



DUALE, OVIA &
ALEX-ADEDIPE

Deepfakes: Legal Safeguards in Nigeria



Picture a world in which a passionate speech by a politician or a damaging statement from your favorite celebrity, both seemingly authentic, turn out to be digitally crafted. This unsettling reality is plausible through the concept of deepfakes. Deepfakes are hyper-realistic images, videos, and audios that undergo digital manipulation to portray individuals engaging in actions or uttering words that never occurred.

Deepfake is no longer new. As a phenomenon, it gained public attention in 2017 when a Reddit user shared videos featuring celebrities placed in compromising situations. Deep fake technology primarily stems from an AI technique called 'Generative Adversarial Networks', where two artificial neural networks collaborate to produce remarkably realistic images, videos, or sounds.



Unethical Use of Deepfakes

1. **Personal Vendetta:** One concerning use of deepfake technology for this purpose, is the fabrication and dissemination of explicit media content involving a person, to cause disrepute to that person simply for revenge.
2. **Disinformation Campaigns:** This involves creation of content to manipulate public opinion and support. For example, the deepfake audio of a call between Peter Obi and Bishop Oyedepo during the 2023 electoral campaign which was aimed at diminishing public support for Peter Obi by tarnishing his integrity.
3. **Financial Fraud:** Criminals can make use of deepfake technology to create deceptive videos of profit and loss statements, ledgers, and other financial reports from trading platforms and bank accounts.
4. **Market and Stock Manipulation:** Deepfake technology can be deployed to create real time visual and audio impersonations of executives announcing a fake product launch, or create videos depicting fake occurrence of events which are capable of destabilizing the stock market. For example, in 2023, a deepfake video of a purported explosion near the Pentagon went viral causing the U.S. stock market to wobble.



Legal Safeguards in Nigeria against Unethical Use of Deepfakes

There is currently no substantive legislation in Nigeria regulating the creation and use of deepfakes. However, cross-sectorial laws may come into play as it relates to the creation and use of deepfakes. These laws generally aim to guard against harassment, defamation, and copyright infringement, as well as data protection regulations.

1. Data Privacy and Protection

Every individual has the right to privacy and protection of their personal data. Personal data is defined under the Nigeria Data Protection Act 2023 and the Nigerian Data Protection Regulation 2019 to include photographs, and any other information specific to the physical, physiological, genetic, economic, cultural or social identity of that natural person. Therefore, where a person's data has to be processed, consent has to be gotten from the individual himself. Thus, a creation of a deep fake without consent violates an individual's right to their data and privacy. This right is also guaranteed under the Constitution of the federal republic of Nigeria. As a remedy, any aggrieved person whose data has been used in connection with a deepfake without his consent may recover damages from the perpetrators in civil proceedings.



2. Intellectual Property Infringement

Deep fakes involve using copyrighted elements like a photograph, audiovisual recording or performance without permission thus an unauthorized use may trigger an action for intellectual property infringement. This is also enabled by the fact that a copyrightable work requires no registration or other formality to enjoy protection under the Copyright Act 2022. Where a deepfake infringes on a copyrighted work, the creator of the work can institute an action for copyright infringement. The Copyright Act 2022 also provides for takedown rights.

3. Identity Theft, Impersonation, and Other Criminal Law Penalties

Depending on the purpose and damage dealt, deepfake may attract criminal sanctions and penalties. For instance, the Cybercrime Act (Prohibition, Prevention etc.) Act 2015 prohibits certain computer-related crimes such as identity theft, impersonation, computer related forgery and fraud, cyberstalking, child pornography, cyber terrorism, racism etc. For instance, identity theft and impersonation under the Cybercrime Act attracts an imprisonment term of not less than 3 (three) years or a fine of not less than N7,000,000 (Seven Million Naira) or both depending on the circumstances. Where such use of deepfake also results in the death of another, graver consequences apply under the Criminal laws.



4. Consumer and Competition Protection

Where deepfakes are utilized in false advertising or endorsement of a product or service, such may amount to fraud and misrepresentation which are unfair business practices. These unfair business practices offend the provisions of the Federal Competition and Consumer Protection Act (“FCCPA”) 2018 and perpetrators may face sanctions as may be prescribed under the FCCPA.

Conclusion

It is often said that it is never the tool that decides, it is the hands and heart of the one who wields it. It is worthy of note that deepfake technology and the use of same are not in themselves illegal. For instance, deepfake technology have been used for legitimate and legal commercial purposes in various industries such as the entertainment industry (for example to create a continuation of a show after the death of an actor), as well as healthcare, telecommunications, e-commerce and fashion industries. Notwithstanding, when placed in the wrong hands, deepfake technology has the potential to wreak significant damages to the life and property of another. There is, therefore, the need for adequate legal provisions to regulate the use of deepfake technology in Nigeria.

BEFORE

AFTER

