

Copyright or personality rights? A critical analysis of Denmark's approach to deepfakes

Gabriel Ernesto Melian Pérez

Universitat Pompeu Fabra

Laura Herrerías Castro

Universitat Pompeu Fabra

Date of submission: September 2025

Accepted in: January 2026

Published in: March 2026

Abstract

This paper critically examines Denmark's proposed amendment to its Copyright Act, particularly section 73(a), which aims to grant individuals intellectual property protection against the unauthorized sharing of realistic, digitally generated imitations of their physical traits (deepfakes). While recognizing the well-intentioned aim, this study contends that the Danish proposal is fundamentally flawed both conceptually and teleologically. The analysis demonstrates that copyright law is an inappropriate framework for safeguarding elements of personal identity. A significant teleological mismatch exists: copyright law promotes economic and cultural objectives by encouraging the creation of works, whereas personality rights are grounded in the principle of human dignity. This misalignment risks turning intrinsic personality traits into commodities and undermining the coherence of the copyright system. The study proposes that Spain's Organic Act 1/1982 on the civil protection of the right to honour, privacy and one's own image offers a more suitable alternative. Despite its origins in the 1980s, this act's substantive and procedural design effectively addresses technological challenges such as deepfakes without requiring major reforms. The paper concludes that reinforcing existing civil protection mechanisms provides a more consistent solution than relying on copyright law.

Keywords

deepfake; artificial intelligence; copyright; personality rights; right to one's image

¿Derechos de autor o de personalidad? Un análisis crítico del enfoque de Dinamarca hacia las falsificaciones deepfake

Resumen

Este documento examina de forma crítica la enmienda propuesta por Dinamarca a su Ley de Derechos de Autor, en particular la sección 73(a), cuyo objetivo es otorgar a las personas protección de la propiedad intelectual contra el intercambio no autorizado de imitaciones realistas generadas digitalmente a partir de sus rasgos físicos (deepfakes). Al tiempo que reconoce el objetivo bienintencionado, este estudio sostiene que la propuesta danesa es fundamentalmente defectuosa tanto conceptualmente como teleológicamente. El análisis demuestra que la ley de derechos de autor es un marco inapropiado para salvaguardar los elementos de la identidad personal. Existe una discordancia teleológica significativa: la ley de derechos de autor promueve los objetivos económicos y culturales fomentando la creación de obras, mientras que los derechos de personalidad se basan en el principio de dignidad humana. Esta desalineación corre el riesgo de convertir los rasgos de personalidad intrínseca en mercancías y socavar la coherencia del sistema de derechos de autor. El estudio propone que la Ley Orgánica 1/1982 de España sobre la protección civil del derecho al honor, la privacidad y la imagen propia constituye una alternativa más adecuada. A pesar de sus orígenes en la década de 1980, el diseño sustantivo y procedimental de esta ley aborda eficazmente desafíos tecnológicos, como los deepfakes, sin requerir reformas importantes. El documento concluye que reforzar los mecanismos de protección civil existentes proporciona una solución más coherente que confiar en la ley de derechos de autor.

Palabras clave

deepfake; inteligencia artificial; derechos de autor; derechos de personalidad; derecho a la imagen propia

Introduction

The swift progress of Artificial Intelligence in recent years has driven the surge of deepfakes.¹ This technology can generate or alter images, audio, or voices with extraordinary realism, making it a potential tool for rights violations. Deepfakes differ from other types of digital manipulation because they aim for such authenticity that they can deceive and cause confusion, unlike caricatures or parodies, which exaggerate features or depend on humour and critique without any assertion of authenticity. It is precisely this potential for deception that makes deepfakes particularly relevant in legal, ethical, and social contexts.

Common threats include non-consensual pornography and identity impersonation or identity theft, illustrating the technology's potential to harm both private and public life (Simó Soler, 2023, pp. 500-503). Deepfakes can also be a powerful means of spreading misinformation, allowing people to generate fake content in political, social, or personal contexts to deceive or mislead audiences and consumers. Consequently, this content significantly undermines trust in the media, traditional evidence, and science (Van der Sloot & Wagenveld, 2022, p. 6).

Some jurisdictions have responded to this situation by proposing new norms. In recent months, Denmark's approach has garnered considerable public attention due to

1. According to recital 134 and art. 3.60 of the Artificial Intelligence Act, "'deep fake' means AI-generated or manipulated image, audio or video content that resembles existing persons, objects, places, entities or events and would falsely appear to a person to be authentic or truthful". Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

its pragmatic proposal.² This initiative aims to amend the Danish Copyright Act to enable individuals to take legal action against the sharing of deepfakes. This is outlined in section 73(a), which states: "General Protection against Deepfakes: Any individual can seek IP protection against the unauthorized sharing of realistic, digitally generated imitations of their physical characteristics (face, voice, etc.)." It is important to highlight that the Danish proposal focuses solely on the distribution of deepfakes, not their mere creation. Therefore, the provision does not constitute a general ban on deepfakes. Private imitations that are not made available to the public remain permitted.³

Although the aim of protecting citizens is well-intentioned, the Danish proposal is both conceptually and teleologically flawed. By transforming elements of personal identity into legal assets under a branch of law traditionally reserved for intellectual creations, it distorts the object of copyright and disregards its functions and objectives. Intellectual property is, therefore, an inadequate tool for addressing deepfakes. From a comparative law perspective, more suitable legal solutions exist.⁴ Analysing the proposal's conceptual foundations is essential to inform the political debate and ensure that efforts to address deepfakes do not compromise the coherence and integrity of long-established legal institutions.

