Negative: Deep Fake

By “Coach Vance” Trefethen

***Resolved: The United States federal government substantially reform the use of Artificial Intelligence technology***

Case Summary: The AFF plan regulates/restricts/bans the distribution of “deep fake” products. Deep Fakes are pictures or videos that have been altered using AI to make it appear, falsely, that someone has done or said things that never actually happened. The most common use of DF is for embarrassing pornography, where a porn video is edited to put someone else’s face into it. DF can also be used for political purposes, to deceive voters into thinking some political leader said things he never actually said.   
 There are multiple avenues of attack. You can argue that detection technology will advance enough to enable fakes to be detected and flagged. And you can argue that if it doesn’t, then any ban or regulation becomes unenforceable. After all, if AI can make a DF that is indistinguishable from reality, you would never be able to ban them, because no one would be able to recognize it and prosecute whoever made it. After all, to prosecute someone, you have to prove in a court of law that it’s a fake, and how could you do that if they’re impossible to distinguish from reality?  
 The harms are exaggerated anyway. Fake media is nothing new. John Adams and Thomas Jefferson both complained about the media deceiving people with false stories that led voters astray. Somehow we and our democracy survived. And the disadvantage of having the government get in the business of censoring media content to decide what’s true or not means we lose the vital protections of the First Amendment, which outweighs any benefit of the Plan.

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Negative: Deep Fake

MINOR REPAIRS – Labeling and education instead of the AFF Plan

Overview: Ban isn’t the answer

Law shutting down disinformation isn’t the answer to Deep Fakes

Prof. Holly K. Hall 2018 (Associate Professor of Strategic Communication, Arkansas State Univ. J.D. University of Arkansas at Little Rock William H. Bowen School of Law) Deepfake Videos: When Seeing Isn't Believing, CATHOLIC UNIVERSITY JOURNAL OF LAW & TECHNOLOGY (ellipses in original) <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1060&context=jlt#page=14> (accessed 23 Oct 2021)

In order to maintain our democratic system, where the public gets the news they need in order to make informed decisions, a multilayered approach to fighting deepfakes is needed. The response should include the government, private foundations, social media networks and Internet companies, educators, and journalism representatives. A distinct law shutting down disinformation is not the solution.

1. Require internet platforms to label content if it’s altered – instead of banning it

Labeling requirement would solve

Prof. Richard Hasen 2020 (Professor of Law and Political Science, UC Irvine School of Law ) Deep Fakes, Bots, and Siloed Justices: American Election Law in a “Post-Truth” World 7 May 2020 ST LOUISE UNIV LAW JOURNAL <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1782&context=lj#page=17> (accessed 22 Oct 2021)

As detection technology continues to develop, a truth-in-labeling regime should be the top way to deal with the deep fake problem and is supported by the government’s interest in preventing consumer and voter deception. Such labeling would help solve the market-for-lemons problem, at least with respect to doctored audio and video. The market for lemons in the used car market arose because consumers do not have adequate tools to separate good used cars from lemons. Just like a law that would require sellers of used cars to disclose earlier problems with a car (akin to “show me the Carfax”), a labeling law requiring social media platforms to label video and audio as altered would help cure the market failure. Viewers would become more confident that the videos they observed or audio they heard were genuine and not a “lemon” when the media arrived into their feed without a label indicating alteration.

Labeling requirement wouldn’t violate the constitution

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Third, the government likely has the power under the Constitution to mandate a truth-in-labeling law requiring social media platforms and other websites with large numbers of users to deploy the best reasonably available technology to label synthetic media containing altered video and audio images as “altered.”

