The Exploitation Of Image Rights In The Era Of Deep-Fakes[1]

1.0 INTRODUCTION

The rise of deep-fakes, powered by AI, has intensified concerns over image rights, a critical aspect of an individual's personal privacy (or right to privacy) and dignity. As deep-fake technology advances, individuals' likenesses can be misused for malicious purposes, ranging from defamation and impersonation to more severe cases such as fraud or sexual harassment. Given that the manipulation of images and videos is now so realistic, distinguishing between authentic and fabricated content becomes increasingly difficult.

This presents unique challenges for both individuals and the legal system in terms of safeguarding image rights.[2] In the context of image rights, individuals are generally granted control over how their image is used or distributed. Unauthorized use of someone's image, especially in ways that can harm their reputation, violate their privacy, or mislead others, can infringe upon these rights.

This issue becomes particularly pronounced with deep-fakes, where the unauthorized alteration of images or videos might not only violate an individual's privacy but also mislead viewers into believing false narratives about them.[3] Thus, this policy brief would consider the concept of image rights, deepfakes and the exploitation of these manipulated visual images.

2.0 CONCEPTUAL CLARIFICATION

2.1 Image rights

Image rights refer to the right of an individual to control or prevent the use, appropriation and exploitation of their image or likeness.[4] Image rights, also connote an individual's right to control or prevent the use, appropriation, and exploitation of their image. Despite its importance, the concept of image rights remains underdeveloped as a legal

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[2] Abisola Fayinka, 'Adopting Artificial Intelligence to Law Practice in Nigeria: A Lawyer's Delight or Dilemma? '<https://www.unilagreview.org/2019/04/01/adopting-artificial-intelligence-to-law-practice-in-nigeria-a-lawyers-delight-or-dilemma/> accessed 18 August 2022.

[3] Rowena Rodrigues, "Legal and Human Rights Issues of AI: Gaps, Challenges and Vulnerabilities" (2020) 4 Journal of Responsible Technology <https://www.sciencedirect.com/science/article/pii/S2666659620300056> accessed 19 August 2022.

[4] Steve Austin Nwabueze and Theodora Olumekor, "Beyond the Runway: Understanding the Scope of Image Rights Protection under Nigerian Law" (International Bar Association, August 18, 2021) <https://www.ibanet.org/image-rights-protection-nigerian-law> accessed March 7, 2025.

principle due to the lack of comprehensive laws and practical application in many jurisdictions. As a result, there is a need to prove the breach of other legal principles, such as passing off, performers' rights, or the human right to privacy, to assert image rights. Typically, image rights come into play for celebrities, particularly in relation to their partnerships or sponsorships with commercial brands. These rights allow public figures to regulate the publication of their image in a way that implies endorsement of a brand, even without a formal agreement or contract. In essence, celebrities have the ability to control how their image is used, especially when it suggests an endorsement of a product or service without their explicit consent. An example of an attempt to enforce the right of an individual to the protection or exploitation of their image rights in practice, can be found in the case involving Nigerian singer Mercy Chinwo and the artist Obidiz. Mercy Chinwo alleged that her name had been used in a song by Obidiz, despite the song not being directly about her. Instead, the song made comparisons to the behavior of another individual, which Mercy Chinwo claimed could lead listeners to believe it was referencing her. This case highlights how individuals, especially public figures, can assert their image rights when their name or likeness is used in a way that might cause harm or unwanted associations.

2.2 Deep-Fake(s)

Deep-fakes are a form of artificial intelligence (AI) used to manipulate the content of images and videos, often replacing the appearance of an individual who originally recorded the video with someone else's likeness or generating videos or images containing actions or statements directed by prompts sent to machine to generate these images.[5] These AI-generated manipulations are often hyper-realistic and create difficulty in distinguishing from actual or authentic content, and these videos or images are frequently created without the subject's knowledge or consent. Deep-fakes are primarily generated using a technique called generative adversarial networks (GANs), which involve a dual-system approach consisting of two neural networks: a generator and a discriminator. The generator creates the fake content, while the discriminator evaluates it