The paper is structured as follows. The first section discusses why copyright law is an unsuitable framework for protecting aspects of individual identity. It begins by highlighting the differences between the objects of protection (work/performance versus physical attributes). Then, it addresses the fundamental teleological issue: the purpose of copyright law is inherently distinct from that of laws designed to protect the intrinsic features of a person. The second section reviews the provisions of Spain's Organic Act 1/1982. It demonstrates how this legislation provides a clearer and more effective framework for dealing with the

challenges posed by deepfakes. Overall, the paper seeks to demonstrate that tackling contemporary issues like deepfakes does not require altering existing legal regimes but can be achieved by relying on well-established legal frameworks.

Before proceeding, please note the following disclaimer. Section 73(a) is not the only amendment. Section 65(a) has also been introduced, which states: "Protection for Performing Artists: Performing artists can claim copyright protection from unauthorized sharing of realistic, digitally created imitations of their artistic performances". The difference between the two provisions lies in their scope of protection. Section 73(a) safeguards the personal identity traits of individuals, while section 65(a) protects specific artistic performances. The latter focuses on performers and their right to control the use of their performances, a matter traditionally covered by neighbouring rights. Consequently, section 65(a) grants performers access to the enforcement mechanisms usually available to holders of such rights, including the ability to issue takedown notices, claim damages, or initiate infringement proceedings against the creators of the deepfake (see section 83).⁵ This paper's analysis focuses solely on the problematic section 73(a), rather than on section 65(a), since the latter is neither as controversial nor as innovative. Section 65(a) is less groundbreaking because it does not establish an entirely new legal framework; instead, it extends existing protections under neighbouring rights for performers to the context of deepfakes. The enforcement mechanisms it provides were already available and are merely applied to a new technological setting. In contrast, section 73(a) creates an autonomous protection of personal identity against digital imitations, an area not traditionally addressed by copyright or neighbouring rights. With these clarifications in mind, we now turn to analysing the implications of the newly introduced section 73(a).

2. See <https://www.theguardian.com/technology/2025/jun/27/deepfakes-denmark-copyright-law-artificial-intelligence>; <https://www.nytimes.com/2025/07/10/world/europe/denmark-deepfake-copyright-ai-law.html>; <https://www.weforum.org/stories/2025/07/deepfake-legislation-denmark-digital-id/>. The proposal can be found at <https://www.ft.dk/samling/20241/almdel/kuu/bilag/232/3050901.pdf>.
3. In fact, nothing prevents realistic digitally generated imitations from being used within the private sphere, for example, at a private party, as specified in the proposal on page 41.
4. According to the European Parliamentary Research Service's Study on "Tackling deepfakes in European policy" (PE 690.039 - July 2021, p. 40): "Since individuals generally do not own a copyright interest in their own image, copyright law is not very suitable for individuals to protect their own persona. However, in some EU Member States there are other legal provisions for the protection of a person's image or portrait. Although the protection of image rights in the EU still remains far from harmonised, most Member States recognise at least some form of legal protection".
5. As we will discuss later, this broad set of remedies is not available to the subjects covered by section 73(a). The Danish proposal does not provide any justification for this distinction.

1. Copyright is not the proper legal framework

1.1. The problem of the object of protection

Copyright protects original expressions of human intellect, such as literary, cinematographic, musical, pictorial, and photographic works, among others.⁶ What is protected are not abstract ideas, but rather the concrete and original form in which those ideas are expressed, hence originality in this expression is a prerequisite (Goldstein and Hugenholtz, 2019). According to the doctrine of the CJEU, an expression is original and therefore constitutes a work protected by copyright if it is the author's own intellectual creation⁷ (Fritz, 2024). While no high level of creativity or special artistic merit is required,⁸ it should allow some room to reflect creative choices or decisions.⁹ If there is no room for such decisions, it would lack originality and could not be considered a work protected by copyright.¹⁰ Besides, the notion of "intellectual creation" implies that the work must be the product of human mental activity, i.e., it excludes anything that is purely automatic, natural, or generated without creative intervention by someone (Friedmann, 2024). This implies that a certain degree of conscious choice and creative freedom is required, so that it can communicate a personal touch.

Copyright laws also cover what are known as "Neighboring Rights".¹¹ These protect performers, phonogram producers and broadcasters. That is, its object of protection is the interpretation or performance of works, phonograms, and radio and television broadcasts. Neighbouring rights safeguard those who, without being the original authors of a work, make a creative, technical, or financial contribution essential for its public dissemination. A key difference between copyright and neighbouring rights is that the latter do not demand "originality" in the strict sense. However, they do involve an act of creative or technical input, such as a musician's performance (Hugenholtz, 2019). A phonogram producer does not create in the artistic sense but or-

ganizes and makes technical and economic decisions that produce an object worthy of legal protection. In essence, neighbouring rights aim to ensure the fair exploitation of contributions significant to cultural communication - even if they are not "original" to the extent required for copyright protection.

Although related rights are less strict than copyright, they are not an appropriate parallel for personal traits. Neighbouring rights, while not requiring the same level of creativity as copyright, still involve an act of creation. An actor's or musician's performance, or a phonogram's recording, reflects an individualized creative or technical contribution that involves conscious effort. Conversely, personality traits such as image and voice are inherent qualities of human personality and not the result of free choices. The proposal neglects the core principle of intellectual property, which is the act of creation. Denmark's approach would introduce elements of personality rights into a legal framework designed for intellectual creations, leading to a clear conflict regarding what is protected.

1.2. Copyright and personality rights have limits, but with different rationales

The boundaries of copyright differ substantially from those of personality rights. While copyright protects the author's rights over an original intellectual creation, the right to one's own image aims to safeguard inherent and fundamental attributes of the individual. This distinction forms the foundation upon which their respective limitation regimes are built. Copyright limitations are intended to balance the creator's temporary monopoly with broader societal interests. To ensure access to culture, education, and the encouragement of new works, the law offers exceptions such as quotation, educational or research use, parody, and informational use. These limitations help prevent the protection of a work from hindering cultural development.

