

The Law of Digital Avatars

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Our civilization is starting to be populated by a new kind of presence: convincingly life-like digital representations of people, now principally two-dimensional, but they can be three-dimensional as well. Such digital avatars may make computerized banking and travel services enjoyable (or amusing or at least less painful), may cause more people to ask for information from information desks, and may provide at least some form of companionship to the elderly, infirm, or simply lonely. Lots of what digital avatars will do is cool.

But digital avatars can also be convincingly life-like digital replicas of people we know or who are known to us. And these replicas can be used in contexts where the person represented was never actually present and did not consent to appear. The range of such potential unauthorized uses of digital avatars is stunning. A long-deceased actor may be “reanimated” in a feature film; a musician may be “present” and performing on a concert stage as a hologram; a person may be the victim of “revenge porn” in which their digital avatar engages in obscene acts; the digital avatar of a respected newscaster can be used for propagate “fake news.”

This paper describes the varied ‘issues’ of digital replicas – from revenge porn to fake news – as a unified whole: the simple and singular policy issue is control over one’s own image. The paper then surveys the variety of laws already in place that can be used to address digital avatars -- from personality rights, rights of publicity, and “false light” causes of action to less obvious legal regimes, especially data privacy laws like the GDPR and California’s new data protection statute. Finally, the paper discusses and makes recommendations on current proposals for laws expressly intended to regulate digital avatars.