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Review paper

Alexandra Salnikow, PhD student
Faculty of Law, University of Vienna, Austria
E-mail: alexandra.salnikow@univie.ac.at
ORCID-ID: 0009-0004-7290-249X

DEEPFAKES ACROSS JURISDICTIONS: REGULATORY APPROACHES IN TENNESSEE AND DENMARK TO THE PROTECTION OF PERSONAL CHARACTERISTICS

ABSTRACT

Responding to calls from artists' organisations (e.g., the US Screen Actors Guild and Germany's Voice Actors Association), regulators have begun to act, notably with Tennessee's ELVIS Act and Denmark's proposal to amend its Copyright Act to curb the sharing of realistic, digitally generated imitations of personal characteristics and performances. This paper analyses these regulatory responses with a targeted focus on the protection of personal characteristics (image and voice) and measures designed to mitigate risks for artists and performers. It contrasts Tennessee's explicit consent-based protection (including voice) with Denmark's copyright-anchored draft that effectively codifies personality-control norms while raising questions of fit, effectiveness against fully synthetic deepfakes, and compliance with EU copyright harmonisation. The paper argues that coherent safeguards for artists require clear consent defaults for image and voice and careful alignment with EU law – offering lessons for Member States and, ultimately, for a more coordinated EU and global approach to governing deepfakes ethically and responsibly.

Keywords: *deepfakes, image and voice protection, EU law, regulatory responses, artificial intelligence*

1. INTRODUCTION

Deepfakes are AI-generated synthetic media that can convincingly imitate individuals. This technology has sparked a worldwide discussion on how to address its risks. It gained prominence in 2017 with a Reddit user (username 'deepfakes') who edited the faces of famous actresses and singers into

pornographic videos and uploaded them to the platform.¹ The term² is likely a hybrid of 'deep learning', referring to the fact that deepfakes are usually created with deep learning technology which is a form of artificial intelligence, and 'fake', reflecting the deceptive deceitful nature of deepfakes, which may appear to be authentic, while being completely synthetic.

This negative connotation of the term also reflects the dangers deepfake technology poses. Although the technology as such may not be inherently harmful, it lends itself to many harmful uses³, as illustrated by cases of deepfake-based disinformation and the rise of deepfake pornography. As early as 2019, over 90% of deepfake videos online contained pornographic content.⁴ This trend has remained unchanged, as evidenced by incidents with the AI tool Grok. Of the millions of images generated over nine days, at least 41% were sexualised images of women.⁵ Many legislative responses, therefore, target this ongoing problem of non-consensual sexual synthetic imagery, and in light of the incidents with Grok, the EU Parliament included recommendations⁶ to include provisions on the protection against deepfake pornography in the Digital Omnibus.

¹ The original website on Reddit can still be seen on the waybackmachine, even if the videos have been deleted in the meantime. Waybackmachine, Webpage of the Reddit user 'deepfakes' on 17 December 2017, <https://web.archive.org/web/20171212214356/https://www.reddit.com/user/deepfakes/submitted/>, 26 March 2026.

² It is quite interesting that not every language chooses to incorporate the English neologism in their language, some languages create their own. This best can be observed when looking at Art 3 No. 60 of the AI Act in the different languages. For example, Greek, Spanish or French have created their own neologism to describe AI-generated synthetic media. A table with a comparison of the term provided by the author of this paper, can be found here: Salnikow, A., Term deepfakes in Art. 3 No. 3 of the AI Act in different languages - overview, <https://lush-antelope-62c.notion.site/Term-deepfakes-in-Art-3-No-3-of-the-AI-Act-in-different-languages-overview-315909c4539280199771d169c2f7368c>, 26 March 2026.

³ For an overview of potential misuse of deepfakes see EPRS, *Tackling deepfakes in EU policy*, 4.

⁴ Deeptrace, The state of deepfakes: Landscape, threats, and impact, 2019, p. 1, https://regmedia.co.uk/2019/10/08/deepfake_report.pdf, 26 March 2026.

⁵ Conger, K.; Stuart, A., *Elon Musk's Grok A.I. Chatbot Made Millions of Sexualized Images, New Estimates Show*, The New York Times, 22 January 2026, <https://www.nytimes.com/2026/01/22/technology/grok-x-ai-elon-musk-deepfakes.html>, 26 March 2026.

⁶ See Amendments 171 to 176 which suggest including sexual AI imagery as a forbidden practice in Art 5 AI Act and Amendments 253 to 254 which suggest obliging the providers of AI systems in Art 50 AI Act to include measures to prevent the generation of deepfakes depicting non-consensual nudity or sexually explicit conduct. Kokalari A. and McNamara, Amendments 171-317: Draft Report on the Proposal for a Regulation of the EU Parliament and of the Council amending Regulations (EU) 2024/1689 and (EU) 2018/1139 as regards the simplification of the implementation of harmonised rules on artificial intelligence

At the same time, deepfake technology offers significant positive applications, for example, in political and social satire, marketing, research, and psychological care.⁷ In the entertainment and music industry, deepfake technology may enable artists to license their face or voice in new ways. Some well-known celebrities already offer their voices on voice-generation websites for public use.⁸ With the current technology, it is easy to realistically replicate the voice or appearance of a person with minimal source material. Currently, as little as a three-second audio sample is sufficient to generate a realistic audio imitation (deepfake) of a person's voice.⁹ This poses a threat to a person's autonomy over their personal characteristics. This concern over autonomy poses a challenge for the creative sector, as artists — such as actors, singers, and musicians—fear their work will be used without their consent or compensation. The Writers Guild of America and SAG-AFTRA early drew attention to the potential harm of AI – including deepfakes – for the creative sector.¹⁰ This raised awareness in artists' associations all over the world. For example, the German Voice Actor Association¹¹ opened discussions on the right to one's own voice with the streaming platform Netflix, temporarily refusing further collaboration. The starting point was a new contract provided by Netflix that would have included an 'AI clause'. This clause would have allowed Netflix to use all audio recordings for AI training. The German Voice Actors Association criticised the lack of choice, as Netflix refused further voice actor employment without signing the AI clause. Furthermore, no additional remuneration was offered.¹²

(Digital Omnibus on AI), (COM(2025)0836 – C10-0304/2025 – 2025/0359(COD)), 14 February 2026 2025/0359(COD).

⁷ For an overview of potential positive uses of deepfakes see Westerlund, M., *The Emergence of Deepfake Technology: A Review*, TIm Review, 11/ 2019 9, 41.

⁸ For example, the voices of Snoop Dogg, Mr. Beast and Gwyneth Paltrow are available on 'Speechify' with these celebrities' permission. Weitzman, C., Voicify AI: Revolutionize Your Voice Content Creation, Speechify, 2025, https://speechify.com/blog/voicify-ai/?srsltid=AfmBOOpNiUWFuwKT48azT29mK0DEuXIkmt7GY-JEIV4EJqFgiphr_k_, 26 March 2026.

⁹ See Microsoft Research, VALL-E, 09 May 2025, <https://www.microsoft.com/en-us/research/project/vall-e-x/>, 26 March 2026.

¹⁰ Barnes, B. *et al.*, *Hollywood Actors Join Writers on Strike, Bringing Industry to a Standstill*, The New York Times, 13 July 2023, <https://www.nytimes.com/2023/07/13/business/media/sag-aftra-writers-strike.html>, 26 March 2026.

¹¹ VDS – Berufsverband für professionelle Sprecher:innen, <https://www.sprecherverband.de/>, 26 March 2026.