2. Education

Solution is beyond the law. What we really need is educating citizens about it

Prof. Holly K. Hall 2018 (Associate Professor of Strategic Communication, Arkansas State Univ. J.D. University of Arkansas at Little Rock William H. Bowen School of Law) Deepfake Videos: When Seeing Isn't Believing, CATHOLIC UNIVERSITY JOURNAL OF LAW & TECHNOLOGY (ellipses in original) <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1060&context=jlt#page=14> (accessed 23 Oct 2021)

While technology, social media networks, and Internet organizations play catch-up to detecting deepfakes, media literacy initiatives should be paramount. Eric Goldman, Professor and Director of Santa Clara University’s High Tech Law Institute, argues the solution to the deepfake problem needs to reach beyond the law, educating citizens regarding their approach to interpreting content, stating, It absolutely bears repeating that so much of our brains’ cognitive capacities are predicated on believing what we see . . . The proliferation of tools to make fake photos and fake videos that are indistinguishable from real photos and videos is going to test that basic, human capacity. This concept requires a dedication to digital literacy education for children.

INHERENCY

1. Harm to individuals – already punished under existing law

Fake videos that make false statements about an individual or put them into pornography are already actionable under existing law

Amanda Inglesh 2020 (*second-year law student at the Benjamin N. Cardozo School of Law and a Staff Editor at the Cardozo Arts & Entertainment Law Journal*) Deepfakes May be in Deep Trouble: How the Law Has and Should Respond to the Rise of the AI-Assisted Technology of Deepfake Videos 19 Jan 2020 <https://cardozoaelj.com/2020/01/19/deepfakes-deep-trouble/> (accessed 22 Oct 2021)

In terms of privacy, pornography is a major area most affected by deepfake videos. A recent trend was to create fake sex videos featuring public figures and celebrities, such as Emma Watson. Private individuals are also affected.  Victims of these videos may claim defamation, which is an oral or written communication of a false statement about another that unjustly harms their reputation.  Sexual deepfake videos implicate false statements about a person, while placing them in offending situations. Normally, since the First Amendment of United States Constitution protects American citizens’ freedom of speech, any law that interferes with Americans’ ability to express themselves is problematic. However, neither false speech nor obscenity are afforded First Amendment protection.  Moreover, untrue and damaging statements may lead to claims of defamation.

Lawsuits solve for porn deep fakes. The rest are protected by the 1st Amendment

Megan Kauffman 2019 (Associate Member, *University of Cincinnati Law Review) UNIV OF CINCINNATI LAW REVIEW 26 Mar 2019* <https://uclawreview.org/2019/03/26/deep-fakes-finding-the-balance-between-national-security-and-freedom-of-speech/> (accesed 22 Oct 2021)

Legislators face a couple of challenges in banning deep fakes, including a First Amendment issue of freedom of speech and the “fair use” doctrine in copyright law. In the cases of pornographic deep fakes, courts have allowed for individuals to sue under tortious claims, including false light and defamation, and under copyright claims.  Courts have recognized, however, that there is a need to balance a plaintiff’s right to privacy and ownership with a defendant’s right to creation under the First Amendment.

96% of deep fakes are pornography [already actionable under existing law]

[Soojin Jeong](https://www.theregreview.org/author/sjeong/), [Margaret Sturtevant](https://www.theregreview.org/author/msturtevant/), and [Karis Stephen](https://www.theregreview.org/author/kstephen/) 2021. ( ) 14 Aug 2021 “Responding to Deepfakes and Disinformation” <https://www.theregreview.org/2021/08/14/saturday-seminar-responding-deepfakes-disinformation/> (accessed 22 Oct 2021)

The first deepfakes [appeared](https://www.technologyreview.com/2021/02/12/1018222/deepfake-revenge-porn-coming-ban/) around 2017 and comprised pornographic videos that swapped female celebrities’ faces onto other persons’ bodies. By 2019, a startup [reported](https://regmedia.co.uk/2019/10/08/deepfake_report.pdf) that approximately 96 percent of deepfakes are pornographic and disproportionately victimize women, casting them in humiliating, violent situations and [exposing](https://intelligence.house.gov/uploadedfiles/citron_testimony_for_house_committee_on_deep_fakes.pdf#page=4) them to rape and death threats.

