

Navigating the Impact of Deepfakes in Hollywood: The Legal Ramifications of Video Manipulation

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An explicit deepfake of Taylor Swift abruptly circulated the internet this past week, with one photo reaching 45 million views on X, formerly known as Twitter. Although generative artificial intelligence (AI) has seeped its way into the education and legal systems, there is currently very little conversation concerning other forms of AI and their implications. A deepfake is “any of various media, *esp.* a video that has been digitally manipulated to replace one person's likeness convincingly with that of another, often used maliciously to show someone doing something that he or she did not do.”¹ Taylor Swift is not the first celebrity to fall victim to non-consensual deepfakes. Hollywood star Scarlett Johansson is currently taking legal action against Lisa AI: 90s Yearbook & Avatar—an app used to create deepfake videos—after a 22-second advertisement that featured the actor's likeness and name was released on X on October 28th, 2023.² Johansson's legal representatives quickly made it clear that she was not endorsing or connected to the brand. Fellow Hollywood star Tom Hanks was also involved in an unnegotiated advertising campaign where he was seen promoting a dental plan.³ The actor was quick to respond on Instagram, warning his fans that he had “nothing to do with [the company].”⁴ Although AI-generated celebrity deepfakes in advertisements may seem insignificant in the grand scheme of things, situations like Taylor Swift's deepfake debacle show the disturbing abilities AI can have and force us to start a conversation concerning how deepfakes are impacting not only Hollywood but the legal system as well. Judiciaries must integrate software solutions or implement procedural frameworks for discerning deepfake evidence that arises from the escalating difficulty in its detection owing to technological advancements. Failure to do so risks inflicting harm upon innocent parties.

From a publicity standpoint, deepfakes are difficult to dispute because of the most logical

¹ deepfake, n. meanings, etymology and more | Oxford English Dictionary. (2023). *Oed.com*. <https://doi.org/10.1093/OED//7847968874>

² Shanfeld, E. (2023, November 1). *Scarlett Johansson Takes Legal Action Against AI App That Ripped Off Her Likeness in Advertisement*. Variety. <https://variety.com/2023/digital/news/scarlett-johansson-legal-action-ai-app-ad-likeness-1235773489/>

³ Zee, M. (2023, October 1). *Tom Hanks Warns Fans About “AI Version of Me” Promoting Dental Plan: “I Have Nothing to Do With It.”* Variety. <https://variety.com/2023/film/news/tom-hanks-ai-video-dental-plan-warns-fans-1235741781/>

⁴ *Instagram*. (n.d.). *www.instagram.com*. Retrieved January 30, 2024, from <https://www.instagram.com/p/Cx2MsH9rt7q/>

rebuttal: freedom of speech. A defendant may argue that their content is transformative, meaning it should be considered as a parody, satire, or comedy and, therefore, must be protected by the First Amendment.⁵ Public figures and celebrities may combat this using claims of intentional infliction of emotional distress, defamation, or harassment.⁶ However, with rapid technological advancement and the increasing difficulty of detecting deepfakes, the courts are struggling to find a balanced solution to keep public figures safe without jeopardizing the First Amendment.⁷ The Lanham Act, also known as the Trademark Act of 1946, addresses this issue to a certain extent: it holds that if a deepfake has commercial intent and “is likely to cause confusion or to deceive as to the affiliation, connection, or association of such person with another person,” it is liable to civil action.⁸ One problem that arises, however, is the question of who is legally liable for the deepfakes. The person who created it? The app that creates the content? The platform where the video is shared? According to Section 230 of the Lanham Act, no user or account “shall be treated as the publisher of any information provided by another information content provider.”⁹ However, “no court has held that Section 230 bars false association claims,” meaning users can hold websites accountable for deepfakes.¹⁰

Simultaneously, there is a growing concern within the justice system of deepfakes being used as evidence or scapegoats for defendants. If falsified audio and video are submitted as evidence and are not properly identified, innocent parties will be hurt. If people are unable to determine if what they are viewing or hearing is real, the court will be subject to human testimony, which can be equally as faulty. Although seven leading AI companies made voluntary commitments to combatting irresponsible AI usage in July 2023—using a watermarking system to reduce deception and reporting their system’s capabilities, limitations, and areas of appropriate

⁵ Bass, D. F., Penning, N., & on, S. A. (2023, July 25). *The Legal Issues Surrounding Deepfakes*. [Www.honigman.com. https://www.honigman.com/the-matrix/the-legal-issues-surrounding-deepfakes](https://www.honigman.com/the-matrix/the-legal-issues-surrounding-deepfakes)

⁶ Bass, D. F., Penning, N., & on, S. A. (2023, July 25). *The Legal Issues Surrounding Deepfakes*. [Www.honigman.com. https://www.honigman.com/the-matrix/the-legal-issues-surrounding-deepfakes](https://www.honigman.com/the-matrix/the-legal-issues-surrounding-deepfakes)

⁷ *Artificial intelligence, free speech, and the First Amendment* | *The Foundation for Individual Rights and Expression*. (n.d.). [Www.thefire.org. Retrieved January 30, 2024, from https://www.thefire.org/research-learn/artificial-intelligence-free-speech-and-first-amendment#:~:text=Just%20as%20a%20realistic%20painting](https://www.thefire.org/research-learn/artificial-intelligence-free-speech-and-first-amendment#:~:text=Just%20as%20a%20realistic%20painting)