¹² Rbb, J.S., Streit mit Netflix: Synchronsprecher protestieren gegen KI-Klausel, tagesschau.de, 8 February 2026, <https://www.tagesschau.de/wirtschaft/synchronsprecher-netflix-ki-100.html>, 26 March 2026.

In an interview, Patrick Winczewski – the voice actor for Hugh Grant and Tom Cruise – emphasised that the technology is already part of society and in use.¹³ To name a few examples, the use of AI technology to recreate the voice of deceased voice actor Hans Joachim Clarin in a new iteration of the series 'Neue Geschichten vom Pumuckl' can be mentioned.¹⁴ Winczewski, however, stressed that choice and autonomy are vital for the future of the voice actor as well as the whole creative industry. The German Voice Actor Association, therefore, calls for a right to choose freely whether to use AI, including the right to refuse, and for an open discussion of new forms of remuneration in the age of AI. The association has commissioned a legal opinion ('Rechtsgutachten') which concludes that the forced approach adopted by Netflix is unlawful.¹⁵ However, as the feeling of legal uncertainty regarding the topic of deepfakes remains, there is a call for regulation of the phenomenon.

There are two notable legislative responses to these concerns of artists. The most prominent legislation in this regard is the so-called ELVIS Act of the US state of Tennessee, as it can be considered the first law to target deepfakes by broadening the protection of the right to publicity. In Europe, Denmark has taken another approach, by planning to introduce protection against realistic digital imitation into its Copyright Act. The legislative proposal of Denmark is still pending at the time of writing but offers an interesting approach regarding deepfakes.

2. METHODS OF THE PAPER

This paper examines the Tennessean and Danish legal approaches to protecting artists and performers from deepfake imitations of personal characteristics, using a comparative doctrinal case-study approach. The focus is on protection against deepfake imitation—synthetic media that imitate a specific person.¹⁶

After a brief introduction to the technology, the paper discusses first the Tennessean and then the Danish legislative approach. Where appropriate, it makes selective reference to the Austrian (and German) systems of personality rights and

¹³ *Loc. cit.*

¹⁴ Bekommt der Pumuckl wieder die Hans-Clarin-Stimme?, OVB Heimatzeitungen. 31 May 2022, <https://www.ovb-heimatzeitungen.de/rosenheim-region/2022/03/30/bekommt-der-pumuckl-wieder-die-hans-clarin-stimme.ovb?shorten>, 26 March 2026.

¹⁵ Hense, P.; Kahl, J.; Manthey, G.; Wagner, D., *Rechtsgutachten Netflix AI Training: im Auftrag von Verband Deutscher Sprecher:innen e.V.* 2026.

¹⁶ In contrast, the technology of deepfakes can also be used to generate random person who do not resemble a specific person. See for example This Person Does Not Exist - Random Face Generator. 2021-2023, <https://this-person-does-not-exist.com/en>, 26 March 2026.

copyright, whose continental personality-rights structure and copyright regimes comparable to Denmark offer useful comparative insights. Finally, the paper assesses whether the two case studies provide guidance for legislative action to safeguard autonomy over personal characteristics against deepfakes for performers in the EU.

3. DEEPFAKE TECHNOLOGY

Deepfakes constitute a sub-category of AI-generated media.¹⁷ However, the term is not uniformly defined and, therefore, takes on different meanings depending on the context. There are different types of deepfakes. When discussing deepfakes, content is usually meant that was created based on deep neural networks, i.e., artificial intelligence.¹⁸ This AI-based technology makes highly realistic content possible.¹⁹ In contrast, the term 'cheap fakes' can be used to refer to content of inferior quality that may stand up to initial scrutiny but not to closer examination.²⁰

It is even possible to use deep learning technology in isolated (partly synthetic deepfakes). An example is the technique of face replacement (face-swap) that aims to swap the face of a target person to replace the face in a source image or video.²¹ In contrast, completely synthetic deepfakes include no parts of other material, but are created entirely from scratch by AI technology. The possibilities of imitation with deepfake technology are improving, allowing the creation of realistic imitations with just a few clicks.²² In this regard, synthetic deepfake imitation differs significantly from traditional mimicry and copyright reproduction. Traditional voice mimicry is less disruptive than deepfakes, as, for example, a voice impersonator requires a certain level of skill to be a true copy and is physically limited in their use of another person's voice. In contrast, deepfake technology allows for a practically unlimited and highly realistic reproduction of a person's likeness and voice and, therefore, is more harmful.²³ Moreover, deepfakes differ from traditional reproductions of works, which are governed by copyright, as the AI-based technology enables the creation of content that is

¹⁷ EPRS, *Tackling deepfakes in EU policy: Study*, 2021, p. 1.

¹⁸ *Loc. cit.*

¹⁹ For more on the technology behind deepfakes see van der Sloot B. *Regulating the synthetic society: Generative AI, Legal Questions and Societal Challenges*, Bloomsbury Publishing 2024, p. 44ff.

²⁰ *Ibid.*, p. 46.

²¹ *Ibid.*, p. 9.

²² For details see p. 3.

²³ Moos, K., *My Body, My Voice: Defining Vocal Identity Rights to combat AI-Generated Deception*, Mar Intell Prop Innovation L REv. 29(2) 2025, 358.

entirely novel and does not incorporate any copyright-protected aspects in the output (the deepfake).²⁴ Against this technical background, legislators in Tennessee and Denmark have introduced or have sought to introduce protections against this technology.

4. TENNESSEE: ELVIS ACT

A prominent example of strengthening the protection of personal characteristics against deepfakes can be found in the US state of Tennessee. The Ensuring Likeness Voice and Image Security Act²⁵—ELVIS Act for short—was the first US legislation to specifically protect artists and musicians from the unauthorised use of their likeness and voices through AI technologies and against deepfakes. It aims to achieve this by broadening the statutory right to publicity.

4.1. History of the ELVIS Act

The ELVIS Act was passed on 21 March 2024 and went into effect on 1 July 2024.²⁶ It is not a novel law, but an amendment to the 'Personal Rights Protection Act of 1984'. The acronym of the Act referring to the well-known musician is no coincidence but goes back to the background of the amended law. It is sometimes stated that *'Tennessee's right of publicity was not just developed because of Elvis, it was developed for Elvis'*²⁷. This is not entirely accurate, as the doctrinal evolution of the right of publicity itself cannot be traced back to the well-known artist.²⁸ The name of the Act of 2024 is probably inspired by the history behind the preceding Personal Rights Protection Act of 1984, which was enacted in response to a court decision regarding Elvis Presley's heirs—the Elvis Presley Estate which inherited Elvis' independent right to publicity after his death. Legal Cases in the 1980s following Elvis Presley's death shaped the right of publicity in Tennessee. In a court case²⁹ involving the Elvis Presley Estate, it

²⁴ van der Sloot, *op. cit.* note 22, p. 47.

²⁵ Ensuring Likeness Voice and Image Security Act - Tennessee Senate Bill 2096 (112th General Assembly), 07 March 2024.

²⁶ ELVIS Act, Section 12, 13.

²⁷ Christoff, A.T., *Long Live the King: The Influence of Elvis Presley on the Right of Publicity in Tennessee*, U. Mem. L. Rev., 41/2011, p. 667.

²⁸ Moldawer, M., *ELVIS Act: From Authorship to Ownership in Intellectual Property Law*, Texas Intellectual Property Law Journal 2024, p. 21.