2. Foreign influence on US elections – already illegal under existing law

It’s already illegal for foreign entities to spend money on American election campaigns

Prof. Richard Hasen 2020 (Professor of Law and Political Science, UC Irvine School of Law ) Deep Fakes, Bots, and Siloed Justices: American Election Law in a “Post-Truth” World 7 May 2020 ST LOUISE UNIV LAW JOURNAL <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1782&context=lj#page=17> (accessed 22 Oct 2021)

The Supreme Court in Buckley v. Valeo recognized that campaign finance disclosure laws may serve this information interest, as well as interests in preventing the corruption of elected officials, by allowing voters to follow the money and look for special treatment given to campaign donors or those who spend to favor or oppose candidates, and the enforcement interest, ensuring that no other campaign finance laws are broken. For example, it is illegal for foreign governments, other foreign entities, and most noncitizens (except green card holders residing in the United States) to spend money on American candidate campaigns, and adequate disclosure allows regulators, the press, and the public to ensure that prohibited foreign sources are not secretly participating in our elections.

3. Industry initiatives

Distribution platforms already obligated to control content and they are taking action

Dr. Edvinas Meskys, Aidas Liaudanskas, Julija Kalpokiene and Dr. Paulius Jurcys 2020 (Meskys - Attorney-at-law at Ellex (Vilnius),Head of Legal Department for the Baltics at the affiliate of one of the largest pharmaceutical companies in the world TEVA. Liaudanskas - M.Sc. (Cambridge) Machine Learning Engineer at Fyusion, Inc. (San Francisco). Kalpokiene - LLM (Nottingham) Attorney-at-law assistant at Konsus (Kaunas). Jurcys - LL.M. (Harvard) Founder of data privacy company Prifina (San Francisco), teaching fellow Berkman Klein Center for Internet & Society (CopyrightX), member of the ILA Committee on IP and Private International Law) “Regulating Deep-Fakes:Legal and Ethical Considerations” January 2020 Journal of Intellectual Property Law & Practice (accessed 24 Oct 2021) <https://www.researchgate.net/publication/345383883_Regulating_deep_fakes_legal_and_ethical_considerations>

Currently, most of the content distribution platforms such as YouTube, Facebook or Twitch, have numerous legal obligations to control the content. In fact, those platforms do the most advanced technologies to detect immoral, illegal or malicious content and remove it. There are also multiple tools for platform users to spot and notify the platform operator about such content. Since deep fakes are in most cases jarringly realistic and can hardly be distinguished by a naked human eye, both governments and private platform operators have already started developing deep-fake detecting technologies.

Social media sites are taking action against fakes

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Some Internet and social media sites are recognizing the role they could play in combating fake news. Twitter organized a Trust and Security Council, including a cadre of safety advocates, academics, anti-abuse and anti-bullying representatives, and others as part of a “multi-layered approach” to “ensure people can continue to express themselves freely and safely.” Google announced a $300 million initiative in 2018 to fight misinformation. The company began working with fact-checking networks, providing detailed publication information, utilizing trust icons (items that appear next to news articles and provide information about the source of the story), and introduced the Google News Initiative (GNI). Part of the GNI is Disinfo Lab, which is an effort to combat misinformation and disinformation during breaking news moments and elections. Google reports that they are changing their algorithms to allow more credible content to rise to the surface during breaking news events, when platforms are particularly vulnerable to misinformation

