



PERSONALITY RIGHTS CHALLENGES IN THE DIGITAL AGE

ABSTRACT

What if reality had an exact perfect twin?

Imagine recreating and reimagining the iconic sitcom “Friends” with the original cast appearing as their younger selves, all achieved at a fraction of the original budget. What seemed impossible a decade ago is now a reality. This technological leap, driven by artificial agents capable of replicating exact human features, poses significant challenges to the legal framework surrounding intellectual property and personality rights. As this digital revolution unfolds, legal systems worldwide must adapt to address the complex issues arising from the use and potential misuse of these advanced technologies.

INTRODUCTION

The human replication of another person’s characteristics has long been construed as a fascinating work of art, mastered by sculptors, painters and performers throughout history. However, recent technological advancements have propelled this concept into unprecedented scientific territory. From hyper-realistic digital avatars to voice cloning and motion capture, the line between reality and digital creation is rapidly fading. Digital simulation technologies have not only revolutionized entertainment and gaming but also raised profound ethical and legal challenges.

The ability to digitally replicate individuals with such precision creates unprecedented opportunities for creative expression and economic efficiency. This, nevertheless, raises pressing questions as to: who owns the rights to a digital likeness or simulation? What happens when technology infringes on personal privacy and misappropriates

someone’s identity? How do we ensure creators and individuals maintain control over their work and likeness in a time where replication is relatively easy and effortless?

This paper will delve into these questions, all while emphasizing the need to establish a proper legal framework for the protection of the individual’s key personality elements.

PERSONALITY RIGHTS IN A NUTSHELL

Personality rights, also known as rights of likeness, publicity rights or image rights, are a set of rights that protect an individual’s identity, including their name, likeness, voice and/or any other defining characteristic(s).

Personality rights aim to provide control and profit from the commercial use of the persona (*i.e.* right of publicity) all while safeguarding the privacy and reputation of the individual (*i.e.* right to privacy).



KEY ELEMENTS OF PERSONALITY RIGHTS

Name, likeness, voice and other identifiable features of the individual are all considered key elements of an individual's persona.

Nowadays, these elements and rights are increasingly relevant as technologies become more sophisticated and accessible.

The protection of these elements is critical, as any unauthorized use of someone's identity can lead to financial loss, reputational damage and emotional distress.

WHO OWNS THE RIGHTS TO A DIGITAL SIMULATION?

Albeit from a *prima facie* standpoint the question and answer might seem dull, banal, and straightforward, the actual and correct answer for the proposed question holds multiple levels of complexity.

Two cannot debate that the general rule behind ownership rights, grant the individual, whose likeness and personality elements are being digitally exploited, the unequivocal power to award or prohibit the exploitation and use of his/her digital simulation.

However, the above is not always the case. During our experience in the entertainment industry, production companies are requesting the performers (actors mainly) to grant their explicit consent and irrevocable license to the production company in the event the latter wishes to create a digital version of the content produced and consequentially create a digital version of the performer. This is also considered standard practice in video games based on audiovisual cinematic works. It is worth noting that in some instances, and depending on the contractual contexts, the actor/individual may

retain part of the revenue pertaining to his underlying personality rights.

WHAT HAPPENS WHEN TECHNOLOGY INFRINGES ON PERSONAL PRIVACY AND MISAPPROPRIATES SOMEONE'S INDENTITY?

Nowadays, social media platforms are full of synthetic content that blurs the line between authenticity and fabrication. Unauthorized use of an individual's image, voice, or likeness are becoming increasingly common on social media, which is affecting the reasonable person's grasp of the information offered online.

Although some synthetic content is relatively easy to be discovered on the naked eye, other content is considered to be a bit more complex and could require the intervention of special forensic technological tools that can identify subtle inconsistencies in images, videos and audio.

Furthermore, the violations committed on an individual's personality rights could lead to multiple concerns, some affect the individual himself, others could spread across an entire community.