²⁹ State ex rel. Elvis Presley Int'l Mem. Found. v. Crowell 733 S.W.2d 89, 95 (Tenn. Ct. App. 1987), discussing Memphis Dev. Found. v. Factors, Etc. Inc. 441 F. Supp. 1323, 1330 (W.D. Tenn. 1977).

was held that the law did not provide for a right to publicity that survived a celebrity's death. Therefore, protection for the Elvis Presley Estate was denied. The Tennessee General Assembly aimed to correct this outcome, recognising the need for a post-mortem right to publicity. Consequently, the Personal Rights Protection Act of 1984 was enacted, providing protection for a person's name, photograph, or likeness that continued after the individual's death and that also can be passed on to their family or heirs.³⁰

4.2. Deepfakes and the right to publicity

The doctrinal evolution of the right of publicity started with the privacy-based 'right to be left alone' that subsequently developed into a transferable property right of celebrities to their personal features.³¹ The right of publicity is often defined as 'the right to stop others from using [one's] identities, particularly [one's] names and likenesses, without permission'.³² In the US, there is no federal or constitutional right to publicity, but it is created at state level in common and/or statutory law, resulting in a fragmented legal landscape.³³ However, protection against the commercial appropriation of an individual's name or likeness can be identified as a common ground.³⁴ In Tennessee, even prior to the ELVIS Act, the 'Personal Rights Protection Act of 1984' offered a statutory right of publicity.³⁵ This framework was, however, deemed ineffective against AI-generated imitations. One aspect was the lack of protection of the voice. Tennessee law – like many US states – only offered individuals a property right in the use of that person's name, photograph, or likeness.³⁶ The lack of protection of the voice in current US personality rights was a major point of concern, as deepfake technology has made highly realistic voice cloning possible.³⁷ The ELVIS Act addressed this problem by being one of the first US states to introduce an explicit protection of the voice. Another point of concern was the synthetic nature of

³⁰ Christoff, *op. cit.* note 31, p. 691f. The descendibility of the right to publicity was also recognized under common law by the Tennessee Court of Appeal three years after the enactment of the Personal Rights Act of 1984. See *Ibid.*, p. 693, citing *Elvis Presley v. Crowell*, *op. cit.* note 33.

³¹ For details on this evolution see Moldawer, *op. cit.* note 32, p. 21ff.

³² Rothman, J., *The Right of Publicity: Privacy Reimagined for a Public World*, Harvard University Press 2018, p. 2.

³³ *Ibid.*, p. 3f.

³⁴ Preminger, A.; Kugler, M., *The Right of Publicity Can Save Actors From Deepfake Armageddon*, BTLJ, 39/ 2023, p. 794.

³⁵ Christoff, *op. cit.* note 31, p. 691f.

³⁶ Fowler, S.L.; Fowler, J.D., *Why Tennessee's ELVIS Act Is the King of Artificial Intelligence Protections*, *Vand. J. Ent. & Tech. L.*, 27(2)/2025, p. 263.

³⁷ Moos, *op. cit.* note 26, p. 355.

AI-generated content. Case law suggested that the right of publicity may not apply if the imitation of a person's likeness or voice cannot be attributed to a specific individual. In the case of *Midler v. Ford Motor Co.*, the singer Midler claimed to be imitated by a similar-sounding vocalist after Midler had been denied a contract with Ford to create the said commercial jingle. The court held that the statutory right of publicity did not apply because Midler's voice was not 'used' but merely imitated.³⁸ Some authors, therefore, doubted the applicability of the right of publicity to AI-generated images and recordings, arguing that they similarly may not constitute a use of a person's personal characteristics but only imitations of an individual.³⁹ Others argue that AI-generated imitations constitute an appropriation of likeness and voice covered by the right of publicity, pointing to the case of traditional CGI.⁴⁰ In *Hart v. Electronic Arts*, the court determined CGI depictions in video games to be a use of likeness when digital avatars mirror real individuals.⁴¹ This legal uncertainty—whether AI-generated imitation will be covered by the statutory right of publicity—was the motivation for the adoption of the ELVIS Act.⁴²

The Act now imposes liability where, without the individual's prior consent, a person publishes, performs, distributes, transmits, or otherwise makes available to the public an individual's voice or likeness, without the required consent.⁴³ Moreover, a person is also liable for the distribution, transmission, or making available of an 'algorithm, software, tool, or other technology, service, or device, the primary purpose or function' of which is 'the production of a particular, identifiable individual's photograph, voice, or likeness'⁴⁴ without consent.

4.3. Critique

On the one hand, blind spots in the right of publicity have been brought to attention. Despite the ELVIS Act providing broad protection for personal characteristics, only certain uses are prohibited ('purposes of advertising products, merchandise, goods, or services, or for purposes of fundraising, solicitation of donations, purchases of products, merchandise, goods, or services'⁴⁵). The

³⁸ The court, however, still found the defendant liable for common law misappropriation claim. See *Midler v. Ford Motor Co.* 849 F.2d 460 (9th Cir. 1988) at 463.

³⁹ See Moos, *op. cit.* note 26, p. 355.

⁴⁰ Preminger *et al.*, *op. cit.* note 38, p. 799f.

⁴¹ *Hart v. Elec.Arts, Inc.* 717 F.3d 141, 147 (3rd Cir. 2013).

⁴² Moos, *op. cit.* note 26, p. 357f.

⁴³ ELVIS Act Section 6(a)(2).

⁴⁴ *Ibid.*, Section 6(a)(3).

⁴⁵ *Ibid.*, Section 6(a)(1).

limitation to commercial uses creates uncertainty regarding deepfakes distributed on the internet. For example, the commercial aspect of the use of social media may be less clear than a film studio using an actor's face for a deepfake replica without their consent.⁴⁶ Non-commercial deepfakes fall outside the scope of the ELVIS Act and most other statutory publicity rights.⁴⁷

On the other hand, the scope of protection was also deemed too broad. For example, voice as a medium is protected if it is 'readily identifiable and attributable to a particular individual, regardless of whether the sound contains the actual voice or a simulation of the voice of the individual'⁴⁸. This would, therefore, not only include AI-generated imitations, but also traditional voice mimicry, as seen in *Midler v. Ford*. As AI generation is not comparable to traditional mimicry, the scope of protection should be calibrated, introducing a tiered level of protection that is justified by the specific risk to the imitation of personal characteristics.⁴⁹

4.4. Ownership of personal characteristics?

Due to its strong protection, the right of publicity under the ELVIS Act is classified as a property-based, IP-like⁵⁰ right to one's name, voice, and likeness. This is strongly supported by the legal text which states that '[e]very individual has a property right in the use of that individual's name, photograph, voice, or likeness in any medium in any manner.'⁵¹ The right of publicity in general is widely recognised as a form of intellectual property.⁵² Occasionally, it is described as a 'legal hybrid, zigzagging between privacy, property rights, trademark law, and copyright law'⁵³. A major point of critique is that the ELVIS Act's right of publicity awards ownership to personal characteristics similarly to copyright, without inciting a similar discussion on the struggle to balance authorship rights and the freedoms of the public domain.⁵⁴

⁴⁶ For a deeper discussion see Preminger *et al.*, *op. cit.* note 38, p. 805ff.

⁴⁷ See for example the California Civil Code. Section 3344 and New York Laws Civil Rights. L (Consol. 20239). Section 50. In this regard, California's common law is an exemption as it extends the scope to noncommercial uses as well (See *White v. Samsung Electronics America Inc.* 971 F.2d 1395, 1401 (9th Cir. 1992) at 1397).

