viewpoint. If someone wants to create a painting after a photograph, they will need to ask the photographer's permission as the initial IP right holder. Analogously, it is the wild animals that have the "first IP rights" and any subsequent user should pay the contribution to the fund.

2. Why not a tax?

While imposing a tax on the companies that use wild species in their logo, on their products or as part of their marketing campaign could be an alternative to our proposed measure, we believe that it is not the most suitable.

In the OECD classification the term “taxes” is defined as “compulsory, unrequited payments, in cash or in kind, made by institutional units to government units.” Taxes are unrequited in the sense that benefits provided by the government to taxpayers are not normally in proportion to their payments.⁶³ In our case, because we are talking about goods and services, the particular type of tax concerning our measure is sales tax. The same Organisation defines sales tax as “Tax imposed as a percentage of the price of goods (and sometimes services). The tax is generally paid by the buyer but the seller is responsible for collecting and remitting the tax to the tax authorities.”

By looking at these definitions, we can draw a couple of conclusions. First, taxes are incumbent on one country’s individuals or corporations, they are enforced by a government entity, whether local, regional or national and the funds go to the state budget. Second, taxes are used in order to fund public services, various programs such as Healthcare, Education, Social Security, government and public administration positions, as well as infrastructure and so on. All in all, taxes are used for improving the economy of a country and all of its citizens.

We find two major incompatibilities with our proposal and taxes. As we noted when we discussed our proposed measure (Chapter III, 3.Administration of funds) we believe the best way to administer the funds is in a worldwide fund with the help of national subsidiary agencies. By doing so through independent agencies as opposed to public administrations we hope to avoid some of the most problematic issues that the public sector presents, such as: bureaucracy and delayed decisions, lack of efficiency, excessive government control and political interference. The second and most relevant one, is the use of funds. While taxes are used for financing government activities and to the benefit of one country and its citizens, we want the funds to be used in the benefit of local communities situated in the proximity of the wild species the money is raised for. We want them to be incentivized to preserve and protect the wild animals surrounding them, to stop poachers and trophy hunters, to stop cultivating the land used by wildlife. Thus the money will be distributed to communities around the world which we believe would be an easier process by recognizing personality rights for the wild species and administering the funds at a global level rather than through taxes.

⁶³ OECD Glossary of Statistical terms.

Chapter V. Conclusions

Could we solve the underfinancing problems of wildlife preservation? We believe we could. By recognizing the collective “personality right” of wildlife species and triggering the payment of a 0.5% royalty fee on all products coming from companies that use wildlife logos, wildlife images on their products or in their advertising campaigns. Their preservation is of utmost importance as biodiversity is tumbling at alarming rates thus impacting the planet’s ecosystems.

As we have seen in the second chapter of this thesis, the animal kingdom is facing serious challenges. Despite having 15 specialized agencies, the United Nations has no such body for the environment. Until now, the main tools available under international law for countries to collaborate on a large range of global environmental challenges are international conventions and treaties. We believe an international environment organization could provide support in matters concerning pressing matters in regards to the environment and also monitor their progress. Another strongly disputed issue is concerned with granting animals rights. The way animals have been perceived along the time has slowly changed. From being seen as simple objects, nowadays people start to realize the importance of the beings around them, and their contribution to a healthy and sustainable environment. Some countries, such as Pakistan, have affirmed the rights of nonhuman animals, while some are still debating the issues and other passing laws to offer some protection to some species. Despite funding issues being always a problem in animal preservation, the current pandemic has taken a significant toll on communities whose main source of income was tourism. More and more voices criticise wildlife watching tourism as such as *the* solution to the current environmental, biodiversity and climate emergency. While wildlife watching tourism brings needed money to local communities, it also has a quite important carbon emissions footprint, associated with long distance travelling and shipment of goods. In other words, it is not the most sustainable solution, although still much better than trophy hunting or displacement for livestock and crops.

There are some initiatives that try to fill this financial gap, like the “Rhino Impact Bond”, linked to the populations of African black rhinos, where investors are given their financial returns upon reaching the established goal in increasing the rhino population. Another initiative is the monetization of forest elephants, due to their capacity to increase carbon capture (the calculated value of each elephant alive is \$1.75 million, as opposed to some \$40,000 when killed

by poachers for ivory). A third relevant initiative is the Lion's Share, which proposes that brands which use images of animals in their ad campaigns donate a small percentage of paid media to their fund. Although we are in agreement with this idea, we believe that this initiative, which is open to voluntary participation, is not enough, as it does not cover all scenarios of wildlife personality rights and it does not follow a destination principle.

Acknowledging the challenges our planet is facing and the serious lack of financing for preserving wildlife species and helping the communities living in proximity to those species, we have come up with what we believe could be a possible solution. The 0.5% royalty fee shall be paid by brands that use wildlife as part of their logo, brands that use wildlife images on their products, brands that use wildlife in their ad campaign and finally service providers. We have looked at the large amount of brands that use wildlife, from cars to sports teams, alcohol, cigarettes, food, toys, clothes, decorations and many others. All revenues would be collected in a worldwide fund through subsidiary national agencies and their distribution will be in accordance with the animal used: if a particular brand uses an elephant on their products, then the collected revenue will be distributed to preserving elephants. A key factor in our proposal is the distribution of funds towards the local communities in proximity of those species. As the communities are struggling with the bare minimum, they are put in the position to harm the animals in order to save their properties and to support or allow poachers to conduct their business. We hope that by creating a direct link between wildlife preservation and the community's welfare, better and longer lasting results can be achieved by finding practical and beneficial ways for people and nature to flourish together.

As we have looked at two ways the measure could be adopted, either by recognizing personality rights to wild animals used by the companies or imposing a tax on those companies that use wildlife in their branding, we believe the former is more preferable. Taxes are collected by government agencies and funds go into their budget for a country's economy and its nationals. In our vision, funds will be dispersed to local communities around the globe, to help them live a better life and simultaneously save wildlife species.

We hope this proposal to be a first step in solving the lack of financing for wildlife species, as it is highly important to restore and improve the critically endangered biodiversity, habitats and ecosystems. That will not only enable us to save the beauty of our planet but also preserve it so that future generations can admire and enjoy it too.

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