4. Status Quo legal trends

Existing law will evolve hand in hand with changing technologies

Dr. Edvinas Meskys, Aidas Liaudanskas, Julija Kalpokiene and Dr. Paulius Jurcys 2020 (Meskys - Attorney-at-law at Ellex (Vilnius) and the Head of Legal Department for the Baltics at the affiliate of one of the largest pharmaceutical companies in the world TEVA. Aidas Liaudanskas , M.Sc. (Cambridge). Machine Learning Engineer at Fyusion, Inc. (San Francisco). Julija Kalpokiene , LLM (Nottingham) Attorney-at-law assistant at Konsus (Kaunas). Dr. Paulius Jurcys , LL.M. (Harvard) Founder of data privacy company Prifina (San Francisco), teaching fellow Berkman Klein Center for Internet & Society (CopyrightX), member of the ILA Committee on IP and Private International Law) “Regulating Deep-Fakes:Legal and Ethical Considerations” January 2020 Journal of Intellectual Property Law & Practice (accessed 24 Oct 2021) <https://www.researchgate.net/publication/345383883_Regulating_deep_fakes_legal_and_ethical_considerations>

We also tried to illustrate that the novelty of the technologies empowering individuals create deep fakes may raise new issues with regard to the interpretation and application of law. However, we are not of the opinion that the existing legal categories are helpless. Instead, we believe that existing laws will naturally evolve hand-in-hand with changing technologies.

5. New technology will solve

Sophisticated new AI technology will eliminate the threat of Deep Fakes

Dr. Edvinas Meskys, Aidas Liaudanskas, Julija Kalpokiene and Dr. Paulius Jurcys 2020 (Meskys - Attorney-at-law at Ellex (Vilnius) and the Head of Legal Department for the Baltics at the affiliate of one of the largest pharmaceutical companies in the world TEVA. Aidas Liaudanskas , M.Sc. (Cambridge). Machine Learning Engineer at Fyusion, Inc. (San Francisco). Julija Kalpokiene , LLM (Nottingham) Attorney-at-law assistant at Konsus (Kaunas). Dr. Paulius Jurcys , LL.M. (Harvard) Founder of data privacy company Prifina (San Francisco), teaching fellow Berkman Klein Center for Internet & Society (CopyrightX), member of the ILA Committee on IP and Private International Law) “Regulating Deep-Fakes:Legal and Ethical Considerations” January 2020 Journal of Intellectual Property Law & Practice (accessed 24 Oct 2021) <https://www.researchgate.net/publication/345383883_Regulating_deep_fakes_legal_and_ethical_considerations>

We are moving into the world where we will see the democratization of AI: machine learning and AI systems which are currently developed in different industries are going to become even more powerful and automate most of the decision-making process. The democratization of AI means that algorithmic systems will gradually replace manual processes. Currently, private companies and government-funded research tanks are developing machine learning and artificial intelligence systems that generate data sets and working toward (a) increased accuracy (‘you better be right’) and (b) backing up the outputs with evidence (‘how can we make sure that the data transparent’). Such efforts to democratize AI will have serious implications on how information is aggregated and processed. For instance, fraud detection will become more accurate and transparent. Deep fakes will be only one subset of fraud instances which will be eliminated by highly sophisticated AI systems.

HARMS / SIGNIFICANCE

1. Nobody’s using deep fakes

Lots of scenarios where bad guys could have used them but didn’t: It’s too much trouble and other tricks are easier

Russell Brandom 2019 (policy editor at THE VERGE) 5 Mar 2019 DEEPFAKE PROPAGANDA IS NOT A REAL PROBLEM <https://www.theverge.com/2019/3/5/18251736/deepfake-propaganda-misinformation-troll-video-hoax> (accessed 22 Oct 2021)