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[5] Barney Nick and Wigmore Ivy, 'Deepfake AI (Deep Fake)' (2023) <https://www.techtarget.com/whatis/definition/deepfake> accessed 1 July 2023.
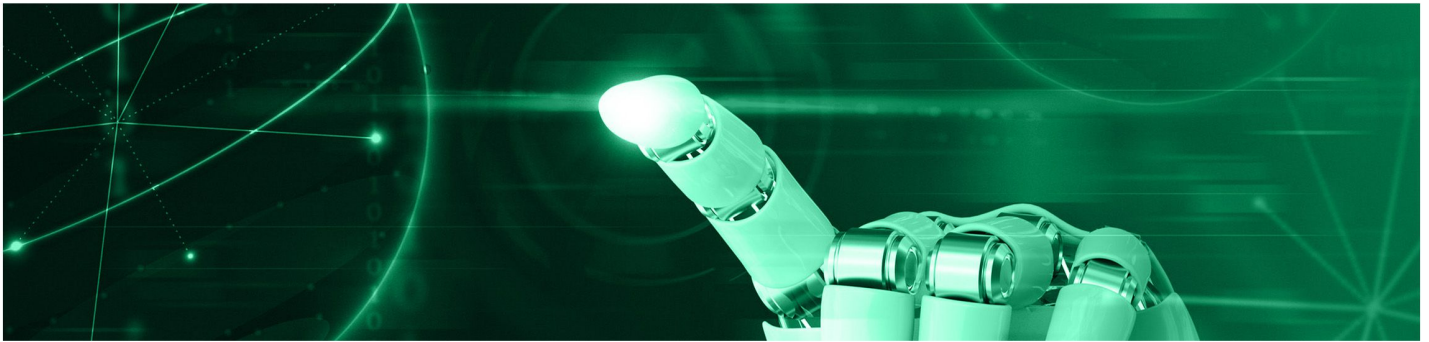
against real data, enhancing the realism of the generated content over time through repeated iterations.[6]

3.0 THE INCREASING PROBLEM OF THE USE OF DEEP-FAKES IN RELATION TO IMAGE RIGHTS

In the context of deep-fakes, the implications for image rights are significant. There have been numerous instances where manipulated images or videos or images of well-known personalities, celebrities, or politicians have been created, depicting them engaging in actions or making statements they never did. These deep-fake videos or images can be used to promote political agendas, create false sexual or pornographic content, or exploit intellectual property rights. For instance, deep-fake technology can be used to fabricate videos or images of public figures singing, dancing, performing satire, or engaging in dramatic or theatrical acts, all of which can damage their public image and reputation, in the instance where such acts are against public goodwill.

There are various examples of the issues mentioned above, such as when deepfake and AI-generated images were shared of celebrities supposedly endorsing or supporting political candidates for the United States Presidential election. In reality, these celebrities had neither endorsed these candidates nor shown any personal support for those specific political parties.[7] Additionally, there was an incident involving a French woman who alleged that a substantial amount of money was given to a celebrity in a deepfake scam. In this case, the perpetrator generated images of the celebrity and requested money for surgery.[8]

The victims of these deepfake images are not limited to celebrities but also include individuals in both personal and corporate settings. One example involved an employee who validated the transfer of a substantial sum of money from a corporate organization to an account directed to him. The scammer had generated a deepfake image of his employer, fellow employees, and even their family members to create a convincing virtual

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[6] Carlianna Dengel, 'Deepfakes and Intellectual Property: What You Should Know' (27 October 2022) <https://www.romanolaw.com/2022/10/27/deepfakes-and-intellectual-property-what-you-should-know/> accessed 1 July 2023.

[7] Steve Austin Nwabueze and Theodora Olumekor, "Beyond the Runway: Understanding the Scope of Image Rights Protection under Nigerian Law" (International Bar Association, August 18, 2021) <https://www.ibanet.org/image-rights-protection-nigerian-law> accessed March 7, 2025.

[8] Science O-OD, 'French Woman Scammed out of €830,000 in Deepfake "Brad Pitt" Scheme' (Medium, 16 January 2025) <https://odsc.medium.com/french-woman-scammed-out-of-830-000-in-deepfake-brad-pitt-scheme-368ca2291954> accessed 10 March 2025.

company meeting, all for the purpose of deceiving the employee into making the transfer.[9] The question that arises is: how can the public trust information shared on online platforms when images can be generated using the face or likeness of a trusted individual or public figure to spread false information? Additionally, how can private individuals or public figures, prevent the unauthorized use of their images or likeness, whether by unknown individuals or corporate organizations?

