

# ***Dignity and Deepfakes***

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Today, we face a dangerous technosocial combination: AI-generated deepfakes and the Internet. Believable and accessible, these deepfakes have already spread sex, lies, and false advertisements across the Internet and targeted everyone from Taylor Swift to middle school students and teachers. Dissemination of deepfakes inflicts multifarious dignitary harms against their victims, stripping them of control over their own identities, harming their reputations, and ostracizing them from society through shame.

Yet this is not the first time a new technology for capturing one's likeness and a method for disseminating images threatened individuals' dignity. In the late nineteenth century, the right of publicity emerged in response to a similar troubling technosocial combination: the portable camera and mass media. With no legal remedy for the capture and dissemination of one's likeness to friend and foe alike, the right of publicity sought to protect both individuals' dignitary and economic interests by curtailing the sharing of images without permission.

The right of publicity offers an apt historical analogy that should inform a dual approach for how we approach deepfakes. Promising anti-deepfake proposals should both counter dissemination and address the dignitary harms inflicted by deepfakes. Yet most proposed legal remedies are unviable because they do not meet one of these two prongs. Some proposals are limited in restricting dissemination because a federal law, Section 230, immunizes online platforms for their users' actions, including the posting of deepfakes. Other claims that lie outside of Section 230, such as copyright and trademark infringement, are a conceptual mismatch for the dignitary harms of deepfake dissemination, limiting their utility.

This Article proposes the right of publicity is not only a helpful historical analog, but also offers a third path between these doctrinally and conceptually lacking proposals. Recognizing the right of publicity as intellectual property would exclude it from the liability shield of Section 230. If Section 230 did not apply, online platforms could be liable for hosting misappropriations of another's right of publicity, including deepfakes. This would oblige online platforms, consistent with the First Amendment, to adopt notice-and-takedown frameworks to restrict deepfakes' dissemination. Although the right of publicity has become unmoored from its dignitary purpose and is increasingly limited to commercial uses, now is the time to restore the right's full original purpose to address both commercial and dignitary harms.