During the time deepfake tech has been available, misinformation campaigns have targeted [the French elections](https://go.redirectingat.com/?id=66960X1514734&xs=1&url=https://www.telegraph.co.uk/news/2017/07/31/wikileaks-releases-thousands-hacked-macron-campaign-emails/&referrer=theverge.com&sref=https://www.theverge.com/2019/3/5/18251736/deepfake-propaganda-misinformation-troll-video-hoax&xcust=___vg__p_18015777__t_w__r_google.com__d_D), [the Mueller investigation](https://www.thedailybeast.com/mueller-russian-trolls-hijacked-and-altered-evidence-for-new-disinformation-operation) and, most recently, [the Democratic primaries](https://www.nbcnews.com/politics/2020-election/russia-s-propaganda-machine-discovers-2020-democratic-candidate-tulsi-gabbard-n964261). Sectarian riots in [Sri Lanka](https://www.nytimes.com/2018/04/21/world/asia/facebook-sri-lanka-riots.html) and [Myanmar](https://www.nytimes.com/2018/11/06/technology/myanmar-facebook.html) were fueled by fake stories and rumors, often deliberately fabricated to stoke hate against opposing groups. Troll campaigns from [Russia](https://www.cnbc.com/2018/12/17/russia-trolled-people-worried-about-russian-trolls-on-social-media-report.html), [Iran](https://news.vice.com/en_ca/article/594ekk/iran-russia-facebook-twitter-disinformation), and [Saudi Arabia](https://exposingtheinvisible.org/resources/automated-sectarianism) have raged through Twitter, trying to silence opposition and confuse opponents. In any of these cases, attackers had the motive and the resources to produce a deepfake video. The technology is cheap, easily available, and technically straightforward. But given the option of fabricating video evidence, each group seems to have decided it wasn’t worth the trouble. Instead we saw news articles made up from whole cloth, or videos edited with conventional tools to take on a sinister meaning.

2. A/T “Threatens democracy” – Nothing new about it. If it destroys democracy, we lost it 200 years ago

We survived the “threat to democracy” from a flood of fake media in the 1800s

David Uberti 2016 (journalist) 15 Dec 2016 The real history of fake news COLUMBIA JOURNALISM REVIEW <https://www.cjr.org/special_report/fake_news_history.php> (accessed 24 Oct 2021)

While circulation in those days was relatively low—high publishing costs, low literacy rates—proliferation of multiple titles in each major city provided a menu of worldviews that’s similar to today. The infant republic nevertheless managed to survive the fake news scourge of early 19th-century newspapermen. “The large number of news outlets, the heterogeneity of the coverage, the low public esteem toward the press, and the obvious partisan leanings of publishers limited the power of the press to be influential,” political scientist Darrell M. West wrote in his 2001 book, *The Rise and Fall of the Media Establishment*.

Political manipulation of the truth in the media is an old American tradition. Somehow we’ve survived it…

David Uberti 2016 (journalist) 15 Dec 2016 The real history of fake news COLUMBIA JOURNALISM REVIEW <https://www.cjr.org/special_report/fake_news_history.php> (brackets in original) (accessed 24 Oct 2021)

“I will add,” Jefferson [continued](https://press-pubs.uchicago.edu/founders/documents/amendI_speechs29.html) in 1807, “that the man who never looks into a newspaper is better informed than he who reads them; inasmuch as he who knows nothing is nearer to truth than he whose mind is filled with falsehoods & errors.” Decades later, when Alexis de Tocqueville penned his seminal political analysis, Democracy in America, he also assailed the day’s content producers as men “with a scanty education and a vulgar turn of mind” who played on readers’ passions. “What [citizens] seek in a newspaper is a knowledge of facts,” de Tocqueville [wrote](https://xroads.virginia.edu/~hyper/detoc/1_ch11.htm), “and it is only by altering or distorting those facts that a journalist can contribute to the support of his own views.” His concerns weren’t for passive failures of journalism, but active manipulation of the truth for political ends.

