Copyrighting Voice and Image

How Denmark's New Deepfake Law Challenges Traditional Personality Rights in Europe

Alma Eggers

26.03.2026 doi: 10.59704/1e52ec7471ea264b

With the increasing proliferation of deepfakes and rapid development of artificial intelligence, Denmark has become the first country in the European Union to specifically protect one's image and voice with a new legislative initiative. As of 31 March 2026, a new intellectual property right is expected to enter into force, modelled as a neighbouring right to copyright law and specifically designed to protect a person's voice and physical appearance. Traditionally, voice and image have been protected as personality rights that are not transferable, primarily defensive in nature, and only partially commercial. Denmark's new legislation marks a significant departure from this tradition by reconceptualising voice and image as intellectual property rights, making them potentially transferable and commercially exploitable.

While this step is important, particularly for performers, it cannot replace personality rights, which remain indispensable in cases such as deepfake pornography. Furthermore, given the inherently cross-border nature of deepfake cases, a purely national solution will not suffice.

Deepfakes and the right to one's own image

Deepfakes are digital manipulations of image, video, or audio material and give rise to a range of risks. They are frequently used to produce so-called deepfake pornography, can be employed for political misrepresentation or the spread of misinformation and, moreover, make it possible to imitate artists, for instance by generating new songs or films with their voice and appearance.

What these scenarios have in common is that virtually any deepfake depicting a natural person interferes with an individual's right to their own image, irrespective of whether the person concerned is a public figure or a private individual. What distinguishes them, however, is the nature of the harm involved and, consequently, the protective aim pursued. Deepfake pornography primarily harms the individual depicted, interfering with their intimate sphere and personal dignity. Deepfake music and film production similarly affect the individual but shift the focus towards the economic value associated with their identity. Political deepfakes, by contrast, pose a threat not so much to the politician depicted as to the public at large, undermining informed debate and democratic discourse. The protective aim is here less about safeguarding the individual and more about protecting society from manipulation and misinformation.

At the European level, the right to one's own image is derived from Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private and family life. According to the case law of the European Court of Human Rights, this right encompasses an individual's control over the use of their image. A comparable approach can be found in French law. Article 9 of the Civil Code protects privacy (*vie privée*) and thus forms the basis of the French right to one's image (*droit à l'image*), which, although not codified, has been developed through judicial decisions. In Germany, the right to one's own image is recognised both at the level of statutory law and constitutional law. At the statutory level, it is primarily governed by sections 22 and 23 of the *Kunsturhebergesetz* (Copyright Act for Artistic Works). At the constitutional level, it is understood as an aspect of the general right of personality, derived from Article 1(1) in conjunction with Article 2(1) of the *Grundgesetz* (Basic Law).

By contrast, the position in the Anglo-American legal sphere is markedly different. The United Kingdom does not recognise a freestanding general right of personality, nor a specific right to one's own image. Historically, this approach has been justified, inter alia, on the basis that images are generally regarded as carriers of information, the dissemination of which may serve a legitimate public interest and for the freedom of expression. In the United States a distinction is drawn between the *Right of Privacy* and the *Right of Publicity*. Whereas the former protects an individual's private sphere, the latter enables, in particular public figures, to control the commercial exploitation of their name, image, or identity. In several U.S. states this right is expressly conceptualised as a form of intellectual property right.

A regulatory gap

Deepfakes present a novel legal challenge in a number of respects and expose a potential regulatory gap. In response, several Member States of the European Union, most recently Denmark, have begun to pursue legal approaches that increasingly resemble those found in the United States. This development suggests a possible shift in the conceptualisation of the right to one's own image: traditionally framed as a personality right in most continental European countries, it may gradually be recast along the lines of an intellectual property right. This shift, however, has attracted criticism. Accordingly, the right to one's own image is intrinsically and closely linked to the personality of the individual depicted and should therefore not be an economic intellectual property right.

However, what distinguishes deepfakes from earlier technological developments, such as photography, which historically prompted the emergence of image rights as a response to the unprecedented ability to reproduce a person's image without their consent, is that deepfakes merely generate avatars rather than reproducing real moments from a private or public life. Existing control mechanisms in this area are therefore largely limited to injunctive relief and defensive claims. Furthermore, the notion that images inherently convey a form of "truth" must now be regarded as outdated. Deepfakes do not represent the underlying personality, but rather the body as a mere external form. Whereas economic value was traditionally created through an individual's artistic works, such as songs or performances, that value is now increasingly attached to the body itself, to the "shell", which, although it cannot be entirely separated from the personality, can nevertheless be distinguished from it far more clearly than in the past, when images were assumed to depict the real person and an authentic moment. Licencing one's appearance remains problematic in most European jurisdictions, as the human body cannot be "sold". However, the issue here is not the commodification of the body itself, but rather the use of a person's digital representation.

In certain respects, therefore, deepfakes nonetheless exhibit parallels with copyright law. In jurisdictions such as Germany and France, copyright follows the model of *Author's Rights*, encompassing not only economic rights but also moral rights that protect the personal bond between author and work. Accordingly, copyright in continental Europe maintains a strong personality-based dimension. By contrast, the United Kingdom and the United States adhere more closely to a copyright model that primarily emphasises economic exploitation rights.

In both German and French law, an intellectual property-based approach to image rights is generally rejected so far. However, economic rights in relation to one's image are already recognised, but whether these must be explicitly regulated under intellectual property law remains an open question. For example, the *Bundesgerichtshof* (German Federal Court of Justice) has not yet ruled definitively on this matter.