⁴⁸ Tennessee Code Annotated Section 47-25-1102.

⁴⁹ See Moos, *op. cit.* note 26, p. 358.

⁵⁰ Moldawer, *op. cit.* note 32, p. 65f.

⁵¹ Tennessee Code Section 47-25-1103(a).

⁵² See e.g. *Zacchini v. Scripps-Howard Broad. Co.* 433 U.S. 562, 573 (1977). For more details see Fowler *et al.*, *op. cit.* note 40, p. 277; Moldawer, *op. cit.* note 32, p. 21ff; Preminger *et al.*, *op. cit.* note 38, p. 793f; Rothman, *op. cit.* note 36, p. 75ff.

⁵³ Moldawer, *op. cit.* note 32, p. 35.

⁵⁴ *Ibid.*, p. 23.

The ELVIS Act does not prohibit every use of personal characteristics but provides a fair-use exception that applies to uses of name, photograph, voice, or likeness (1) in news, public affairs, or sports broadcasts; (2) for comment, criticism, scholarship, satire, or parody; or (3) for the 'representation of the individual as the individual's self in an audiovisual work, [...] unless the audiovisual work containing the use is intended to create, and does create, the false impression that the work is an authentic recording in which the individual participated'; (4) for fleeting or incidental uses; and (5) for an advertisement or commercial announcement for any of the above.⁵⁵ These exceptions reflect the need to balance protection against deepfakes with fundamental rights such as the right to freedom of expression.⁵⁶ However, the narrow wording of the exception raises concerns that while the ownership over personal characteristics is strengthened, the freedom of the public is restricted. This creates the curious paradox that the attempt to strengthen the protection in reaction to a new technology may create the very framework that encourages further exploitation.⁵⁷ This conflict between wanting to protect personal characteristics against deepfakes and needing to balance this protection with the freedom of others lies at the core of the problem of regulating new technologies.

4.5. Inspiration for Europe?

The ELVIS Act could serve as a source of inspiration for future legislation, as it aims to strengthen legal protection against deepfakes. The lack of protection of personal characteristics – especially the voice – is also a problem in Europe. However, the critique of the Tennessean law also demonstrates the risk of simply establishing ownership over personal characteristics without establishing a balance with the rights of the public, such as the freedom of expression or art. The scope of legislation targeted at AI-generated media also must be considered, as it may accidentally cover cases such as traditional mimicry, which do not pose the same harm as deepfakes. Moreover, for transposing such protection into Member States' national or even EU law, the features of the legal systems have to be considered. Tennessee, having a different legal framework, especially regarding the doctrinal structure of the right of publicity, may not fit (all) European countries. In this regard, further research will be needed before crafting a draft for the protection of personality rights for the EU and/or Member States. For example, the GDPR plays an important role in EU countries. Since the personal

⁵⁵ Tennessean Code Section 47-25-1107(a).

⁵⁶ See Moos, *op. cit.* note 26, p. 361.

⁵⁷ Moldawer, *op. cit.* note 32.

characteristics of deepfakes can constitute personal data, the relationship between the GDPR and EU legislation must be considered. There are also regulatory proposals that address data protection directly. Notably, the '*right not to be cloned*'⁵⁸ in the draft of C. Wendehorst is worth mentioning here.

The need for legislation was also not left unanswered in Europe. In October 2025, Denmark released a legislative draft to strengthen protection against deepfakes, not as an amendment to data protection regulation, but to its Copyright Act.⁵⁹

5. DENMARK: AMENDMENT OF THE COPYRIGHT ACT

The Danish Government released a legislative proposal to amend the Danish Copyright Act, intending to create a safeguard against digitally generated imitations (hereinafter, the 'Danish Draft')⁶⁰.

5.1. History

The legislative proposal reflects a political agreement of 26 June 2025 between the Danish Government and a broad spectrum of parties in the Danish Parliament.⁶¹ On 7 October 2025, the Danish Government submitted a written

⁵⁸ Art. 12 (2) (b) (ii) of the Tentative Academic Discussion Draft (version 1.1.) for a Regulation on the protection of personal data in the context of artificial intelligence and the data economy and amending Regulation (EU) 2024/1689 ('AI Data Protection Regulation'). Wendehorst, C., *Datenschutz im Zeitalter von KI: Wissenschaftlicher Diskussionsentwurf für eine neue „KI-Datenschutz-VO“ (Teil 2)*, KIR 2025. The draft is also included in the response of the ELI on the Digital Package which is available here: ELI, *Simpler, Fairer, More Effective – Towards a Targeted Revision of EU Data Protection law*, https://www.EUlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Response_-_Simpler_fairer_more_effective.pdf, 26 March 2026.

⁵⁹ Kulturministeriet, Deepfakes, produktionsrabat og mindre bureaukrati er på årets lovprogram, 07 October 2025, <https://kum.dk/aktuelt/nyheder/deepfakes-produktionsrabat-og-mindre-bureaukrati-er-paa-aarets-lovprogram>, 26 March 2026.

⁶⁰ The text of the legislative proposal including explanatory notes of the Danish Government (in Danish and English) are provided in the TRIS notification of Denmark to the Commission and can be accessed here: <https://technical-regulation-information-system.ec.europa.eu/en/notification/27420>, 26 March 2026.

⁶¹ The political agreement included the government consisting of the Social Democrats, Liberal Party and Moderates. Of the parties in parliament, the Denmark Democrats, Socialist People's Party, Conservative People's Party, Red-Green Alliance, Danish Social Liberal Party and the Alternative joined. Kulturministeriet, Bred aftale om deepfakes giver alle ret til egen krop og egen stemme, 06 June 2025, <https://kum.dk/aktuelt/nyheder/bred-aftale-om-deepfakes-giver-alle-ret-til-egen-krop-og-egen-stemme>, 06 June 2025.

draft to the Danish Parliament for review that corresponded with the political agreement.⁶² At the time of writing, the bill is still under review.

The Danish Government also notified the EU Commission of the planned legislation in accordance with the notification procedure under Directive (EU) 2015/1535 (TRIS – Technical Regulation Information System).⁶³ The notification procedure obliges Member States to notify the Commission of any draft technical regulation prior to its adoption. The notification triggers a three-month standstill period during which the notifying Member State cannot adopt the technical regulation in question. This enables the Commission and the other Member States to examine the notified text and to respond appropriately.⁶⁴ In this instance, the Commission reacted to the Danish Draft with comments only.⁶⁵ The draft can, therefore, be adopted after the expiration of the three-months-standstill-period if Denmark incorporates the Commission's comments accordingly. As will be seen in the analysis of the draft (chapter 5.3), Denmark will have to adapt the draft, as the Commission drew attention to incompatibilities with EU directives.

5.2. Content of the Draft

The Danish Government provided the draft of the amendment to the Danish Copyright Act (with English translations) including explanatory notes with their notification in accordance with TRIS.⁶⁶ According to the explanatory notes, the main objective of the Danish legislative proposal is to provide protection against the abuse of personal characteristics and to ensure that technological developments like AI that enable the creation of realistic representations of individuals, their

aftale-om-deepfakes-giver-alle-ret-til-egen-krop-og-egen-stemme, 26 March 2026. Details on the political proposal can be found here: Kulturministeriet, Værn mod deling af digitale efterligninger af personlige kendetegn, 26 June 2025, [https://kum.dk/fileadmin/kum/1_Nyheder_og_presse/2025/Vaern_mod_deling_af_digita le_efterligninger.pdf](https://kum.dk/fileadmin/kum/1_Nyheder_og_presse/2025/Vaern_mod_deling_af_digita_le_efterligninger.pdf), 26 March 2026.

