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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **NAVIGATING THE DEEPFAKE DILEMMA: A LEGAL DISCOURSE ON INTELLECTUAL PROPERTY LAWS AND THE ERA OF SYNTHETIC REALITIES**

AUTHORED BY - NITHYASRI G & SRI SAI SANTOSH R

## **Abstract**

This comprehensive exploration delves into the legal intricacies surrounding deepfake technology, particularly within the context of Indian intellectual property laws. The narrative navigates the technological landscape of deepfakes, addressing ethical considerations, global perspectives on regulation, and emerging challenges. Focusing on the Indian legal framework, it critically analyzes the current intellectual property laws, emphasizing the need for legislative updates to effectively address the unique challenges posed by synthetic media. The paper scrutinizes the rigidity of fair dealing, aligns with international standards, and probes into intermediary liability, proposing solutions for a proactive legal approach. The discussion extends beyond legal aspects to include suggestions for global collaboration, public awareness initiatives, and corporate responsibility, outlining a holistic strategy to tackle the multifaceted issues surrounding deepfakes.

**Keywords: Deepfake, Copyright Law, Indian Legal Framework.**

## **I) Introduction:**

In the era of synthetic realities, deep fake technology has emerged as a powerful tool, raising profound legal and ethical questions. This exploration begins by unraveling the intricacies of deepfake creation, delving into the global discourse on regulation, and highlighting the challenges posed by technological advancements. With a specific focus on India, the paper scrutinizes the existing intellectual property laws, examining the applicability of fair dealing, moral rights, and civil and criminal liability. Recent cases provide insights into the evolving legal landscape, paving the way for a critical analysis of the pressing need for legislative updates to effectively regulate deepfakes and protect intellectual property rights.

## **Understanding Deepfakes and Technological Advancements:**

Deepfakes, a portmanteau of "deep learning" and "fake," are intricately crafted synthetic media. They leverage generative adversarial networks (GANs), a subset of machine learning, to manipulate and generate content that convincingly mimics real-life scenarios. From altering facial expressions in videos to entirely fabricating speeches, deepfakes have transcended their initial novelty to become a powerful tool for both creative expression and malicious intent.<sup>1</sup>

## **Technological Landscape:**

The sophistication of deepfake technology raises critical questions about the ethical use of artificial intelligence. As these algorithms become more intricate, detecting deepfakes becomes increasingly challenging. This technological arms race between creators and detectors places society at a crossroads, prompting a nuanced examination of the ethical considerations surrounding the creation, dissemination, and regulation of deepfakes.

## **Ethical Considerations and Individual Rights:**

The surge in deepfake production introduces profound ethical considerations, particularly regarding privacy and individual rights. As individuals find themselves unwittingly cast in fabricated scenarios, questions of consent, autonomy, and the potential for reputational harm come to the forefront. Balancing technological innovation with safeguarding fundamental rights is a delicate task that requires a comprehensive ethical framework.

## **Privacy and Deepfakes:**

Privacy concerns emerge as a central theme in the discourse surrounding deepfakes. The ability to manipulate digital content to depict individuals in fabricated scenarios infringes upon personal privacy rights. Striking a balance between artistic expression, free speech, and safeguarding individual privacy becomes imperative in crafting regulations that are both effective and respectful of fundamental rights.

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<sup>1</sup> Ian Sample.(2020, January 13).What are deepfakes – and how can you spot them? The Guardian.  
<https://www.theguardian.com/technology/2020/jan/13/what-are-deepfakes-and-how-can-you-spot-them>



### **Global Perspectives on Deepfake Regulation:**

The proliferation of deepfake technology is not confined by borders, requiring a unified global response. Various nations grapple with distinct cultural, legal, and technological landscapes, leading to diverse approaches. While some jurisdictions lean on stringent copyright regulations, others focus on privacy laws or broader technology-related statutes. A harmonized global perspective is crucial for effectively tackling the transnational challenges posed by deepfakes.

### **Emerging Regulatory Frameworks:**

The evolving nature of deepfake technology demands proactive regulatory frameworks. Policymakers worldwide are tasked with creating laws that not only deter malicious use but also foster responsible innovation. Collaborative efforts between governments, technology experts, and legal scholars are essential to navigating the complex interplay of technology and regulation.

## **II) Challenges:**

### **Deepfake Detection Challenges:**

The contest between creators and detectors intensifies with the Deepfake Detection Challenge initiated by tech giants. Despite efforts to enhance detection capabilities, the winner's 65.18% accuracy underscores the persistent challenges. Improving detection mechanisms is vital for effectively enforcing copyright laws and mitigating the potential harm caused by misleading deepfake content.

Given the global nature of the internet, a harmonized international response is essential. Collaborative initiatives should transcend borders, fostering a shared understanding of the challenges and solutions. Platforms for international cooperation can facilitate the exchange of best practices, legal strategies, and technological innovations to combat the multifaceted issues associated with deepfakes.