Thomas Jefferson used fake news to discredit John Adams and win the Presidential election in 1800

Prof. Holly K. Hall 2018 (Associate Professor of Strategic Communication, Arkansas State Univ. J.D. University of Arkansas at Little Rock William H. Bowen School of Law) Deepfake Videos: When Seeing Isn't Believing, CATHOLIC UNIVERSITY JOURNAL OF LAW & TECHNOLOGY <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1060&context=jlt#page=14> (accessed 23 Oct 2021)

Such misinformation has a long history in our political processes. For example, during the election of Thomas Jefferson against incumbent John Adams, some newspapers were used as wreckers of reputation with little consideration for truth. Jefferson used a questionable journalist, James Callendar, to write defamatory pieces about Adams, including an inaccurate story that Adams wanted to start a war with France

John Adams was complaining about fake news in 1798

Jackie Mansky 2018 (journalist) The Age-Old Problem of “Fake News” 7 May 2018 SMITHSONIAN MAGAZINE <https://www.smithsonianmag.com/history/age-old-problem-fake-news-180968945/> (accessed 24 Oct 2021)

In the margins of his copy of Condorcet’s treatise [Outlines of an Historical View of the Progress of the Human Mind](http://oll.libertyfund.org/titles/1669), President John Adams[scribbled](https://books.google.com/books?id=UEsKz5E4EO4C&pg=PA39&lpg=PA39&dq=john+adams++Condorcet%E2%80%99s+Outlines+of+an+historical+view+of+the+progress+of+the+human+mind+there+have+been+more+errors&source=bl&ots=NT-yD6QTz0&sig=-ceCeYM6Uqi-Jqr1bmVs0aTd0EQ&hl=en&sa=X&ved=0ahUKEwickdGevN_YAhXBc98KHcZMAMEQ6AEILzAB#v=onepage&q=john%20adams%20%20Condorcet%E2%80%99s%20Outlines%20of%20an%20historical%20view%20of%20the%20progress%20of%20the%20human%20mind%20there%20have%20been%20more%20errors&f=false) a cutting note. Writing in the section where the French philosopher predicted that a free press would advance knowledge and create a more informed public, Adams scoffed. “There has been more new error propagated by the press in the last ten years than in an hundred years before 1798,” he wrote at the time. The charge feels shockingly modern. Were he to have written the sentiment in 2018, and not at the turn of the 19th century, it’s easy to imagine that at just 112 characters, he might have tweeted it, instead.

A/T “Nobody can believe anything in the media” - Thomas Jefferson said the same thing in 1807

David Uberti 2016 (journalist) 15 Dec 2016 The real history of fake news COLUMBIA JOURNALISM REVIEW <https://www.cjr.org/special_report/fake_news_history.php> (brackets in original) (accessed 24 Oct 2021)

In an 1807 letter to John Norvell, a young go-getter who had asked how to best run a newspaper, Thomas Jefferson penned what today would make for a fiery Medium post condemning fake news. “It is a melancholy truth, that a suppression of the press could not more compleatly [sic] deprive the nation of its benefits, than is done by its abandoned prostitution to falsehood,” the sitting president wrote. “Nothing can now be believed which is seen in a newspaper. Truth itself becomes suspicious by being put into that polluted vehicle.”

3. Journalists exaggerating the problem

Journalists exaggerate the fake media “problem” as an excuse for their own loss of power and public confidence

David Uberti 2016 (journalist) 15 Dec 2016 The real history of fake news COLUMBIA JOURNALISM REVIEW <https://www.cjr.org/special_report/fake_news_history.php> (accessed 24 Oct 2021)

Public trust of the media has been in decline for decades, though the situation now feels particularly cataclysmic with the atomization of media consumption, partisan criticism from all corners, and the ascension of Donald Trump to the White House. Just as Watergate gave the media a bright story to tell about itself, fake news provides a catchall symbol–and a scapegoat–for journalists grappling with their diminished institutional power.