⁶² Kulturministeriet, *op. cit.* note 65.

⁶³ EU Commission, Act amending the Copyright Act (Introduction of performance protection and protection against digitally generated imitations, etc.): Notification Detail, 31 October 2025, <https://technical-regulation-information-system.ec.europa.eu/en/notification/27420>, 26 March 2026.

⁶⁴ Directive (EU) 2015/1535 of the EU Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification).

⁶⁵ EU Commission, *op. cit.* note 69.

⁶⁶ The text of the Danish Draft (with explanatory notes) can be downloaded here: <https://technical-regulation-information-system.ec.europa.eu/en/notification/27420>, 26 March 2026.

performances, and other characteristics do not come at the '*expense of integrity, credibility, trust, and transparency*'⁶⁷. The draft introduces two additional provisions in the Danish Copyright Act.

§⁶⁸ 65a extends the existing protection of performances for performers under neighbouring rights to the context of deepfakes; the text reads as follows:

Realistic digitally generated imitations of a performer's performance or an artist's artistic presentation may not be made available to the public without the consent of the performer or artist.

(2) The protection provided for in the first paragraph lasts until 50 years have elapsed after the year of death of the performer or artist.

(3) The provisions of [§] 2(3) and (4), [§§] 3, 11, 13, 13a, 16a, 16c-16f and 17-17b, [§] 17c(2), (3) and (4), [§§] 17d-17e, [§] 18(1) and (2), [§] 19(1) and (2) and [§§] 21-23, 24b, 25, 25a, 27, 28, 30a, 33, 34, 35, [§] 47(1) and (2), [§§] 49, 50-57, 58a, 61 and 62 apply mutatis mutandis to realistic digital imitations of performers' performances or of artists' artistic presentations.'⁶⁹

As this provision will introduce the terms '*artist*' and '*presentation*' in addition to the existing ones '*performer*' and '*performance*', the draft stipulates that this new term is to be added to other provisions of the Danish Copyright Act.⁷⁰

§ 73a, in contrast, takes a more innovative approach, introducing protection against realistic digitally generated imitations of personal characteristics for the general public into a Copyright Act; it reads as follows:

Realistic digitally generated imitations of a physical person's personal physical characteristics may not be made available to the general public without the consent of the person being imitated.

(2) The first paragraph does not apply to imitations that are mainly expressions of a caricature, satire, parody, pastiche, criticism of power, social criticism, etc. unless the imitation constitutes misinformation that may specifically seriously jeopardise the rights or essential interests of others.

(3) The protection referred to in the first paragraph lasts until 50 years after year [sic!] of death of the person being imitated.

(4) Realistic digitally generated imitations may be made available without consent in accordance with the provisions of [§] 23(2) and [§] 25.⁷¹

Correspondingly, § 86a under the heading '*Special provision on protection against realistic digitally generated imitations of personal characteristics*' specifies that

⁶⁷ Danish Draft, p. 7.

⁶⁸ Where the English translation of the Danish Draft uses 'section', this article retains the section sign (§) of the Danish original.

⁶⁹ Danish Draft § 1 No. 9.

⁷⁰ See *Ibid.*, § 1 No. 2, 5-8.

⁷¹ *Ibid.*, § 1 No. 11.

'[t]he provision in [§] 73a applies to imitations of all natural persons, including foreign nationals.'⁷²

5.3. Critical discussion

The prospect of granting more control over the use of personal characteristics such as voice and image in light of deepfakes seems especially appealing. Therefore, the draft of the Danish Government triggered a discussion whether intellectual property law is an appropriate tool to achieve the intended protection and whether this approach could be a template for the EU.⁷³

This analysis proceeds as follows. First, it examines the choice to place the protection of personal characteristics in the Copyright Act. Second, it considers the balancing of the proposed protection with freedom of expression and related public-interest exceptions. Third, it assesses the effectiveness of the proposed mechanisms. Finally, given partial harmonisation of copyright and neighbouring rights, it considers the draft's compatibility with existing EU law.

5.3.1. Placement within the Copyright Act

A major point of discussion regarding the Danish Draft is the decision to place the protection of personal characteristics in copyright law, even though they do not conceptually fall within the scope of copyright.⁷⁴ This argument mainly concerns § 73a of the Danish Draft, namely the introduction of a general protection against realistic, digitally generated imitations of personal characteristics. § 65a, in principle,⁷⁵ is covered by copyright law, as it broadens the existing protection of

⁷² *Ibid.*, § 1 No. 20.

⁷³ See for example EPRS, The Danish approach to copyright and deepfakes: A model for the EU?, January 2026, [https://www.europarl.europa.eu/RegData/etudes/ATAG/2026/782611/EPRS_ATA\(2026\)782611_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2026/782611/EPRS_ATA(2026)782611_EN.pdf), 26 March 2026.

⁷⁴ Pérez, G.E.M.; Castro, L.H., *Copyright or personality rights? A critical analysis of Denmark's approach to deepfakes*, IDP Revista de Internet, Derecho y Política 2026; EU Commission, *Issue of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015 - Notification 2025/0654/DK - Act amending the Copyright Act (Introduction of performance protection and protection against digitally generated imitations, etc.)*, C(2026) 756 final, 2026, p. 7; EPRS, *op. cit.* note 79, p. 2.

⁷⁵ Concerning § 65a Danish Draft, there are however doubts if it is truly just trying to broaden performers protection or if it also in reality also aims at a protection of personal traits. For this discussion see chapter 5.3.4.

performers under neighbouring rights which are partly harmonised by EU copyright directives.⁷⁶

§ 73a explicitly prohibits the imitation of a natural person's personal physical characteristics. Personal characteristics or traits such as a person's image or voice are usually considered intangible aspects of personality – such as ideas or facts, or techniques. These are normally not governed by copyright protection, as they do not constitute a copyright-protected work.⁷⁷

The Danish Government appears to address this aspect in their explanatory notes to the draft. They admit that the right to a person's own image serves a different purpose from protection against imitation under the Copyright Act. However, this statement does not address the distinction between the protection of personal traits and an original copyright-protected work because in the next paragraph a copyright provision on commissioned portraits is cited which provides a limitation to a photographer's rights.⁷⁸ In jurisdictions with continental personality rights, like Germany or Austria, the provision on commissioned portraits is supplemented by the right to one's own image (a personality right).⁷⁹

The legal nature of the protection of personal traits in Denmark is, of course, not necessarily comparable to Germany or Austria. An important aspect to consider in this regard is that Denmark largely relies on unwritten principles governing the use of personal images.⁸⁰ According to the explanatory notes to the Danish Draft, '[i]t follows, firstly, that the commercial use of a person's image may not take place without that person's consent and, secondly, that both publicly known persons and private persons may, depending on the circumstances, be entitled to compensation for non-material damage if the publication of a picture of that person constitutes an unlawful infringement.'⁸¹ The only written provision can be found

⁷⁶ The protection against imitation for performers is partly harmonised by Directive 2001/29/EC (InfoSoc Directive), Directive 2006/115/EC (Rental and Lending Right Directive), Directive 2011/77/EU (Term of Protection Directive), Directive 2014/26/EU (Collective Rights Management Directive) and the Directive (EU) 2019/790 (Copyright in the Digital Single Market Directive).