6. Art. 2 Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, as revised at Paris, July 24, 1971, and amended in 1979.
7. Infopaq International A/S v. Danske Dagblades Forening, C-5/08, EU:C:2009:465 (2009).
8. Cofemel v. G-Star Raw CV, C-683/17, EU:C:2019:531 (2019).
9. Painer v. Standard VerlagsGmbH, C-145/10, EU:C:2011:798 (2011); Brompton Bicycle Ltd v. Chedech/Get2Get, C-833/18, EU:C:2020:946 (2020).
10. Football Dataco Ltd v. Yahoo! UK Ltd, C-604/10, EU:C:2012:115 (2012).
11. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, 496 UNTS 43 (1961).

These limits are reinforced by the “three-step rule”, established in the Berne Convention as a strict control mechanism over copyright exceptions. Consequently, for a limitation to be lawful, it must cumulatively meet three conditions:

- 1) the limitation must only apply in certain specific cases that are well defined by law;¹²
- 2) the use covered by the limitation must not interfere with the way in which the author is commercially exploiting his work; and
- 3) the limitation must not cause disproportionate harm to the legitimate interests of the right holder.

In contrast, the limits of image rights are established through a balancing test between fundamental rights (Dworkin, 1977), which evaluates the legality, proportionality, and necessity of restricting personal rights in favour of others, such as freedom of expression or information. Unlike copyright, the restrictions on image rights are not aimed at fostering third-party creativity or cultural access but are instead designed to weigh these rights against constitutionally protected interests. The ECtHR has outlined nonexhaustive key factors to consider when balancing the right to one's image under art. 8 and freedom of expression under art. 10 ECHR, including: contribution to a debate of public interest, the prominence of the individual concerned,¹³ prior conduct of that individual, the content, form, and consequences of the publication, and, where relevant, the circumstances under which the photographs were taken.¹⁴

The right to information does not protect the dissemination of deepfakes, as these creations, by their very nature, lack factual or informational value given that the content

they depict is not real. In certain circumstances, the unauthorized dissemination of a deepfake may be protected by freedom of expression when it involves public figures, poses no risk of confusion, and respects the principle of proportionality, for example, in the cases of parody¹⁵ or social criticism.¹⁶

In summary, in copyright law, the limits are determined by the law governing the creator's monopoly rights, which permit society to benefit from the work under specific conditions. Conversely, restrictions on image rights stem from a balance of fundamental rights, where the right to one's own image may be overridden by freedom of expression and information, always subject to strict scrutiny of proportionality and relevance. This contrast is clear in practice. With copyright, any excerpt from a film or book can be used without the right holder's permission for purposes such as criticism or analysis, provided the three-step test is satisfied. However, under image rights, reproducing and sharing a clip of an identifiable person without consent would generally be prohibited unless there is a significant public interest justifying it.

1.3. The teleological argument

Copyright law is a set of norms that grant creators of original works a series of exclusive rights over the use and exploitation of their works. Although it may be perceived at first glance as a norm whose objective is to protect authors, its purpose is much broader and more complex, preserving a delicate balance between private and public interests (Ricketson & Ginsburg, 2022; Hugenholtz, 2000).

The fundamental purpose of copyright is based on the theory of economic incentive, which seeks to encourage

12. The doctrine of the CJEU establishes that Member States cannot invoke fundamental rights enshrined in the Charter of Fundamental Rights of the EU to create exceptions or limitations to copyright that are not expressly provided for in the Infosoc Directive. This principle, established in cases such as *Spiegel Online* (C-516/17, ECLI:EU:C:2019:62 (2019). § 49), confirms that the copyright system operates with a closed list of exceptions, which marks a fundamental difference with the regime for limiting personality rights.
13. Public figures enjoy more limited protection of their image rights than private individuals. Whilst in the former case the press exercises its role of “public watchdog” in a democracy by imparting information and ideas on matters of public interest, that role appears less important in the latter case.
14. ECtHR, *Hannover v Germany* (no. 2) [GC], applications n° 40660/08 and 60641/08 (7 February 2012), §§ 108-113; *Axel Springer AG v Germany* [GC], application n° 39954/08 (7 February 2012), §§ 89-95.
15. Satire is a form of artistic expression and social commentary and, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. See ECtHR, *Vereinigung Bildender Künstler v Austria*, application n° 68354/01 (25 January 2007), § 33.
16. Freedom of expression not only protects ideas that are favorably received or regarded as inoffensive, but also those that offend, shock or disturb. See ECtHR, *Castells v Spain*, application n° 11798/85 (23 April 1992), § 42.

creativity by ensuring that authors can obtain fair compensation for their intellectual efforts.¹⁷ By granting a temporary monopoly on reproducing and distributing a work, the law establishes a market mechanism that allows creators to benefit from their efforts. Without this legal fiction, the ease with which original works could be mass-copied would discourage the creation of new works. In this way, copyright acts as a tool to stimulate a constant flow of innovation and expression (Landes & Posner, 1989).

The copyright system does not grant authors absolute control; instead, it operates through a delicate balance between their private interests and the public interest in accessing knowledge and culture. This balance is reflected in the temporality of rights, ensuring that all works eventually enrich the public domain. Likewise, the law establishes limitations and exceptions, such as the right to quote or educational uses, allowing society to use existing works reasonably (Ricketson & Ginsburg, 2022). Therefore, ultimately, the function of copyright transcends the individual benefit of the author to fulfil a higher social objective: the advancement of culture, science, and art. The economic reward for the author serves as a means to an end, which is the construction of a rich and diverse cultural heritage and the continuous advancement of knowledge and art.