SOLVENCY

1. Unenforceable #1: Foreign actors

Ban on deep fakes wouldn’t stop foreign offenders outside the US

**[So, no solvency for “foreign influence on US elections”]**

Jessica Ice 2019 (JD candidate, Case Western Reserve Univ. School of Law) Case Western Reserve Law Review·Volume 70·Issue 2·2019, Defamatory Political Deepfakes and the First Amendment <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=4854&context=caselrev> (accessed 22 Oct 2021)

Some lower courts have found injunctions to be impermissible because they are not sufficiently tailored, effectively creating a prior restraint on constitutionally protected speech. Other courts have suggested that narrowly crafted injunctions against defamatory speech may be permissible. Even if an injunction against a defamatory political deepfake survives a First Amendment challenge, victims might still be unable to remove that deepfake if its creator is unreachable by United States courts.

2. Unenforceable #2: Anonymous actors

Enforcement would be an enormous challenge because deepfake works are created anonymously

Prof. Holly K. Hall 2018 (Associate Professor of Strategic Communication, Arkansas State Univ. J.D. University of Arkansas at Little Rock William H. Bowen School of Law) Deepfake Videos: When Seeing Isn't Believing, CATHOLIC UNIVERSITY JOURNAL OF LAW & TECHNOLOGY <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1060&context=jlt#page=14> (accessed 23 Oct 2021)

Even if a regulation could be created to tackle fake news and deepfake videos, these works are typically created anonymously, spread and shared over social media, making enforcement an enormous challenge. A regulation covering speech in a public forum would have to be content neutral and provide other options for communicating the message. Developing such a law would be difficult given the likelihood of targeting a particular viewpoint and providing another venue for communicating the message.

3. Lack of expertise and slow political process

Regulatory response won’t work very well due to lack of expertise and slow political process. Better solution is Status Quo market forces and new technologies

Dr. Edvinas Meskys, Aidas Liaudanskas, Julija Kalpokiene and Dr. Paulius Jurcys 2020 (Meskys - Attorney-at-law at Ellex (Vilnius) and the Head of Legal Department for the Baltics at the affiliate of one of the largest pharmaceutical companies in the world TEVA. Aidas Liaudanskas , M.Sc. (Cambridge). Machine Learning Engineer at Fyusion, Inc. (San Francisco). Julija Kalpokiene , LLM (Nottingham) Attorney-at-law assistant at Konsus (Kaunas). Dr. Paulius Jurcys , LL.M. (Harvard) Founder of data privacy company Prifina (San Francisco), teaching fellow Berkman Klein Center for Internet & Society (CopyrightX), member of the ILA Committee on IP and Private International Law) “Regulating Deep-Fakes:Legal and Ethical Considerations” January 2020 Journal of Intellectual Property Law & Practice (accessed 24 Oct 2021) <https://www.researchgate.net/publication/345383883_Regulating_deep_fakes_legal_and_ethical_considerations>

Even though some regulatory framework to address social, economical and political implications of deep fakes is desirable, the lack of significant technical expertise and slow political processes suggest that such regulatory responses will not be as efficient as market-driven solutions. We, therefore, suggest that the fate of deep fakes will be contingent upon the development of deep fake detecting technologies, and ethical commitments of content distribution platforms to identify malicious content. Furthermore, the democratization of AI systems will inherently provide solutions that help verify the authenticity of deep fakes.

4. Already tried and failed

Countries have tried regulating content after it’s published, but it hasn’t worked

Dr. Edvinas Meskys, Aidas Liaudanskas, Julija Kalpokiene and Dr. Paulius Jurcys 2020 (Meskys - Attorney-at-law at Ellex (Vilnius) and the Head of Legal Department for the Baltics at the affiliate of one of the largest pharmaceutical companies in the world TEVA. Aidas Liaudanskas , M.Sc. (Cambridge). Machine Learning Engineer at Fyusion, Inc. (San Francisco). Julija Kalpokiene , LLM (Nottingham) Attorney-at-law assistant at Konsus (Kaunas). Dr. Paulius Jurcys , LL.M. (Harvard) Founder of data privacy company Prifina (San Francisco), teaching fellow Berkman Klein Center for Internet & Society (CopyrightX), member of the ILA Committee on IP and Private International Law) “Regulating Deep-Fakes:Legal and Ethical Considerations” January 2020 Journal of Intellectual Property Law & Practice (accessed 24 Oct 2021) <https://www.researchgate.net/publication/345383883_Regulating_deep_fakes_legal_and_ethical_considerations>

It goes without saying that outright ban of deep fakes would not be efficient. Nor could such an outright ban pass the constitutional thresholds for regulating free speech. Some countries like Singapore have passed special laws that deal with false statements of facts online that affect the public interest. However, such ex post “censorship” laws are not actually solving the problem.