⁷⁷ Beverley-Smith, H.; Ohly, A.; Lucas-Schloetter, A., *Privacy, Property and Personality*, Cambridge University Press 2009, p. 159; EPRS, *op. cit.* note 20, p. 40.

⁷⁸ Danish Draft p. 9.

⁷⁹ Austria: Ciresa, M., § 75 UrhG in Ciresa, M. (ed), *Österreichisches Urheberrecht*. Wien 2015, Mn. 8. Germany: Loewenheim, U. (ed), *Handbuch des Urheberrechts*, C.H. Beck 2021, Mn. 71ff.

⁸⁰ 'In the current Copyright Act, there are no rules on the protection of personal physical characteristics of natural persons.' Danish Draft p. 44.

⁸¹ *Loc. cit.*

in the Danish Marketing Practices Act, which 'provides protection against the commercial use of personal images without consent'⁸², and in criminal law.⁸³

The Danish Draft even states in the explanatory notes that one of the new provisions cannot be designated as copyright.⁸⁴ This seems to refer to § 65a. They go on to state that the other provision falls 'within the scope of personal rights'⁸⁵. This must refer to § 73a. Another indicator that the Danish Government considers this provision as a personal right and not a matter of copyright is the following statement: 'Personal characteristics are closely linked to a person's personality. For this reason, it is proposed that this area be not covered by an agreement [meaning contractual] licence.'⁸⁶

The objects of protection of § 73a functionally are, therefore, personal characteristics such as voice, movements, and appearance. Such aspects of individual identity do not fall within the scope of the copyright framework, as copyright is designed to protect original expressions of human intellect.⁸⁷ This was also correctly noted by the Commission in its comments.⁸⁸ The copyright framework is unsuitable for the protection of aspects of personal identity for several reasons. Copyright law governs works or performances which are the product of human intellect and require a certain amount of creativity. In contrast, the protection of personal traits constitutes a part of an individual's identity which does not result from creation. Simply extending copyright protection to personal traits without any adjustments to the scope would disrupt the copyright framework, as the temporary monopoly of creators in copyright is balanced with the limitation that protection covers only original intellectual creations.⁸⁹

From a comparative perspective, § 73a of the Danish Draft faces similar criticism to the extension of the right to publicity in the ELVIS Act.⁹⁰ Strengthening the control over personal traits to the same extent as copyright-protected creations disrupts the current framework and unjustifiably limits the freedom of the public. This argument is supported by the rationale of copyright law, which is based on

⁸² *Loc. cit.*

⁸³ *Ibid.*, p. 9ff.

⁸⁴ *Ibid.*, p. 36.

⁸⁵ *Loc. cit.*

⁸⁶ *Ibid.*, p. 19.

⁸⁷ See for example Berne Convention for the Protection of Literary and Artistic Works. September 9 1886, as revised at Paris, July 24 1971, and amended in 1979. Art. 2.

⁸⁸ EU Commission, *op. cit.* note 80, p. 5f.

⁸⁹ Pérez *et al.*, *op. cit.* note 80, p. 4.

⁹⁰ See chapter 4.4.

economic interests.⁹¹ In contrast, the Danish Draft clearly aims for the protection against unauthorised use of personal traits and the prevention of 'a business model based on the commercialisation of images'⁹², explicitly precluding the possibility of licensing⁹³. As observed regarding the ELVIS Act,⁹⁴ using the copyright framework for personal characteristics to protect from unauthorised commercial use may create the paradox that it makes the commercial exploitation of personal traits with deepfakes even more attractive.⁹⁵

With the unsuitability of the copyright framework in mind, the Commission,⁹⁶ as well as literature,⁹⁷ suggested introducing the protection of personal traits against deepfakes within another legal framework. The most prominent candidate in this regard is frameworks for the protection of personality rights.⁹⁸ As mentioned, Danish law relies on unwritten rules for the protection of personal traits; the Danish Draft would function as a codification of those rules.

The placement of such a codification of personality rights in the Copyright Act (provided that it does not rely on a copyright framework) may not seem so unusual from a comparative perspective in Austria. Austrian personality rights are governed by a system of written and unwritten legal principles.⁹⁹ Interestingly, the provision of the right to one's own image, which is considered a personality right, can be found in the Austrian Copyright Act due to historical reasons. When this right was incorporated into legislation, it was considered akin to copyright and therefore included in the Copyright Act.¹⁰⁰ A similar line of argument can be found in the explanatory notes to the Danish Draft by the Danish Government:

'Given that the protection is closely related to protection against realistic digital imitations of performers' performances and artists' artistic

⁹¹ For a detail analysis of the teleological argument against the Danish copyright-based approach see Pérez *et al.*, *op. cit.* note 80, p. 5f.

⁹² *Ibid.*, p. 6 fn. 18.

⁹³ See Danish Draft p. 19.

⁹⁴ See Moldawer, *op. cit.* note 32, p. 25.

⁹⁵ Pérez *et al.*, *op. cit.* note 80, p. 6f.

⁹⁶ EU Commission, *op. cit.* note 80, p. 5f.

⁹⁷ Pérez *et al.*, *op. cit.* note 80, p. 7ff.

⁹⁸ For example, Pérez and Castro suggest the Spanish Organic Act 1/1982, of 5 May, as an inspiration. This Act includes provisions that protects individuals against the use of their name, voice, or image for advertising, commercial or similar purposes. *Ibid.*, p. 9ff.

⁹⁹ Koziol, H.; Warzilek, A., Der Schutz der Persönlichkeitsrechte gegenüber Massenmedien in Österreich in Koziol, H.; Warzilek, A.; Aebi-Müller, R.E. (eds), *Persönlichkeitsschutz gegenüber Massenmedien*, Wien[ua] 2005, Mn. 1ff.

¹⁰⁰ However, this approach of the Austrian legislator has been criticized in literature; for details see Buchner, W., Das Persönlichkeitsrecht des Abgebildeten in Dittrich, R. (ed), *Festschrift 50 Jahre Urheberrechtsgesetz*, Manz 1986, 21f.

performances and presentations, as described in Section 2.2.2 below, and given that the Copyright Act also regulates a large amount of the material on which digital imitations are based – either as work or creations – it is appropriate that this imitation protection be included in the Copyright Act.¹⁰¹

The motivation of the Danish Government to include a non-copyright provision with similarities to copyright in their copyright code is also supported by their intent to change the title of the Danish Copyright Act to 'Copyright etc. Act'¹⁰². The motivation to include a codification of unwritten personality-rights principles within the Copyright Act could also stem from the fact that the Danish legal system possesses no comprehensive civil code which could incorporate such provisions. The other option would be to create a standalone legislative act.

To sum up, the placement of a provision on the protection of personal characteristics (§ 73a) in the Danish Copyright Act can be criticised from a conceptual perspective. The economically motivated copyright framework is not suitable for the protection against deepfakes, with personality-rights frameworks offering a more compatible approach. With a comparative perspective on Austria, the mere placement of such protection in the Copyright Act is less consequential if the structural inconsistencies are dealt with.

5.3.2. Balancing of rights

The Danish Draft – similarly to the ELVIS Act – includes exceptions to the prohibition on the unauthorised imitation of personal characteristics if they constitute 'mainly expressions of a caricature, satire, parody, pastiche, criticism of power, social criticism, etc. unless the imitation constitutes misinformation that may specifically seriously jeopardise the rights or essential interests of others.'¹⁰³ The attempt to balance the protection against deepfakes with the freedom of expression is a welcome addition.