In 2023/2024, when the Screen Actors Guild–American Federation of Television and Radio Artists (SAG-AFTRA) went on strike, one of their key demands was to oppose contractual terms that allowed media companies or organizations to use their pictures or likenesses to generate deepfakes. This practice was seen as a way to speed up the production of films, dramas, or video game content. While technology might be deemed as a way to make work "easier", however, the lines are blurred in protecting the personal

interest of the individuals concerned.[10] The widespread access to images and videos of public figures, facilitated by the internet and other technological advancements, has made it easier to exploit their image rights. Furthermore, there are also instances where deepfake technology is used to create pornographic images of both public figures and private individuals, which are then used for the purpose of blackmailing the person into sending money in exchange for the removal of those images. This accessibility to platforms for the generation of these images have also led to a general lack of awareness and diligence in protecting these rights, and there is often a lackadaisical attitude toward the issue, with only a few legal cases addressing the unauthorized exploitation of an individual's image rights. As deep-fakes become more sophisticated, it becomes increasingly difficult to distinguish between genuine content and manipulated media, making it more challenging to protect image rights and

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[9] Chen Heather and Magramo Kathleen, 'Finance Worker Pays out $25 Million after Video Call with Deepfake "Chief Financial Officer"' (CNN, 4 February 2024) <https://edition.cnn.com/2024/02/04/asia/deepfake-cfo-scam-hong-kong-intl-hnk/index.html> accessed 10 March 2025.

[10] 'AFTRA Pushes for A.I. Protections, Representation at Game Developers Conference' (SAG, 3 April 2024) <https://www.sagaftra.org/sag-aftra-pushes-ai-protections-representation-game-developers-conference> accessed 10 March 2025.

enforce legal protections.[11]

4.0 CONCLUSION

In conclusion, the rise of deepfake technology and AI-generated imagery poses significant challenges in both personal and public spheres. From the manipulation of celebrity endorsements to corporate scams, the ability to create hyper-realistic, yet entirely fabricated, images raises serious questions about the trustworthiness of information shared online. As seen in the actions of organizations like SAG-AFTRA, there is a growing recognition of the need for protections against the misuse of digital likenesses. As technology advances, it is crucial that legal, ethical, and technological frameworks evolve to safeguard individuals and institutions from the harmful impact of these emerging threats, ensuring that the integrity of information remains intact.

The right of an individual to protect the unauthorized use or exploitation of their images is closely tied to their fundamental right to privacy, as well as various other specific rights, including copyright and performers' rights (which apply to creators such as musicians, film producers, and actors), or generally to private individuals. It is therefore concerning to witness the increasing spread of false, unverified, or illegal information through the exploitation of people's image rights. This not only infringes on personal freedoms but also undermines trust in the digital landscape, highlighting the urgent need for stronger safeguards and ethical standards to protect individuals from such violations.

5.0 RECOMMENDATIONS

In light of the above analysis, the following recommendations are proffered:

1. **Creation of a sui generis law:** The creation and implementation of a sui generis law to regulate the concept of image rights, globally, which may manifest as an international agreement or domestic legislations is essential. In the absence of such laws, there is a significant lack of accountability. Therefore, specific regulations must be established to safeguard the image rights of individuals. Additionally, this law would enforce legal obligations for transparency in the creation and dissemination of AI-generated content, such as deepfakes.

[11] Andres Guadamuz, 'Revamp Image Rights to Fight Deepfakes' (TechnoLlama, 29 December 2020) <https://www.technollama.co.uk/revamp-image-rights-to-fight-deepfakes> accessed 1 July 2023.

2. Strict enforcement of personal rights: There should be stricter enforcement of personal rights, particularly regarding an individual's right to privacy, as well as greater control over the use of images derived from public spaces.

3. Establishment of Clear Consent Frameworks: Implement legal frameworks that require explicit, informed consent from individuals before their images or likenesses can be used for commercial, media, or digital purposes, including deepfakes.

Consent should be a requirement for both the creation and dissemination of such images.

4. Strengthening Penalties for Image Misuse: Introduce stricter penalties for the unauthorized use or manipulation of images, especially in cases involving defamation, blackmail, or other forms of exploitation. This could include both civil and criminal liabilities for offenders.

5. Right to be Forgotten and Image Removal: Enact or strengthen the "right to be forgotten" in the digital space, specifically focusing on individuals' rights to have images or content that have been misused or manipulated removed from digital platforms and archives.