

Dignity and Deepfakes

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AI-Generated Deepfakes

1. Realistic
2. Accessible
3. Versatile



The Dignitary Harms of Deepfakes

1. Depriving one of control over their self-representation
2. Reputational harm
3. Ostracization through internalized shame



	1890	2025
Image-Capturing Technology	Portable Camera	Generative AI
Distribution Method	Mass Media	Internet

Have you seen the Kodak fiend? Well, he has seen you. He caught your expression yesterday while you were innocently talking at the Post Office. He has taken you at a disadvantage and transfixed your uncouth position and passed it on to be laughed at by friend and foe alike. His click is heard on every hand.

“The Kodak Fiend,” *Hawaiian Gazette* (Dec. 9, 1890).

HARVARD LAW REVIEW.

VOL. IV.

DECEMBER 15, 1890.

NO. 5.

THE RIGHT TO PRIVACY.

THE CONSTITUTION: ATLANTA, GA., SUNDAY, NOVEMBER 15, 1903

**DO IT NOW.
THE MAN WHO DID.**



**DO IT WHILE YOU CAN.
THE MAN WHO DIDN'T.**



THESE TWO PICTURES TELL THEIR OWN STORY.

"In my healthy and productive period of life I bought insurance in the New England Mutual Life Insurance Co., of Boston, Mass., and today my family is protected and I am drawing an annual dividend on my paid-up policies."

"When I had health, vigor and strength I felt the time would never come when I would need insurance. But I see my mistake. If I could recall my life I would buy one of the New England Mutual's 18-Pay Annual Dividen-Policies."

**THOMAS B. LUMPKIN, General Agent,
1008-1009-1010 EMPIRE BUILDING.**



The Right of Publicity Analogy

1. Address dissemination
2. Consider types of harms

Proposed Deepfake Claims

Claim	Dissemination Liability Limits	Conceptual Mismatch
Defamation	Section 230	Requires falsity and (sometimes) malice
Intentional Infliction of Emotional Distress	Section 230	High bar of outrageousness
False Light	Section 230	Requires falsity and malice
NCII	Section 230	Usually do not address synthetic content
State Anti-Deepfake Laws	Section 230	
CSAM		Only children
FOSTA		High scienter requirement
Copyright Infringement	DMCA	Only for copyrighted works; must own copyright
Trademark Infringement	Tiffany v. eBay	Commercial use of identity as a trademark; commercial use in deepfake
Dilution	Tiffany v. eBay(?)	Limited to famous marks

U.S. Online Intermediary Liability Landscape	
Torts	Safe harbor under 47 U.S.C. § 230
Copyright	Requirement-based safe harbor under 17 U.S.C. § 512, including notice-and-takedown
Trademark	Common law notice-and-takedown per <i>Tiffany v. eBay</i> (2d Cir. 2010)
Right of Publicity	???

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Right of Publicity	Common law notice-and-takedown

CLYDE BEATTY CIRCUS

A vintage circus poster illustration. In the foreground, a large black cannon barrel points from the bottom left towards the center, firing a massive white cloud of smoke and a multi-colored streak. Below the barrel is a circular blue pool with a red and white scalloped border. In the background, a person in a red suit is shown in mid-air, having just launched from the pool and is now flying horizontally through the air. The scene is set in a circus arena with tiered seating visible on the left. The entire image is framed by a green border.

**HUGO
ZACCHINI**

The
**HUMAN
PROJECTILE**

Restoring Dignity to the Right of Publicity

- Deepfakes amplify loss of control over one's identity
- Economic understandings cannot address dignitary harms
- The commercial use requirement is not universal
- Deepfakes affect everyone—not just the rich and famous
- Deepfakes are intentional regardless of their commerciality (or lack thereof)

Benefits Over the TAKE IT DOWN Act

- Not just intimate deepfakes
- Consideration of the First Amendment

Questions & Discussion

Takeaways

1. The historical analogy of the right of publicity can inform our approach to deepfakes
2. Most claims either cannot restrict online dissemination or fail to address dignitary harms
3. The right of publicity can constrain deepfakes by incorporating notice-and-takedown and once again considering dignitary harms



Michael P. Goodyear, *Dignity and Deepfakes*, 57 Ariz. St. L.J. — (forthcoming).