The interpretation of the last part of the sentence in the explanatory notes is, however, noteworthy. The Danish Government seems to suggest that deepfake imitation is excluded from protection if it is disclosed as artificially generated.¹⁰⁴

¹⁰¹ Danish Draft p. 14.

¹⁰² *Ibid.*, p. 36.

¹⁰³ *Ibid.*, § 1 no. 11.

¹⁰⁴ EU Commission, Forwarding of the response of the Member State notifying a draft (Denmark) to request for supplementary information (INFOSUP) of EU Commission

This would mean that labelled deepfake pornography would be outside the scope of the Danish Draft.¹⁰⁵ This contradictory result can be traced back to a misinterpretation of the implications of a transparency label in accordance with the Art. 50(4) of the AI Act.¹⁰⁶ This discussion shows the importance of drafting the public-interest exceptions more carefully.

5.3.3. Copyright protection against deepfakes

Another point of critique is that the Danish Draft cannot provide effective protection against deepfakes, as it wrongly classifies deepfakes as a copyright infringement under the current legal framework. Extending copyright protection and the scope of infringement may prove challenging as well, as the limitations of the applicable EU directives have to be considered (see chapter 5.3.6).

A key problem is that the generated output – in this case, the deepfake – will usually not infringe copyright because it does not reproduce copyright-protected material from its training data. It is essential to distinguish between copyright infringements happening during the training of an AI system and the legality of the output itself.¹⁰⁷ The Danish Draft does not even mention the training phase of deepfake technology and only aims to establish protection against the AI-generated output, the deepfake. If the deepfake does not contain any copyright-protected material, there is no infringement and no grounds for copyright enforcement.¹⁰⁸

The only instance where an area of copyright protection remains is if it is a low-quality 'cheap fake' or a partially synthetic deepfake. However, it must be considered that even in these instances, the depicted person will enjoy no protection under copyright law, as their characteristics are imitated in the synthetic part of the deepfake that is not covered by copyright.¹⁰⁹

(Message number 3402): Notification: 2025/0654/DK, 28 November 2025, p. Answers 10 and 11, <https://technical-regulation-information-system.ec.europa.eu/en/notification/27420>, 26 March 2026.

¹⁰⁵ Pérez *et al.*, *op. cit.* note 80, p. 9.

¹⁰⁶ See EU Commission, *op. cit.* note 80, p. 6f.

¹⁰⁷ Austria: Thurner, A., *Bildmanipulation und Persönlichkeitsschutz in Zeiten von „Deepfakes“*, MR, 4/2019, p. 158f. Germany: Zurth P. *Deepfakes im Kontext des Urheber- und Leistungsschutzrechts*, ZUM 2025, 513.

¹⁰⁸ Zurth, *op. cit.* note 113, p. 513; Mitzscherlich, J., *Das Recht an der eigenen Stimme – Teil 2: Schutz vor ungewollter Kommerzialisierung und KI-Imitation*, AfP 2025, 476f.

¹⁰⁹ Appl, C., *Digitale Identität: Schutz und Verwertung der Persönlichkeit im virtuellen Raum* in Appl, C.; Kreutz, O. (eds), *Daten Information Recht: Festschrift für Andreas Wiebe zum 65. Geburtstag*, Wien 2024. 390.

In light of the rapid technological development, it is a pressing legal problem that there is no protection against highly realistic, completely synthetic deepfakes which contain recognisable personal characteristics of a real person. For this problem, current copyright law offers no solution and may also not be able to do so without challenging the rationale of the current framework. Deepfakes do not infringe a copyright-protected work or an equally protected performance of an artist. Rather, the non-consensual use of the personal characteristics of a person, i.e., appearance or voice, is the point of harm.

5.3.4. Effectiveness of the general protection against deepfakes (§ 73a)

§ 73a of the Danish Draft aims to offer general protection against digitally generated imitation. As discussed, the new rights allocated in the provisions are not strictly copyright, but a personal right to one's own likeness and voice. The placement of the provision in the Copyright Act was already discussed above (see chapter 5.3.1).

Examining effectiveness, a right to control the use of one's personal traits in publicly available digitally generated media can be an effective concept to strengthen autonomy. The Danish approach is very similar to the protection offered by the ELVIS Act in Tennessee, which also intends to establish control (see chapter 0). Similarly to the US state, the lack of written legislation on the protection of all personal characteristics, especially the voice, is a key motivator for legislation.

Some have emphasised that the current legal framework – including the unwritten one – offers sufficient protection.¹¹⁰ This is also a common line of argument, for example, in Austria and Germany where there is a written right to one's own image, but not explicitly the voice.¹¹¹ The protection of voice is commonly accepted in these countries.¹¹² However, legal certainty is a strong argument.

¹¹⁰ EPRS, *op. cit.* note 79, p. 2.

¹¹¹ Austria: Pierer, J., *Künstliche Intelligenz und Persönlichkeitsrecht: Mit Bewährtem gegen Neues*, eclex 2024, 753. Germany: Engel-Bunsas, C., *Das Recht an der eigenen Stimme*, Tectum Verlag 2025; Engel-Bunsas, C.; Lampmann, A., *Recht an der Stimme: ein Normierungsappell aus der Praxis*, GRUR-Prax 2025, p. 109ff.

¹¹² Austria: Dokalik D; Mokrejs-Weinhappel C; Kathrein G. (eds), *Das Große ABGB*, 2025. E 26; Meissel, F.-S., § 16 ABGB in Fenyves, A.; Kerschner, F.; Vonkilch, A. (eds), *Großkommentar zum ABGB - Klang-Kommentar: §§ 1 - 43 ABGB, Methodenlehre und Personenrecht*, Wien[ua] 2014, p. 133. Germany: Frey, D.; Westphal, L., *Rechtlicher Schutz und Verwertung der Stimme als Persönlichkeitsmerkmal: Neue Herausforderungen durch Voice-Cloning-Technologien*, MMR 2025, p. 782; Gomille, C., *Deepfakes und das allgemeine Persönlichkeitsrecht: Der Schutz von Stimme, Bildnis und Selbstdarstellung*,

Given the intent of the Danish Draft, the proposal is undoubtedly a good step in the right direction. The broad wording of the provision and the unsuitable placement within the copyright framework require further discussion of a more balanced approach to the protection against deepfakes.

5.3.5. Effectiveness of protection of performers (§ 65a)

§ 65a of the Danish Draft aims to provide protection for performing artists by extending the existing neighbouring rights to the sharing of realistic, digitally generated imitations of their artistic performances without their consent.¹¹³ The Danish Draft aims to establish more control for performing artists in general (not limited to AI-generated imitations), as the term 'digitally generated' is to be understood broadly, covering not only sophisticated technical means, such as AI, but also less sophisticated technical editing tools.¹¹⁴

Neighbouring rights protect performers, phonogram producers, and broadcasters. The object of protection is performances of works, phonograms, or certain broadcasts. The difference from copyright is the lower threshold of originality of the object of protection. The protected performance still must meet certain criteria for being worthy of protection. They are related to copyright in the sense that they follow the same rationale and have a similar framework. In contrast to the protection of personal characteristics, neighbouring rights still rely on a specific performance, phonogram, or certain broadcast as the object of protection.¹¹⁵

As discussed above, synthetic imitations created by deepfakes usually do not constitute a reproduction of a performance, as they only imitate the personal traits of the person, for example, their voice. In this regard, the Danish Draft remains inconclusive whether the object of protection in § 65a Danish Draft is the (creative) performance of the artist or the personal characteristics of the artist. Only the first falls within the scope of the copyright framework.