On this basis, we must ask: does the protection of individual identity traits rest on the same principles and objectives as copyright? The answer is no. Fundamentally different purposes must guide a legal framework designed to prevent the misuse of personal identifying features. Whereas copyright pursues economic and cultural aims, seeking to incentivize creations through economic rewards, personality rights serve an existential and dignitary function, safeguarding the individual's innermost sphere as a cornerstone of human dignity (López Jacoiste, 1986, pp. 1068-1070; de Cupis, 1956, pp. 32-33). Copyright is justified by utilitarian theories (incentive to create), while person-

ality rights are based directly on the dignity of the human person as the supreme value.

If personality rights protect human dignity and the free development of the individual, then what is necessary is a rule that provides concrete safeguards, a guarantee-oriented provision (or a rights-protective rule). The latter do not aim to promote economic activity or encourage productive behaviour, as is the case with copyright, but rather to ensure that a particular right is effectively protected against infringements.¹⁸ In other words, what is necessary is to establish a system of civil protection against all types of unlawful interference, enabling legal action to seek compensation and remedial measures. This concept of "personal intellectual property" conflicts with the logic of copyright law: the goal is not to reward the authorship of a creation, but to prevent impersonation.

In summary, the Danish proposal presents several risks. First, it may lead to uncontrolled expansion and blurring of copyright, whose scope is already complex and diffuse. Including elements unrelated to the system, such as personal identity traits, could distort the logic and principles of the intellectual property regime, leading to conceptual conflicts and interpretive difficulties.

Secondly, this proposal could influence future European legislation in areas such as copyright, where there is still no complete harmonization on several key issues. This could create further legal uncertainty and disrupt the coherence of the European intellectual property framework by incorporating criteria that are unrelated to the traditional logic of this branch of law.

Thirdly, there could be a potential risk of excessive "commodification" of inherent personality traits. Intellectual property law is intended to "commodify" content and promote its economic exploitation. This approach could

17. The first conceptual obstacle arises when comparing this to personal characteristics. While copyright serves to reward the author for the creative effort invested in producing a work, one might ask: what effort is involved in the mere image of an ordinary person? In this case, the "remunerative function" of copyright is meaningless, since there is no effort involved in possessing certain features when these are given by nature. This argument loses force when it comes to celebrities, whose personal characteristics are often the result of significant effort and financial investment - through marketing strategies and advertising campaigns - aimed at building and consolidating their image.
18. Under the objectives set out in the Danish proposal, it does not seem that the idea is to promote a business model based on the commercialization of images, but rather to ensure that individuals can prevent the unauthorized use of their distinctive features. It would be inconsistent to use a regime whose logic consists precisely in encouraging the dissemination, "commodification", and exploitation of content - as is the case with copyright - to pursue an opposite objective, namely, to prevent deepfakes.

indeed turn deepfakes into a new “licensing opportunity” rather than an illegal activity (Hugenholtz, 2025). In other words, aligning with the logic of IP rights encourages the creation of deepfakes as a possible source of income for individuals, rather than deterring it. Should this be the aim of a new regulation that seeks to limit the harmful effects of deepfakes? This is not the perspective supported by this paper. A regulatory solution should prioritize safeguarding individual dignity and control over aspects of identity, rather than providing incentives for economic exploitation.¹⁹

Finally, there is also a risk of weakening or neglecting legal frameworks better suited to protect inherent personality rights. Traditionally, these rights have been protected through constitutional and civil mechanisms, which better align with the dignity and safeguarding purpose of these rights than an intellectual property regime. In the second part of this paper, we therefore aim to highlight an approach that we consider more suitable for protecting the interests discussed above.

2. Towards a more suitable legal alternative

2.1. The civil protection of the right to one's image

A person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her peers. The right to the protection of one's image is thus one of the essential components of personal development and presupposes the right to control the use of that image.²⁰ The spread of deepfakes endangers this right by removing individuals' control over their image and voice.

For instance, deepfakes can falsely attribute statements to someone that oppose their beliefs or be used to mock them. The unauthorised distribution of deepfakes can breach the right to one's image (Trujillo Cabrera, 2024, pp. 92-94), and when such distribution aims to defame the individual depicted, it may also violate the right to honour (Herrerías Castro, 2025, pp. 38-39).²¹

A recent case in Germany illustrates these risks. Manfred Lehmann, a well-known dubbing artist, sued a YouTube channel operator for the unauthorized commercial use of his voice. In its ruling, the Berlin Regional Court (II, 2 O 202/24) found that the YouTube creator had violated Lehmann's right to his own voice by using an AI-generated voice to add narration to videos. Although the voice employed was an artificial reproduction rather than Lehmann's actual voice, the method of production was considered irrelevant. What matters is whether a substantial part of the target audience would believe that Lehmann had authorized the content of the videos.

Section 73(a) of the Danish Proposal Copyright Act protects individuals from the unauthorized publication of deepfakes. This protection remains in force until 50 years after the individual depicted has died. One reason for extending copyright protection to these cases is that, under Danish commercial law, the right to one's own image only covers the commercial use of digitally generated imitations.²² When there is no commercial purpose, the injured parties must rely on the general rules of non-contractual civil liability.

In contrast, art. 7.5 of the Spanish Organic Act 1/1982, of 5 May, on the civil protection of the right to honour, privacy and one's own image protects individuals, among others, against “the capture, reproduction, or publication by means of photography, film, or any other process, of the image of a person in places or moments of their private

19. It should be noted that although personality rights are traditionally regarded as inalienable, unavailable and non-transferable, their holders may consent to certain uses of their image, typically in exchange for remuneration. See Vendrell Cervantes (2014, pp.132-152).