New intellectual property right

Denmark is currently pursuing an approach that is also being actively debated for adoption in the Netherlands. The Danish approach is particularly noteworthy in that it distinguishes between two categories of individuals: ordinary persons and performers. On the one hand, performers, understood as performing artists who do not hold copyright in the underlying work but instead enjoy rights in their performance, are to be

granted specific rights over their voice and appearance. On the other hand, the proposed framework seeks to extend protection to individuals who are not performers. Denmark's initiative does not extend copyright to cover voice and image, but rather creates an entirely new intellectual property right, modelled on the neighbouring rights already familiar from copyright law, such as those enjoyed by performers or broadcasters.

However, there remain strong voices arguing that the right to one's own image should continue to be conceptualised as a personality right. One major advantage of this approach lies in its close connection to the individual. The human body and personality are inherently intertwined; it is difficult, if not impossible, to separate a person's physical appearance from their identity. In this sense, the right to one's own image is fundamentally an expression of personality. This understanding is particularly relevant in light of the reality of deepfakes. A significant proportion of deepfake content, often cited as around 96 per cent, consists of pornographic material, disproportionately affecting women and children. Such uses clearly implicate personal dignity and identity, reinforcing the view that protection should be grounded in personality rights. In this context, P. Bernt Hugenholtz argues that different harms associated with deepfakes should be addressed within their respective legal frameworks. In particular, misinformation primarily concerns the protection of the public rather than the individual depicted. In such cases, regulatory measures, such as transparency obligations, may be sufficient. This approach is reflected, for instance, in the Article 50 EU AI Act, which introduces transparency requirements for AI-generated content, while deepfake pornography is more appropriately addressed within the scope of personality rights.

However, there are also disadvantages to this approach when applied to deepfake usage. Personality rights primarily function as defensive rights, which may lead to gaps in protection. A significant gap arises from the imbalance between the stronger economic protection afforded to creative works and the comparatively weak protection afforded to a person's voice and physical appearance. While copyright holders benefit from a well-developed system of economic rights, including licensing, transferability and enforcement mechanisms, no equivalent comprehensive framework exists for personal attributes such as likeness and voice. This asymmetry becomes particularly evident in deepfake cases and complicates, among other things, the assessment of damages due to the absence of established valuation standards. In practice, image and voice are increasingly subject to commercial exploitation through contractual and licensing arrangements. The economic value of the right to one's own image is therefore likely to continue to rise in the future. Moreover, robust protection of image and voice rights may help to preserve the incentive structure underlying copyright, which is already under pressure from AI, by encouraging the creation of art and new works without fear of unauthorised exploitation.

This reflects a broader shift in which voice and appearance are treated as economic assets. From this perspective, recognising an intellectual property dimension in the right to one's own image aligns with current market realities.

Conclusion and outlook

Reconceptualising the right to one's own image, particularly for performers, as an intellectual property right is necessary to address the growing commercial exploitation of voice and appearance in the digital age. Such a framework, must, however, incorporate moral rights at least as strong as those found in continental European copyright law, if not stronger, given the uniquely personal nature of the attributes at stake. Unlike a mere economic right, as seen in the United States, this would ensure that the personality interests underlying voice and image remain protected even where commercial exploitation is permitted.

In other situations, especially cases involving deepfake pornography, stricter measures are required, many of which are more appropriately rooted in personality rights. Deepfake misinformation cases, however, present a particular challenge. They raise more direct conflicts with freedom of expression and pursue a somewhat different protective aim, as they

are concerned not only with safeguarding the individual depicted but also with protecting the public from deception and manipulation.

It appears unlikely that countries such as France or Germany with strong personality rights will take immediate legislative action in this area. However, the European legislator may be better positioned to address these issues at a supranational level, not least in order to prevent forum shopping. Harmonisation at the European level is particularly important in light of digitalisation and the inherently cross-border nature of these cases. The European Union has already begun to respond to these challenges, most notably through the EU AI Act.

Nevertheless, significant questions remain, particularly with regard to implementation and enforcement. Violations of personality and intellectual property rights on the internet are likely to persist, and the cross-border dimension will often make it difficult, if not impossible, to identify and hold perpetrators accountable. European states have attempted to address this issue, in part through criminal law measures, as reflected for example in provisions such as a newly proposed § 201 b of the German Criminal Code in Germany and the Article 226-8 *Code Pénal* in France.

The introduction of a new intellectual property right in respect of voice and appearance is a meaningful step forward, and one that extends protection to both performers and ordinary people, giving both categories a robust right over their digital likeness. It can, however, only address certain categories of deepfake cases. The deeper challenge remains one of implementation and enforcement, and it is here that the European Union has the opportunity to take meaningful steps towards advancing coherent protection across the European legal space.

ABOUT THE AUTHOR

Alma Eggers

Alma Eggers is a PhD candidate at Paris-Panthéon-Assas and Humboldt University of Berlin, and a Research Fellow at the DFG Graduate School DynamInt.Alma Eggers is a PhD candidate at Paris-Panthéon-Assas and Humboldt University of Berlin, and a Research Fellow at the DFG Graduate School DynamInt.

SUGGESTED CITATION

Eggers, Alma: Copyrighting Voice and Image: How Denmark's New Deepfake Law Challenges Traditional Personality Rights in Europe, Verfassungsblog, 26.03.2026, doi: 10.59704/1e52ec7471ea264b.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260326-163535-0.