The wording of the draft suggests the former, as it regulates 'imitations of a performer's performance or an artist's artistic presentation'¹¹⁶. The explanatory notes of the Danish Government are contradictory. On the one hand, they postulate

ZUM. 2025, p. 506; Wiedemann, M.-J.; Stocks, F., *Der Klang der Zukunft: Die Auswirkungen der KI auf die Musikindustrie*, GRUR 2025, p. 363.

¹¹³ Danish Draft p. 40.

¹¹⁴ *Ibid.*, p. 41.

¹¹⁵ Pérez *et al.*, *op. cit.* note 80, p. 4.

¹¹⁶ Danish Draft §65a (1).

that the 'amendment will result in the protection of the physical characteristics of the performer or artist, including voice because the performance of a performer and an artist is inextricably linked to their voice and appearance.'¹¹⁷ As an example, 'a digitally generated imitation of an author's book reading'¹¹⁸ is mentioned. On the other hand, the Danish Government emphasises several times that only a digitally generated realistic imitation of either a performance of a literary or artistic work or an artistic presentation will be covered. As an example of excluded cases, the explanatory notes name a digitally generated television interview with a performer or the imitation of private individuals.¹¹⁹ This could suggest a limitation of the protection to the (artistic) performance, not the personal likeness or voice of the artist.

The Danish Government seems to believe that AI-generated imitation constitutes a copy and use (i.e., reproduction) of an artist's performance for which the current law offers no protection.¹²⁰ As the explanation was not clear, the Commission requested supplementary information. In their answer, the Danish Government further explained that the current AI technology provides the means to make a reproduction of an artist's performance without a fixation.¹²¹ However, an explanation of how synthetic imitation in deepfakes relates to a reproduction or fixation that violates the rights of performers is lacking.¹²²

This unsolved problem in copyright protection against deepfakes may be the cause of the inconsistencies identified by the Commission. In their comments, the Commission concludes that the Danish Draft needs to clarify the object of protection – i.e., which digital imitations of performances should be covered by § 65a – to be in accordance with the limitations of the EU directives on the rights of reproduction of performers. The term 'performance' is an autonomous notion of EU law and cannot be freely given a national interpretation that would include personal traits of a performer.¹²³

To conclude, § 65a of the Danish Draft pursues the goal of improving protection of performers from deepfake imitation. The intended measure will, however, remain ineffective if, in accordance with EU directives, only the artist's performance and not the imitation of personality traits is protected. Completely

¹¹⁷ *Ibid.*, p. 40f.

¹¹⁸ *Loc. cit.*

¹¹⁹ *Loc. cit.*

¹²⁰ See *Ibid.*, p. 21; EU Commission, *op. cit.* note 80, p. 3.

¹²¹ See answer of the Danish Government to question 4, EU Commission, *op. cit.* note 110, p. 2.

¹²² EU Commission, *op. cit.* note 80, p. 2.

¹²³ See *Ibid.*, p. 3f.

synthetic deepfakes cannot be treated as reproductions of a performance if they constitute something entirely new.

5.3.6. Compliance with EU law

Regarding § 65a of the Danish Draft, the Commission asked the Danish Government to consider the requirements and margin of discretion of applicable EU directives. This applies especially if existing terms of EU directives such as 'performers' or 'performance' may require a broader interpretation to achieve the aim of the Danish proposal. These terms have an autonomous notion of EU law and cannot take on a national meaning.

In this regard, the introduction of the terms 'artist', 'artistic' and 'presentation'¹²⁴ into the Danish Copyright Act seems unusual, notably because there is no corresponding legal definition in the Danish Draft. In the explanatory notes, the Danish Government clarifies that the addition aims to extend the protection of performances to presentations that are not performances of a copyright-protected work according to § 1 of the Danish Copyright Act.¹²⁵ 'Artistic presentations' should exclude athletic or sporting performances, as they are purely technical without an artistic or aesthetic character. 'Artist' includes *'actors, singers, musicians, dancers and other individuals who stage, perform, sing, recite, lecture, act or otherwise carry out artistic performances.'*¹²⁶ This extension of the notion of performers addresses the difficulty of performing artists to prove the originality of their performance. The explanatory notes themselves admit that it may prove difficult to assess what is to be considered an artistic performance or presentation and what not.

There is an obvious overlap between the meaning of 'artist' and 'performer'. The term 'artistic presentation' also seems to extend the current meaning of protected performances, rather than introducing a novel term. The Danish Government will have to adjust the text of the Draft before proceeding with the legislative process to avoid non-compliance with EU directives.¹²⁷

¹²⁴ See Danish Draft § 1 No. 2, p. 5-9.

¹²⁵ *Ibid.*, No. 26.

¹²⁶ *Ibid.*, p. 27.

¹²⁷ EU Commission, *op. cit.* note 80, p. 2f.

5.4. Inspiration for Europe?

The Danish Government has taken the first step toward regulating deepfakes in Denmark and perhaps also in the EU. Unlike mere principles, a written draft can enable in-depth discussion of a legal regulation. That can be seen in the reaction of Member States to Denmark promoting its draft as a template for the EU during the Danish Presidency in the Council of the EU in the second half of 2025. While the majority of the Member States endorsed the draft, others raised concerns linked to the production and dissemination of deepfakes beyond copyright law.¹²⁸ Nevertheless, the interest in the topic of deepfakes in the legislative corpus of the EU is apparent.¹²⁹

As the analysis of the draft has shown, the Danish Draft will still need to be revised before entering into force. It is open to question whether intellectual property law is the appropriate tool to achieve the intended protection. Moreover, the Commission identified conflicts with EU law in the current draft. Therefore, further research and discussion is needed to determine whether the problem of deepfakes involving the imitation of personal characteristics is truly best tackled in the field of copyright or whether other legal initiatives are better suited for the endeavour. The aim of the Danish Draft to tackle the protection of personal characteristics is well-intended. In jurisdictions such as Germany and Austria that, similarly to Denmark, partly rely on unwritten rules for the protection of personal traits, legal scholars also have advocated for a codification of these principles to strengthen legal certainty. In light of deepfakes, the ambition of the Danish Draft could serve as a model; the codification on the basis of copyright, on the other hand, should not.

6. CONCLUSION

Deepfakes pose a structural challenge to the protection of personal characteristics such as likeness and voice against unauthorised use. Surveying the ELVIS Act in Tennessee and the copyright-anchored Danish Draft in Denmark, both follow the approach of strengthening an IP-based right to one's personal characteristics. Whereas the codification of protection of voice, which was either non-existent (Tennessee) or uncoded (Denmark), amounts to a welcome establishment of legal certainty, the basis in copyright or copyright-like frameworks proves

¹²⁸ *Ibid.*, p. 2.

¹²⁹ See for example the engagement of the EU parliament in response to the Digital Omnibus: fn. 6.

disruptive to the current legal framework. Due to the economic orientation of copyright, the framework built to protect against deepfakes may paradoxically create an incentive to further AI-based dissemination of likeness and voice. Therefore, legislative initiatives should seek to create a more balanced approach to regulating deepfakes. Frameworks for the protection of personality rights could serve as a foundation on which to build. In the context of the EU, further research will be needed to explore the role of data protection for a coherent system. As a global phenomenon, deepfakes call for a sustainable European and global response. With the slow international process, a national response can be a trigger to move forward. Denmark's legislative proposal – while not perfect yet – offers inspiration for further initiatives.

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