20. ECtHR, GC, López Ribalda and Others v. Spain, applications n° 1874/13 and 8567/13 (17 October 2019) §§ 87-89.

21. See also Judgements of the Spanish Supreme Court n° 682/2020, of 15 December 2020 (ECLI:ES:TS:2020:4217); n° 209/2020, of 29 May 2020 (ECLI:ES:TS:2020:1537); n° 544/2016, of 14 September 2016 (ECLI:ES:TS:2016:4053); and n° 588/2011, of 20 July 2011 (ECLI:ES:TS:2011:5858).

22. In Spain, see art. 7.6 of the Organic Act 1/1982, of 5 May, which protects individuals against the use of their name, voice, or image for advertising, commercial, or similar purposes.

life or outside of them".²³ The Spanish Supreme Court has interpreted the scope of art. 7 broadly, so that the protection it offers can also be understood to include a person's voice (Ammerman Yebra, 2021, pp. 151-152). The protection of a person's image also extends to neutral photographs, which are images that, while not revealing private details of an individual's life, nonetheless depict their physical appearance in a way that makes them identifiable.²⁴ This is because the Constitutional Court regards the rights to privacy and to one's own image as separate rights with their own specific content.

The Danish Proposal protects only realistic deepfakes and excludes from its scope of application deepfakes created primarily for purposes such as caricature, satire, parody, pastiche,²⁵ or social and political criticism, unless the imitation constitutes misinformation. The criterion of realism requires that the imitation has the potential to cause confusion with the person being imitated. For instance, a deepfake showing a person's traits as a fictional character would not be protected, as such an imitation generally cannot cause confusion. Similarly, a realistic deepfake that reveals the content has been artificially created or manipulated would also not entail a risk of confusion.²⁶ On the contrary, under art. 7 of the Organic Act 1/1982, the mere warning itself does not constitute a legitimate justification for interference with the right to one's image (Extremera Fernández, 2024, pp. 247-248).

As noted above, under the Danish Proposal, caricatures and other forms of protected speech are excluded from its scope of protection unless they pose a risk to the rights of others, such as life, health, privacy, reputation, or property. Similarly, art. 8.2 (b) of the Organic Act 1/1982 states that the right to one's own image shall not prevent the use of caricatures of public persons, in accordance with social custom. A caricature is a visual representation in which a person's image is exaggerated humorously or critically, exercising freedom of expression. A depiction does not qualify as a caricature if the person's image is not distorted or the distortion is not clearly recognizable (de Verda y Beamonte, 2011, pp. 107-108). Consequently, a

deepfake cannot be regarded as a caricature when it does not involve a deliberate alteration of a person's image for satirical, humorous, or socially critical aims. For example, linking a person's face with a naked or semi-naked body surpasses the limits of freedom of expression. In this regard, the Judgment of the Spanish Constitutional Court nº 23/2010, of 27 April, held that it is difficult to see any public interest in the use of such manipulated photographs, as they are unrelated to any legitimate purpose of political or social criticism and their publication does not contribute to the formation of free public opinion.

Finally, according to sections 83 and 84 of the Danish Proposal, individuals have no right to compensation for infringements of section 73 a); they can only seek the removal of the deepfake. This contrasts with the broad range of remedies available under art. 9.2 of the Organic Act 1/1982 in cases of infringement of the right to one's own image. In such instances, the injured party may pursue several remedies, such as an injunction ordering the violation to cease and/or prohibiting its future occurrence, a claim for damages to compensate for the harm suffered, an action seeking the publication of the judgment against the defendant, and the appropriation by the injured party of the profit obtained from the infringement of their rights (Santos Morón, 2023, pp. 1324-1334; Yzquierdo Tolsada, 2014).

In summary, despite the Organic Act 1/1982 dating to the 80s, the wording of art. 7, along with its broad judicial interpretation, allows for the inclusion of deepfakes. It should be noted that this provision does not establish a closed list of infringements of the right to honour, to privacy and to one's own image. This open character allows for an adaptation of new instances of infringements to the new requirements posed by technological advances without the need to pass new acts on the subject.

Regarding the limits of the right to one's own image, deepfakes disseminated for humorous or socially critical purposes should be protected under freedom of expression, provided the principle of proportionality is respected.

23. Ley Orgánica 1/1982, de 5 de mayo, de protección civil del derecho al honor, a la intimidad personal y familiar y a la propia imagen (BOE nº 115, 14/05/1982).

24. Judgement of the Spanish Constitutional Court nº 27/2020, of 24 February 2020 (ECLI:ES:TC:2020:27).

25. On the meaning of the term "pastiche" see the Opinion of AG Emiliou in Pelham, C-590/23, ECLI:EU:C:2025:452 (2025) §§ 81-83.

26. Art. 50.4 of Artificial Intelligence Act.

However, freedom of expression does not extend to the unauthorized dissemination of a person's image – particularly if the individual is not a public figure – when no public interest is involved. Moreover, the Danish Proposal excludes from its scope of protection deepfakes that disclose they have been artificially generated. Even though such deepfakes do not create a risk of confusion, the right to one's image can still be severely infringed, for example, in cases of non-consensual pornography.

2.2. Why should the Organic Act 1/1982 inspire future legislation?

From a procedural standpoint, one of the main advantages of the Spanish legal system is that it allows individuals to seek judicial protection against violations of fundamental rights through the special procedure established in art. 53.2 of the Spanish Constitution. This provision grants all citizens the right to seek protection of their own image before the ordinary courts through a procedure based on the principles of preference and summary resolution. In this regard, art. 249.1.2 of the Civil Procedure Act sets forth that claims seeking protection of the right to honour, privacy, and one's own image shall be given priority. Furthermore, art. 477.2 of the same Act guarantees the possibility of filing an appeal before the Supreme Court in cases involving civil protection of fundamental rights. Finally, the provisional enforcement of judgments safeguarding fundamental rights is also prioritized (art. 524.5), except for compensation awards, for which provisional enforcement is not permitted (art. 535.3).

