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DEEPFAKES AND THE CONCEPT OF SELF IDENTITY

AUTHORED BY - AKSHAT CHUGH

Abstract

The proliferation of generative artificial intelligence has made the creation of hyper-realistic synthetic media — commonly called "deepfakes" — cheap, fast, and accessible to virtually anyone with a smartphone. While much of the legal and policy conversation around deepfakes has focused on misinformation, election integrity, and non-consensual intimate imagery, a subtler harm has received comparatively little attention: the erosion of the individual's control over their own identity. This article examines deepfakes through the lens of the right to self-identity, tracing the doctrinal roots of that right in privacy and personality jurisprudence, mapping the specific ways synthetic media dispossesses individuals of their likeness, voice, and narrative, and evaluating the adequacy of existing legal tools — defamation, the tort of passing off, personality and publicity rights, and data protection law — to respond. It argues that self-identity in the age of generative AI must be reconceived not merely as a dignitary interest but as a proprietary and relational one, and proposes a layered regulatory response combining statutory recognition of an identity right, platform-level provenance obligations, and calibrated criminal sanctions for the most harmful uses.

I. Introduction

Due to the sudden rise of artificial intelligence and generative content creation models, there has been a sudden increase in cases which relate to the misuse of such models to create a 'fake likeness' to replicate as well as imitate people, which has proven to be quite a hassle when it comes to how it is being misused. The likeness can be of many types, for example — a person's face transposed onto another body in a video, a synthetic clone of a person's voice reading words they never spoke, or an entirely fabricated persona built from a handful of scraped photographs. What unites these otherwise diverse manipulations is that each one appropriates something that the law has traditionally treated as belonging, in a deep and almost inalienable sense, to the person depicted: their face, their voice, their mannerisms, and the narrative that others construct about who they are.

This article proceeds in six parts. Part II situates the deepfake phenomenon within the broader trajectory of synthetic media and generative modelling. Part III develops the conceptual link

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between deepfakes and self-identity, drawing on philosophical and psychological accounts of identity as narrative and relational. Part IV surveys the harms that flow from identity-based deepfakes, distinguishing dignitary, economic, and epistemic injuries. Part V evaluates the existing legal toolkit — constitutional privacy jurisprudence, tort law, personality rights, and data protection — against these harms. Part VI proposes reform, and Part VII concludes.

II. The Technological Trajectory of Synthetic Media

Deepfakes are the product of generative adversarial networks and, more recently, diffusion-based models, which learn the statistical distribution of a dataset — typically thousands of images or audio samples of a target individual — and then generate novel outputs that are statistically consistent with that distribution. Early deepfake technology, which emerged around 2017, required substantial computing power, technical skill, and a large corpus of source material, which naturally limited its use to a narrow set of actors. Contemporary consumer-facing tools have collapsed all three barriers: a convincing face-swap video can now be produced from a single photograph, and a cloned voice can be generated from a few seconds of audio scraped from a social media post.

This shift from scarcity to ubiquity is the central fact that should drive legal analysis. A regulatory framework calibrated to a world in which deepfakes required rare technical expertise is poorly suited to a world in which any individual, with no specialised training, can fabricate a realistic likeness of a classmate, colleague, or public figure in minutes. The law's traditional reliance on ex post remedies — sue after the harm occurs — assumes a relatively small number of potential defendants and a traceable chain of production. Mass accessibility breaks both assumptions.

III. Deepfakes and the Reconceptualisation of Self-Identity

A. Identity as Narrative and Relational Construct

Philosophical and psychological accounts of personal identity converge on the idea that identity is not a fixed, purely internal attribute but a narrative that a person constructs and that others help construct about them. The self is, in this sense, partly authored in public — through the accumulation of statements, images, and actions that others attribute to a person and treat as continuous with who that person is understood to be. This relational dimension of identity is precisely what deepfake technology attacks: it inserts fabricated statements and actions into the public record of a person's life, statements and actions the person never made or performed, and which nonetheless become entangled with how others perceive and narrate that person's

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identity.

Legal systems have long recognised fragments of this relational interest — in defamation, which protects reputation as a social good rather than a purely internal one; in the tort of appropriation of personality, which protects the commercial value of a recognisable likeness; and in data protection regimes, which increasingly recognise a right to control how one's personal data is used to construct profiles and inferences about oneself. Deepfakes sit awkwardly across all three categories because they combine reputational, proprietary, and informational harm in a single act of fabrication.

B. From Passive Subject to Active Author

A further conceptual shift concerns authorship. Historically, unauthorised use of a person's image — in a photograph or a painting — still depicted something the subject had actually done: they had posed, or been present at an event. Deepfake technology removes even that residual anchor to reality. The subject becomes, for the first time, an entirely passive raw material from which an unauthorised third party manufactures new, wholly fictional conduct and speech, and then attributes that fictional conduct and speech to the real person as though it were their own. This is qualitatively different from historical forms of misrepresentation because the deepfake does not merely distort an existing fact about the person; it invents facts about them from whole cloth while retaining the persuasive authority of photographic or audio realism.

IV. Mapping the Harms

A. Dignitary Harm

The most immediate harm is to dignity and reputation. Non-consensual sexual deepfakes, which remain the single largest category of deepfake content by volume, inflict harm that closely tracks the harms recognised in voyeurism and image-based sexual abuse jurisprudence, but with the added dimension that the depicted acts never occurred at all. Political deepfakes — fabricated statements attributed to public officials — inflict a related but distinct harm to the integrity of public discourse, since they exploit the audience's reasonable reliance on audiovisual evidence as a marker of truth.