⁸ Legal Information Institute. (n.d.). *15 U.S. Code § 1125 - False designations of origin, false descriptions, and dilution forbidden*. LII / Legal Information Institute. <https://www.law.cornell.edu/uscode/text/15/1125>

⁹ *Section 230*. (n.d.). Electronic Frontier Foundation. <https://www.eff.org/issues/cda230#:~:text=It%20states%3A>

¹⁰ Bass, D. F., Penning, N., & on, S. A. (2023, July 25). *The Legal Issues Surrounding Deepfakes*. [Www.honigman.com. https://www.honigman.com/the-matrix/the-legal-issues-surrounding-deepfakes#:~:text=Importantly%2C%20%E2%80%9Cno%20court%20has%20held](https://www.honigman.com/the-matrix/the-legal-issues-surrounding-deepfakes#:~:text=Importantly%2C%20%E2%80%9Cno%20court%20has%20held)

and inappropriate use¹¹—this task ultimately should not be left to the companies. There is a dire need for the courts to adopt software applications or have an established process to identify deepfake evidence as it becomes harder to identify with advancing technology.

Whilst the court's main concern is regarding the submission of deepfakes as evidence, there is a parallel worry that a defendant will claim that any or all evidence presented against them is comprised of deepfakes. This essay has slightly touched on the dystopian perspective in which the public can no longer believe anything they are seeing, and based on the current trajectory of AI, this idea is not too far-fetched. An example of this issue was already seen in April 2023, when Elon Musk allegedly claimed in an interview conducted in 2016, "A Model S and Model X, at this point, can drive autonomously with greater safety than a person. Right now."¹² Two years later, Walter Huang was killed in a car crash while driving a Model X. The family of Huang filed a lawsuit against Tesla and sought to depose Musk, claiming the automated software failed, while also intending to use Musk's statement in the 2016 interview as part of their lawsuit. Tesla opposed the request in court filings, arguing that Musk does not recall this statement and questions the authenticity of the video. Tesla's legal team stated that "[Musk], like many public figures, is the subject of many 'deepfake' videos and audio recordings that purport to show him saying and doing things he never actually said or did."¹³ Many people, including the judge on the case, found Tesla's statement troubling as it implies that any celebrity can avoid taking accountability for their actions or words by using deepfakes as a scapegoat.¹⁴ With Elon Musk already demonstrating the corrupt ways a person can utilize this technology, it will not be long before these claims are commonly made in court.

As of now, at least 10 states have deep-fake laws to address AI-altered audio and videos, but most are connected to deepfake pornography. In 2019, California was one of the first states to

¹¹ The White House. (2023, July 21). *FACT SHEET: Biden-Harris Administration Secures Voluntary Commitments from Leading Artificial Intelligence Companies to Manage the Risks Posed by AI*. The White House. <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/21/fact-sheet-biden-harris-administration-secures-voluntary-commitments-from-leading-artificial-intelligence-companies-to-manage-the-risks-posed-by-ai/>

¹² Elon Musk's statements could be "deepfakes", Tesla defence lawyers tell court. (2023, April 27). *The Guardian*. <https://www.theguardian.com/technology/2023/apr/27/elon-musks-statements-could-be-deepfakes-tesla-defence-lawyers-tell-court>

¹³ Elon Musk's statements could be "deepfakes", Tesla defence lawyers tell court. (2023, April 27). *The Guardian*. <https://www.theguardian.com/technology/2023/apr/27/elon-musks-statements-could-be-deepfakes-tesla-defence-lawyers-tell-court>

¹⁴ Vincent, J. (2023, April 27). *Tesla lawyers claim Elon Musk's past statements about self driving safety could just be deepfakes*. The Verge. <https://www.theverge.com/2023/4/27/23700339/tesla-autopilot-lawsuit-2018-elon-musk-claims-deepfakes>

pass Assembly Bill 602—a bill that criminalizes altered depictions of sexually explicit content.¹⁵ Georgia, Hawaii, Virginia, and Texas followed suit and criminalized nonconsensual deepfake porn in the following years.¹⁶ Although this is a step in the right direction for courts confronting AI, there must be a reevaluation of what is considered the gold standard of audio and video evidence. Luckily, institutions like MIT and Northwestern are creating technology to detect deepfake videos, but as AI continues to evolve, this endeavor will perpetuate a cat-and-mouse game where other technologies must continually strive to catch up with and outpace the advancements in AI-driven manipulation.

¹⁵ “Akin, an Elite Global Law Firm.” *Akin Gump Strauss Hauer & Feld LLP - California Deepfake Laws First in Country to Take Effect*, www.akingump.com/en/insights/blogs/ag-data-dive/california-deepfake-laws-first-in-country-to-take-effect

¹⁶ Mulvihill, Geoff. “What to Know about How Lawmakers Are Addressing Deepfakes like the Ones That Victimized Taylor Swift.” *AP News*, 31 Jan. 2024, apnews.com/article/deepfake-images-taylor-swift-state-legislation-bffbc274dd178ab054426ee7d691df7e.