### **Legal Challenges and Civil Liberties:**

The legal challenges posed by deepfakes extend beyond copyright and privacy concerns. Fundamental civil liberties, such as freedom of expression, are implicated. Striking a delicate balance between regulating harmful deepfake content and preserving essential freedoms requires thoughtful legal considerations.

### **Regulatory Challenges and Technological Advancements:**

The regulatory landscape for deepfakes faces significant hurdles as technology advances. Traditional legal frameworks often struggle to keep pace with the rapid evolution of AI. Detecting and regulating deepfakes necessitate continuous updates to legal instruments, collaboration with tech experts, and the fostering of interdisciplinary dialogues.

### **Emerging Technologies and Future Trends:**

As technology advances, new iterations of deepfake-like innovations are likely to emerge. Quantum leaps in AI capabilities may present challenges beyond the current scope. Anticipating these developments requires a proactive regulatory approach that is flexible enough to adapt to unforeseen technological advancements.

## **III) Indian Intellectual Property Laws and Deepfakes**

### **Current Legal Framework:**

India, with its rich legal tradition, grapples with the challenges posed by deepfakes within the existing intellectual property laws. The Copyright Act of 1957 forms the bedrock of legal provisions governing the creation and use of synthetic media. Sections pertaining fair dealing, moral rights, and infringement allegations have become focal points in the context of deepfake technology.

### **Fair Dealing under Indian Copyright Law:**

Section 52 of the Copyright Act, of 1957, provides a nuanced perspective on fair dealing, a principle akin to fair use in the United States.<sup>2</sup>This provision outlines specific instances where the use of copyrighted material is considered fair, such as for research, criticism, review, and news reporting. Analyzing the application of fair dealing to deepfakes requires a case-by-case assessment, considering the purpose and impact on the original work's market value. It aligns with Article 13 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) which states that *"Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder."*

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<sup>2</sup> Section 52, Indian Copyright Act, 1957, No. 14 Acts of Parliament 1957 (India).

### **Moral Rights and Integrity Protection:**

Section 57(1)(b) of the Copyright Act acknowledges the moral rights of creators, including the rights of integrity and paternity.<sup>3</sup> These rights empower creators to object to distortions, mutilations, or modifications of their work that could be prejudicial to their reputation. Deepfake content that distorts the original work might trigger the protection granted under this section, creating a legal avenue for creators to safeguard the integrity of their creations.

### **Civil and Criminal Liability:**

Sections 55<sup>4</sup> and 63<sup>5</sup> of the Copyright Act impose civil and criminal liability for infringement of exclusive rights. In the context of deepfakes, these provisions become crucial in holding both creators and intermediaries accountable. Under Section 79 of the Information Technology Act, 2000 intermediaries may be ordered to take down unlawful content upon receiving actual knowledge or a court order.<sup>6</sup> However, in the case of Myspace Inc. v Super Cassettes Industries Ltd, the Court held that in circumstances of copyright infringement, the intermediaries are required to take down infringing content upon receiving a notification from private parties without necessarily receiving a Court order. This case set a precedent in addressing copyright infringement in the digital era, emphasizing the need for adapting legal principles to technological advancements.<sup>7</sup>

### **Recent Cases and Legal Precedents:**

As deepfake technology evolves, recent cases in India provide insights into legal challenges and approaches. Courts have been called upon to balance the rights of creators, the potential harm caused by manipulated content, and the broader societal implications. While specific deepfake-related cases may not have reached prominence, intellectual property courts are likely to witness an uptick in such disputes, necessitating a proactive legal approach.

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<sup>3</sup> Section 57, Indian Copyright Act, 1957, No. 14 Acts of Parliament 1957 (India).

<sup>4</sup> Section 55, Indian Copyright Act, 1957, No. 14 Acts of Parliament 1957 (India).

<sup>5</sup> Section 63, Indian Copyright Act, 1957, No. 14 Acts of Parliament 1957 (India).

<sup>6</sup> Section 79, Information Technology Act, 2000, No. 21 Acts of Parliament 2000 (India).

<sup>7</sup> Myspace Inc. V. Super Cassettes Industries Ltd.[236 (2017) DLT 478]

## **IV) Critical Analysis:**

### **The Need for Legislative Updates:**

Given the dynamic nature of deepfake technology, there is a pressing need for legislative updates to address its unique challenges. The Indian legal framework must evolve to encompass the intricacies of synthetic media, providing clear guidelines for creators, platforms, and the judiciary. Legislative foresight becomes imperative to ensure the efficient regulation of deepfakes and the protection of intellectual property rights.

### **The Rigidity of Fair Dealing in Indian Copyright Law:**

Section 52 of the Indian Copyright Act introduces the concept of 'fair dealing,' seeking to distinguish between bonafide and malafide users of protected works. However, the lack of a precise definition of 'fair dealing' has sparked ongoing debates about its applicability. This rigidity has faced criticism, particularly when compared with the more flexible fair use doctrine in the United States. In the realm of deepfakes, the current position suggests that all creations, irrespective of their purpose, may inadvertently infringe copyright under the Indian doctrine of fair dealing.