HOW DO WE ENSURE CREATORS AND INDIVIDUALS WILL MAINTAIN CONTROL OVER THEIR WORK AND PERSONALITY?

Protecting an individual's personality in the digital age is a complex challenge. While some industries and jurisdictions have taken steps to safeguard personality rights, such as celebrities and public figures in the United States registering their likenesses and voices with the United States Copyright Office, many parts of the world still lack clear frameworks.



In most jurisdictions, the protection of personality rights is considered uncharted territory, requiring a coordinated application of (1) legal, (2) technological, and (3) societal measures, all needing to be employed and deployed in tandem in order to achieve effective results.

1- Legal Frameworks:

One cannot argue that lawmakers need to expedite the lawmaking process in order to move at a semi decent pace compared to the fast-evolving technologies.

Legal frameworks need to be agreed upon on an international level to narrow and close the existing legal gaps.

In developed countries where personality rights are accounted for in their laws (e.g. United States particularly in California), personality rights are treated with a certain level of seriousness and would outlive the individual in some cases (i.e. the California Celebrities Rights Act of 1985). However, many impersonations are still not considered as personality rights infringement on the premise that these acts fall under the parody and fair use, in other cases creators of digital and synthetic content are hiding behind the alibi that the content lacks commercial exploitation. Nevertheless, although these might seem valid from a commercial and economical point of view, the said synthetic content should still be construed as an infringement *ab-initio* as one can still incur reputational harm from the unauthorized use of their identity unless the content creator can show written consent from the right holder.

In other countries, personality rights are still a non-defined legal term, whereby court decisions are being issued by assembling bits and pieces of old existing laws on privacy, intellectual property, and defamation. The absence of specific legislation creates a legal vacuum, leaving victims of identity misuse or infringement without clear recourse.

Therefore, the need for a harmonized international cooperation, and the drafting model laws clarifying all ambiguities, has become a pressing and urgent matter more than ever before for the protection of personality rights in today's digital realm. Moreover, we suggest the establishment of a centralized global system for the registration of the key elements of each individual (i.e. an international registrar), whereby any content published online *via* any platform, needs to be whitelisted by the registrar itself which will be acting as both a collective management organization for individuals and a content ID and rights management system.

2- Technological Measures:

In a world where humans are closing on the end of the biological singularity as we know it, and slowly entering the once hypothetical realm of the technological singularity in the sense of the development of AGI (Artificial General Intelligence) and after it the so called ASI (Advanced Super Intelligence), establishing global and universal ethical guidelines to combat the misuse of personality rights through technology itself is extremely important.

Developers of artificial intelligence agents must embed a level of ethical guidelines and technical safeguards into their systems. e.g.



watermarking, metadata tagging and even the use of blockchain-based authentication through the registrar proposed above.

Furthermore, all regulatory bodies need to work closely and in harmony with technology companies to establish standards for AI development and ethics that emphasize transparency and accountability.

3- Societal Awareness and Education:

Public awareness campaigns and educational initiatives are also crucial in ensuring individuals understand the potential risks and implications of synthetic media and simulations. By educating creators, users, and consumers about the ethical and legal boundaries of using someone's likeness, we can foster a more initiated digital culture.

Additionally, organizations and industry leaders should promote the adoption of ethical guidelines for the use of all forms of reality simulation technologies. Codes of conduct and certification schemes can incentivize creators and companies to prioritize ethical practices and respect for personality rights.

CONCLUSION

As we stand at the crossroads of biological singularity and approach the potential onset of technological singularity, the protection of personality rights becomes not just a legal or technological issue but also a societal imperative. Therefore, the rapid evolvement of all the above aspects is paramount to address and contain the problems facing the personality rights of individuals.

They say that a society grows great when old men plant trees whose shade they know they

will never sit in. By adopting the above-stated measures along with an international community's backing, we can plant the seeds of a future where human dignity; autonomy and privacy are preserved.

Yet, isn't history that taught us that the greatest challenges always come from within?

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