From a substantive law perspective, art. 9.3 of the Organic Act 1/1982 establishes an irrefutable presumption of nonpecuniary damages, which serves as an exception to the general rules in Spanish law that require the claimant

to prove the existence of damage.²⁷ This presumption is justified both due to the difficulty of proving this type of loss and because the specific nature of the protected interests that have been infringed reasonably suggests that nonpecuniary loss has occurred (Martín-Casals/Solé Feliu, 2005, p. 329).

The assessment of nonpecuniary damage must consider both the circumstances of the case and the seriousness of the harm. The latter requires evaluating the scope of dissemination of the medium through which the infringement occurred, from both a quantitative and qualitative perspective. The quantitative dimension refers to the number of potential recipients,²⁸ while the qualitative dimension concerns the impact of the infringement on the injured party's personal, professional, or social life. Even when dissemination is limited, the harm may still be severe if the infringement occurs within the area where the injured person resides or conducts their professional activities.²⁹ In the online context, the Spanish Supreme Court considers various factors when assessing the seriousness of the damage, including the number of followers of an account,³⁰ the volume of visits or impressions received,³¹ and the duration for which the content remained accessible.³² The ECtHR has also stressed the relevance of the social network account's public or private nature in assessing the extent of the harm caused.³³

The injured party may claim damages against the individual who disseminates the deepfake and against the online platform that hosts it. In the latter case, the platform becomes civilly liable only when it has actual knowledge or awareness of the content's illegality, usually upon receiving a user notification, and then fails to act promptly to remove it or restrict access (Herrerías Castro, 2025). Until that moment, it may rely on the safe harbour protection provided in art. 6.1 of the Digital Services Act (Arroyo

27. See also art. 27.1 of Act 15/2022 on equal treatment and non-discrimination (Ley 15/2022, de 12 de julio, integral para la igualdad de trato y la no discriminación, BOE nº 167, 13/07/2022).

28. Judgement of the Spanish Supreme Court nº 689/2019, of 18 December 2019 (ECLI:ES:TS:2019:4200).

29. Judgements of the Spanish Supreme Court nº 484/2024, of 10 April 2024 (ECLI:ES:TS:2024:1805); nº 637/2022, of 3 October 2022 (ECLI:ES:TS:2022:3505).

30. Judgement of the Spanish Supreme Court nº 142/2022, of 22 February 2022 (ECLI:ES:TS:2022:632).

31. Judgements of the Spanish Supreme Court nº 1037/2023, of 27 June 2023 (ECLI:ES:TS:2023:2894); nº 682/2020, of 15 December 2020 (ECLI:ES:TS:2020:4217).

32. Judgement of the Spanish Supreme Court nº 1617/2023, of 21 November 2023 (ECLI:ES:TS:2023:5194).

33. ECtHR, *Kozan v. Türkiye*, application nº 16695/19 (1 March 2022) §§ 51 and 66.

Amayuelas, 2025).³⁴ The injured party might also seek damages from the Generative AI operator itself under Member States' non-contractual liability rules³⁵, although proving fault can be challenging.³⁶

As noted in the previous section, the Danish Proposal grants individuals the right to request the removal of deepfakes from the medium on which they have been published. In accordance with art. 6.4 of the Digital Services Act, the safe harbour protection for hosting service providers does not prevent a judicial authority, following a Member State's legal system, from requiring the online platform to terminate or prevent an infringement.

Pursuant to art. 9.2 a) DSA, any order to act against illegal content must contain the following information:

- i) a reference to the legal basis under Union or national law for the order;
- ii) a statement of reasons explaining why the information is illegal content, by reference to one or more specific provisions of Union law or national law in compliance with Union law;
- iii) information identifying the issuing authority;
- iv) clear information enabling the provider of intermediary services to identify and locate the illegal content concerned, such as one or more exact URL and, where necessary, additional information;

- v) information about redress mechanisms available to the provider of intermediary services and to the recipient of the service who provided the content;
- vi) where applicable, information about which authority is to receive the information about the effect given to the orders. Concerning the territorial scope of such orders, art. 9.2 b) DSA does not exclude global effectiveness, although it states that it must be limited to what is strictly necessary to achieve its objective.³⁷

A key issue, however, is that users may reupload deepfakes, and the Danish Proposal does not clarify whether a claim under sec. 84 extends to preventing further infringements.³⁸ In contrast, art. 9.2(b) of the Organic Act 1/1982 explicitly states that judicial protection includes preventing future infringements.³⁹ Such prevention may be implemented using automated detection tools, such as hashing technologies (Gorwa, Binns & Katzenbach, 2020, p. 4).

Although injunctions are essential for protecting fundamental rights, they are not always sufficient, given the challenges of preventing content from reappearing after removal. The viral dissemination of a deepfake might cause substantial reputational harm, potentially affecting both personal and professional life. Effective protection of the right to one's image requires that injured parties be entitled to seek both injunctive relief and damages. The Danish proposal, in its current form, is inadequate to achieve this objective, as it expressly excludes compensation claims and fails to address the prevention of future infringements.

34. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (OJ L 277, 27.10.2022, pp. 1-102). It should be noted that safe harbor protections do not affect the obligations imposed by the GDPR on online platform operators. See Russmedia Digital and Inform Media Press, C-492/23, ECLI:EU:C:2025:935 (2025), §§127-136.

35. While the Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC classifies AI systems as products, it excludes damages resulting from violations of personality rights from its scope of application (see art. 6 and recital 24).