### **Aligning with International Standards:**

Section 52 aligns with Article 13 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS), emphasizing the need to limit exceptions to exclusive rights in special cases.<sup>8</sup> While this alignment ensures conformity with international standards, it inadvertently creates hurdles for accommodating deepfakes created for legitimate purposes, such as entertainment or education. Adapting the current position becomes imperative to foster innovation while safeguarding the rights of content creators and addressing the unique challenges posed by deepfake technology.

### **Intermediary Liability and Deepfake Challenges:**

The intersection of copyright law and intermediary liability adds another layer to the deepfake dilemma. Section 79 of the Information Technology Act, 2000, empowers intermediaries to take down unlawful content upon receiving actual knowledge or a court order. However, the Myspace Inc.

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<sup>8</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 3; 33 I.L.M. 1197 (1994).

v Super Cassettes Industries Ltd case establishes that intermediaries must act on notifications from private parties, even without a court order, in cases of copyright infringement. This places a substantial responsibility on intermediaries to actively monitor and respond to content concerns raised by private entities.

### **Draft Rules and the Burden on Intermediaries:**

The Information Technology [Intermediary Guidelines (Amendment) Rules], 2018, propose a proactive monitoring approach, requiring intermediaries to employ automated tools to take down unlawful content within 24 hours of receiving an order or notification. While these rules signify a step forward in addressing concerns related to content moderation, their practical implementation, especially concerning deepfake content, presents a significant challenge

### **Detecting Deepfakes: A Technological Challenge for Intermediaries:**

One of the critical hurdles intermediaries face in complying with the draft rules is the technological limitation in detecting deepfake content. Current technology achieves only a 65.18% accuracy rate, making it a formidable challenge for intermediaries to effectively moderate and take down deepfake content, particularly in cases of copyright infringement.

## **V) Suggestions:**

### **Flexible Legal Framework (Global Perspective):**

Navigating the intricate landscape of copyright law, deepfakes, and the internet requires a nuanced understanding of the need for a flexible and adaptive legal framework. From a global perspective, jurisdictions exhibit varied approaches to address the challenges posed by deepfake technology within the realm of copyright law.

### **WIPO's Call for Dialogue (International Collaboration):**

The World Intellectual Property Organization (WIPO) plays a pivotal role in facilitating international collaboration and dialogue to shape effective copyright laws. WIPO's call for dialogue underscores the importance of collaborative efforts among nations to address the challenges posed by deepfakes. Copyright law can therefore be used as a regulatory tool concerning deepfakes based on the position of law in each jurisdiction and certain jurisdictions copyright protection can be extended to protect

deepfakes. The ownership of this particular copyright must be extended to the person who uses the generative adversarial network technology to make the deepfake content as intellectual property is used to incentivize creativity to stimulate further innovation.<sup>9</sup>

### **Public Awareness and Education (Global Initiatives):**

Initiatives focused on raising public awareness and educating users about the implications of deepfakes contribute significantly to creating a more informed digital society. Countries like Australia have implemented robust public awareness campaigns through organizations like the Australian Cyber Security Centre, educating citizens about the risks associated with deepfakes.

### **Educational and Awareness Initiatives:**

Building public awareness about deepfakes, their potential impact, and the importance of responsible use is crucial. Educational initiatives can empower individuals to discern between real and manipulated content, reducing the efficacy of malicious deepfake campaigns. Promoting digital literacy becomes an integral component of the broader strategy to mitigate the negative consequences of synthetic media.

### **Corporate Responsibility and Platform Regulations:**

Social media platforms, as primary channels for deepfake dissemination, bear a significant responsibility. Strengthening content moderation policies and investing in advanced technologies for detection are imperative. Regulatory frameworks must incentivize platforms to take proactive measures while considering the challenges associated with intermediary liability.

### **Governmental Role and Legislative Action:**

Governments play a pivotal role in shaping the regulatory environment for deepfakes. Legislative actions should be forward-thinking, addressing not only current challenges but anticipating future threats. Legal frameworks must be dynamic, allowing for iterative adjustments to accommodate evolving technologies.

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<sup>9</sup> WIPO, What is intellectual property?, WIPO (Jul. 24, 2020, 12:56 AM), <https://www.wipo.int/about-ip/en/>

## **VI) Conclusion:**

In conclusion, the evolving landscape of deepfake technology necessitates a proactive and adaptive legal framework to address its unique challenges. The rigidity of current intellectual property laws, particularly in the Indian context, calls for legislative updates that balance innovation with the protection of creators' rights. As the international community grapples with diverse approaches to deepfake regulation, collaborative efforts, as advocated by institutions like WIPO, become essential. Public awareness initiatives, corporate responsibility, and governmental actions are identified as crucial components of a holistic strategy. The paper emphasizes the importance of global dialogue, education, and dynamic legal frameworks in mitigating the threats posed by deepfakes and fostering responsible innovation in the digital era.