B. Economic and Proprietary Harm

A second category of harm is economic. Voice-cloning technology has already been used to impersonate corporate executives in fraudulent wire-transfer schemes, and synthetic

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endorsements — a celebrity's fabricated voice or likeness promoting a product they never endorsed — divert commercial value that publicity rights doctrines have traditionally reserved to the individual. Because the marginal cost of producing a synthetic endorsement is now close to zero, the scale of potential economic diversion is far larger than what publicity rights law was designed to address.

C. Epistemic Harm

A third, more diffuse harm operates at the level of the broader information ecosystem. As the public becomes aware that any video or audio recording could, in principle, be synthetic, the evidentiary value of authentic recordings also degrades — a phenomenon often termed the "liar's dividend," whereby wrongdoers caught on genuine video can plausibly claim the footage is fabricated. This harm is not borne by any single depicted individual but by the informational commons on which self-identity claims ultimately depend, since a person's ability to prove who they are and what they have actually said or done rests on the continued credibility of audiovisual evidence generally.

V. The Adequacy of Existing Legal Tools

A. Constitutional Privacy and the Right to Identity

Privacy jurisprudence in many jurisdictions has, over the last decade, expanded to recognise informational self-determination — the idea that individuals retain a residual interest in controlling information about themselves even after it enters the public domain. This doctrinal expansion provides a promising foundation for an identity-based response to deepfakes, since it already treats the individual's narrative about themselves as something the state has an interest in protecting from unauthorised appropriation. However, privacy doctrine developed primarily to police state surveillance and the disclosure of true private facts; it is not naturally suited to the deepfake scenario, where the depicted content is false rather than secret, and where the perpetrator is typically a private individual rather than the state.

B. Defamation and Its Limits

Defamation law offers a partial remedy, since a deepfake that falsely attributes statements or conduct to a person will often satisfy the elements of defamatory falsehood. Its limits, however, are well known: defamation claims typically require proof of publication to a third party, quantifiable reputational harm, and — in many jurisdictions — proof of fault, all of which are difficult to establish quickly enough to prevent viral spread. Defamation also protects

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reputation, not identity as such; a deepfake that is flattering rather than damaging, or that simply appropriates a likeness for commercial gain without saying anything false about the person's character, falls outside its scope entirely.

C. Personality and Publicity Rights

Personality rights — recognised to varying degrees across jurisdictions as the right of an individual to control the commercial exploitation of their name, image, voice, and likeness — map more closely onto the deepfake problem, since they do not require proof of falsity or reputational damage, only unauthorised commercial use of an identifiable likeness. Yet personality rights, where they exist, are frequently limited to commercial contexts and to individuals with pre-existing commercial value in their persona, such as celebrities and public figures, leaving ordinary individuals whose likenesses are appropriated for harassment, political satire gone too far, or non-commercial abuse without a clear remedy.

D. Data Protection Frameworks

Modern data protection statutes, which typically define personal data broadly enough to include biometric identifiers such as facial geometry and voiceprints, offer another partial avenue, since the training of a deepfake model on a person's images or voice recordings without consent may itself constitute unlawful processing of personal data, independent of what the resulting synthetic content depicts. This upstream framing is valuable because it allows for intervention at the point of data collection and model training, before any synthetic content is even produced. Its limitation is enforcement: data protection regimes are built around identifiable data controllers, and much deepfake production occurs through anonymous or offshore actors and open-source tools that fall outside easy regulatory reach.

VI. Towards a Layered Regulatory Response

No single doctrinal category — privacy, defamation, personality rights, or data protection — was designed with generative synthetic media in mind, and each captures only a slice of the harm that deepfakes inflict on self-identity. A more coherent response requires action at three levels simultaneously.

A. Statutory Recognition of an Identity Right

Legislatures should consider codifying a free-standing right against the unauthorised synthetic reproduction of a person's identifiable likeness, voice, or mannerisms, decoupled from the

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commercial-use requirement that limits traditional personality rights and from the falsity requirement that limits defamation. Such a right would treat the unauthorised generation of a realistic synthetic likeness as an actionable wrong in itself, subject to defences for satire, parody, and clearly labelled fictional or artistic use.

B. Platform-Level Provenance Obligations

Because individual litigation cannot keep pace with the volume and velocity of deepfake content, platforms that host user-generated audiovisual content should be required to implement content provenance and labelling standards — technical watermarking or metadata standards that travel with synthetic media and disclose its artificial origin — and to maintain expedited takedown procedures specifically calibrated to non-consensual identity-based synthetic content, modelled on but distinct from existing notice-and-takedown regimes for copyright.

C. Calibrated Criminal Sanctions

Criminal law has a role to play, but only at the margins where the harm is most severe and most clearly intentional — non-consensual sexual deepfakes, deepfakes used to facilitate fraud, and deepfakes deployed to interfere with electoral processes through fabricated statements by candidates or officials. Overbroad criminalisation of synthetic media generation risks chilling legitimate uses in satire, education, and artistic expression, and any criminal provision should therefore be narrowly drawn around intent to deceive or to cause harm, rather than around the mere act of technical synthesis.

VII. Conclusion

Deepfake technology exposes a gap at the heart of existing legal protections for personhood: a set of doctrines built to guard reputation, commercial goodwill, and informational privacy, none of which was designed for a world in which any individual's face, voice, and narrative can be convincingly fabricated by a stranger with no technical training. Treating deepfakes purely as a subspecies of defamation or privacy invasion understates the distinctive harm involved — the conscription of a person's identity as raw material for the authorship of a life they did not live. A durable legal response must recognise self-identity as an interest worth protecting in its own right, supported by statutory recognition, platform accountability, and carefully bounded criminal sanctions, so that the accelerating accessibility of generative AI does not come at the cost of an individual's basic authority over who they are understood to be.