36. On 11 February 2025, the European Commission announced the withdrawal of the proposal for a Directive on adapting non-contractual civil liability rules to artificial intelligence due to the absence of a foreseeable agreement among the Member States. See Commission work programme 2025. Moving forward together: A Bolder, Simpler, Faster Union, Strasbourg, 11.2.2025, COM(2025) 45 final, p 26.

37. Recital 36 DSA sets forth that: "In particular in a cross-border context, the effect of the order should in principle be limited to the territory of the issuing Member State, unless the illegality of the content derives directly from Union law or the issuing authority considers that the rights at stake require a wider territorial scope, in accordance with Union and international law, while taking into account the interests of international comity". See (Melian Pérez, 2022).

38. Cf. Art. 17.4 c) of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ L 130, 17.5.2019, pp. 92-125)

39. In Glawischnig-Piesczek, C-18/18, ECLI:EU:C:2019:821 (2019) the CJEU stated that it is not contrary to art. 15.1 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (now art. 8 DSA) an injunction ordering a social network to remove information the content of which is identical or equivalent to information which was previously declared to be defamatory, or to block access to that information, irrespective of who the author is.

Conclusion

The Danish proposal, although well-intentioned, makes a conceptual error by bringing the issue of personality rights into the realm of copyright. While intellectual works are, by nature, economic assets, a person's image and characteristics fall better within the sphere of dignity and personality, and therefore require a less commodified approach. Integrating these elements into the logic of intellectual property not only distorts their essence but also threatens to weaken the internal coherence of the copyright system simultaneously.

This analysis demonstrates that more suitable and less disruptive legal remedies are available. Spain's Organic Act 1/1982 provides a fitting framework for dealing with issues like deepfakes. The act's flexible structure and extensive judicial interpretation mean it can adapt to technological advancements without needing major legislative changes. Additionally, it offers injured parties broader and more effective remedies than those proposed in the Danish proposal. While acknowledging that the Organic Act 1/1982 has its critics, its structure and scope offer a more

consistent way to regulate deepfakes. Improving existing mechanisms, such as the right to one's own image, the right to honour, and personal data protection, presents a more conceptually sound alternative than expanding copyright law into this area.

To summarize, this contribution reaffirms the conceptual and teleological inadequacy of resorting to copyright law to address deepfakes. The systematic coherence of the legal system requires regulatory solutions that are technologically informed yet respectful of and rigorous with respect to traditional legal categories. This is the only way to avoid hasty legislative responses that, far from solving the problem, end up creating greater distortions.

Acknowledgments

This work was supported by the research project "Digitalización y responsabilidad por producto: análisis de la Directiva (UE) 2024/2853 y de su transposición", funded by the Spanish Ministry of Science, Innovation, and Universities. The European Fund of Regional Development and the Spanish State Research Agency (PID2024-1581950B-I00).

References

- AMMERMAN YEBRA, J. (2021). *El derecho a la propia voz como derecho de la personalidad*. A Coruña: Colex.
- ARROYO AMAYUELAS, E. (2025). "Article 6 Hosting". In: SCHULZE, R./STAUDENMAYER, D. (ed.). *EU digital law: article-by-article commentary*, pp. 731-757, 2nd ed. Bade-Baden: Nomos.
- DE CUPIS, A. (1956). *I Diritti della Personalità*. Milan: Giuffrè editore.
- DE VERDA Y BEAMONTE, J. R. (2011). "Intromisiones legítimas en el derecho a la propia imagen autorizadas por la ley". In: DE VERDA Y BEAMONTE, J.R. (coord.). *El derecho a la imagen desde todos los puntos de vista*, pp. 87-120. Cizur Menor: Aranzadi.
- DWORKIN, R. (1977). *Taking rights seriously*. Harvard University Press.
- EXTREMERA FERNÁNDEZ, B. (2024). "Los deepfakes y la intromisión en los derechos de la personalidad (imagen, voz, honor y protección de datos) y sus mecanismos de reparación". In: MORENO MARTÍNEZ/FEMENÍA LÓPEZ (coords.). *Inteligencia artificial y derecho de daños: cuestiones actuales*, pp. 223-259. Madrid: Dykinson.
- FRIEDMANN, D. (2024). "Creation and Generation Copyright Standards". *NYU J. Intell. Prop. & Ent. L.*, vol. 14, p. 51. DOI: <https://doi.org/10.2139/ssrn.4770924>
- FRITZ, J. (2024). "The notion of 'authorship' under EU law—who can be an author and what makes one an author? An analysis of the legislative framework and case law". *Journal of Intellectual Property Law & Practice*, vol. 19, no. 7, pp. 552-556. DOI: <https://doi.org/10.1093/jiplp/jpae022>
- GOLDSTEIN, P.; HUGENHOLTZ, P. B. (2019). *International copyright: principles, law, and practice*. 4th Edition: Oxford University Press. DOI: <https://doi.org/10.1093/9780190060619.001.0001>
- GORWA, R.; BINNS, R.; KATZENBACH, CH. (2020). "Algorithmic content moderation: Technical and political challenges in the automation of platform governance". *Big Data & Society*, vol 7, no. 1, pp. 1-15. DOI: <https://doi.org/10.1177/2053951719897945>
- HERRERÍAS CASTRO, L. (2025). *El derecho al honor en línea: protección civil y responsabilidad de las plataformas digitales*. Madrid: Aranzadi LALEY.
- HERRERÍAS CASTRO, L. (2025). "Liability of online platforms in defamation cases". *Journal of Intellectual Property, Information Technology and Electronic Commerce Law*, vol. 16, no. 2, pp. 252-269.
- HUGENHOLTZ, B. (2025). "Deepfake Bills in Denmark and the Netherlands: Right idea, wrong legal framework". *Kluwer Copyright Blog* [online]. Available at: <https://legalblogs.wolterskluwer.com/copyright-blog/deepfake-bills-in-denmark-and-the-netherlands-right-idea-wrong-legal-framework/>. [Accessed: 28 August 2025].
- HUGENHOLTZ, B. (2000). "Why the copyright directive is unimportant, and possibly invalid". *European Intellectual Property Review*, vol. 22, no. 11, pp. 499-505.
- HUGENHOLTZ, B. (2019). "Neighbouring rights are obsolete". *IIC-International Review of Intellectual Property and Competition Law*, vol. 50, no. 8, pp. 1006-1011. DOI: <https://doi.org/10.1007/s40319-019-00864-3>
- LÓPEZ JACOISTE, J. J. (1986). "Una aproximación tópica a los derechos de la personalidad". *Anuario De Derecho Civil*, vol. 39, no. 4, pp. 1059-1120.
- LANDES, W. M.; POSNER, R. A. (1989). "An economic analysis of copyright law". *The Journal of Legal Studies*, vol. 18, no. 2, pp. 325-363. DOI: <https://doi.org/10.1086/468150>
- MARTÍN-CASALS, M.; SOLÉ FELIU, J. (2005). "The protection of personality rights against invasions by mass media in Spain". En: KOZIOL, H. and WARZILEK, A. (eds). *The protection of personality rights against invasions by mass media*, pp. 287-339. New York: Springer.
- MELIAN PÉREZ, G. E. (2022). "Global or Local? Freedom of Speech and Some Extraterritorial Court Decisions on the Internet". *Queen Mary Law Journal*, vol. 3, pp. 70-91.

- RICKETSON, S.; GINSBURG, J. (2022). *International copyright and neighbouring rights: The Berne Convention and Beyond*. Oxford University Press. DOI: <https://doi.org/10.1093/oso/9780198801986.001.0001>
- SANTOS MORÓN, M. J. (2023). "La tutela de los derechos de la personalidad ante atentados producidos en redes sociales y servicios equivalentes". *Anuario de Derecho Civil*. Tomo LXXVI, fasc. IV, pp. 1297-1374. DOI: <https://doi.org/10.53054/adc.v76i4.10303>
- SIMÓ SOLER, E. (2023). "Retos jurídicos derivados de la Inteligencia Artificial Generativa". *InDret*, vol. 2, no. 22, pp. 493-515. DOI: <https://doi.org/10.31009/InDret.2023.i2.11>
- TRUJILLO CABRERA, C. (2024). "El derecho a la propia imagen (y a la voz) frente a la inteligencia artificial". *InDret*, vol. 1, no. 24, pp. 74-113. DOI: <https://doi.org/10.31009/InDret.2024.i1.02>
- VAN DER SLOOT, B.; WAGENSVELD, Y. (2022). "Deepfakes: regulatory challenges for the synthetic society". *Computer Law & Security Review*, vol. 46, pp. 1-15. DOI: <https://doi.org/10.1016/j.clsr.2022.105716>
- VENDRELL CERVANTES, C. (2014). *El Mercado de los Derechos de Imagen*. Cizur Menor: Thomson Reuters.
- YZQUIERDO TOLSADA, M. (2014). "Daños a los derechos de la personalidad (honor, intimidad y propia imagen)". In: REGLERO CAMPOS, L. F. and BUSTO LAGO, J. M. (coords.). *Tratado de Responsabilidad civil*, pp. 1366-1498. 5.ª ed. Tomo II. Cizur Menor: Thomson Reuters Aranzadi.

Recommended citation

MELIAN PÉREZ, Gabriel Ernesto; HERRERÍAS CASTRO, Laura (2026). «Copyright or personality rights? A critical analysis of Denmark's approach to deepfakes». *IDP. Revista de Internet, Derecho y Política*, no. 44. UOC [Accessed: dd/mm/yy]. DOI: <http://dx.doi.org/10.7238/idp.v0i44.9800397>



The texts published in this journal, unless otherwise indicated, are subject to a Creative Commons Attribution No Derivative Works 3.0 Spain licence. They may be copied, distributed and broadcast provided the the author, the journal and the institution that publishes them (IDP. Revista de Internet, Derecho y Política; UOC) are cited. Derivative works are not permitted. The full licence can be consulted on <http://creativecommons.org/licenses/by-nd/3.0/es/deed.es>.

About the authors

Gabriel Ernesto Melian Pérez

Predocctoral fellow in the Civil Law Department at the Universitat Pompeu Fabra

gabrielernesto.melian@upf.edu

ORCID: <https://orcid.org/0000-0001-9298-5553>

He is a predoctoral fellow in the Faculty of Law at the Universitat Pompeu Fabra, Barcelona. He has been a visiting researcher at the Centre for Advanced Internet Studies (Bochum). He holds an LLM in IP and IT from the University of Göttingen and graduated in Law with honours from the University of Havana. He is a member of the project "Contractual and non-contractual liability of online platforms", funded by the Spanish Ministry of Economy, Industry and Competitiveness, the European Fund of Regional Development and the Spanish State Research Agency (PID2021-126354OB-I00).

Laura Herrerías Castro

Postdoctoral Researcher in the Civil Law Department at the Universitat Pompeu Fabra

laura.herrerias@upf.edu

ORCID: <https://orcid.org/0000-0003-1975-1499>

She is a Postdoctoral Researcher in the Faculty of Law at the Universitat Pompeu Fabra, Barcelona. She has been a visiting researcher at the European University Institute (Florence). She is a member of the projects "Justice, Fundamental Rights and Artificial Intelligence", funded by the EU Justice Programme (101046631, JUST-2021-JTRA); and "Contractual and non-contractual liability of online platforms", funded by the Spanish Ministry of Economy, Industry and Competitiveness, the European Fund of Regional Development and the Spanish State Research Agency (PID2021-126354OB-I00).