5. Unenforceable #3: Turn on AFF harm “AI fakes are indistinguishable from reality”

If you believe AFF’s claim that Deep Fakes are indistinguishable from reality, then the plan becomes unenforceable.

**[Analysis: If it’s true that AI will get so good that no one can distinguish it, then it’s impossible to enforce a “ban” on something that no one can identify.]**

Riana Pfefferkorn 2020 (Associate Director of Surveillance and Cybersecurity, Center for Internet and Society, Stanford Law School) “DEEPFAKES” IN THE COURTROOM 13 Sept 2020 PUBLIC INTEREST LAW JOURNAL <https://siliconflatirons.org/wp-content/uploads/2021/02/Pfefferkorn.pdf> (accessed 24 Oct 2021)

The technology’s accessibility, usability, and the verisimilitude of its output will keep improving over time. Consequently, it will become harder and harder for people—and AI systems themselves—to tell real videos from fake ones.

DISADVANTAGES

1. First Amendment violation

Link: The reason we don’t have deep fake regulations on the books now is because they would violate the 1st Amendment

Prof. Holly K. Hall 2018 (Associate Professor of Strategic Communication, Arkansas State Univ. J.D. University of Arkansas at Little Rock William H. Bowen School of Law) Deepfake Videos: When Seeing Isn't Believing, CATHOLIC UNIVERSITY JOURNAL OF LAW & TECHNOLOGY <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1060&context=jlt#page=14> (accessed 23 Oct 2021)

Any law that seeks to regulate speech faces First Amendment challenges. If the regulation focuses on the content itself, it faces the highest level of judicial review, strict scrutiny, in which the regulation has to be justified by demonstrating a compelling government interest, the regulation is narrowly tailored, and the regulation must be the least restrictive way to achieve that interest. The courts will allow content-based restrictions in libel cases and a few other narrow areas including obscenity, fraud, incitement, fighting words, and speech integral to criminal conduct. Even if a regulation could be created to tackle fake news and deepfake videos, these works are typically created anonymously, spread and shared over social media, making enforcement an enormous challenge. A regulation covering speech in a public forum would have to be content neutral and provide other options for communicating the message. Developing such a law would be difficult given the likelihood of targeting a particular viewpoint and providing another venue for communicating the message. These hurdles, plus the doctrine of counterspeech or the marketplace of ideas, can explain the lack of a strong legislative response to the issues fake news presents.

Link: There are 5 approaches to combatting Deep Fakes that wouldn’t violate the 1st Amendment. None of them are the Affirmative Plan

Prof. Holly K. Hall 2018 (Associate Professor of Strategic Communication, Arkansas State Univ. J.D. University of Arkansas at Little Rock William H. Bowen School of Law) Deepfake Videos: When Seeing Isn't Believing, CATHOLIC UNIVERSITY JOURNAL OF LAW & TECHNOLOGY <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1060&context=jlt#page=14> (accessed 23 Oct 2021)

There are five approaches to combat the harms caused by fake news and deepfake videos that could be explored without infringing on the First Amendment. These combative approaches include (1) using existing laws, (2) urging additional action from social media companies, (3) developing the technology to detect deepfakes, (4) fostering the use of private foundations and other organizations to respond to false information, and (5) deploying digital literacy curriculum in schools.

Backup link: Censoring deep fakes = unconstitutional restriction of freedom of speech

Dr. Edvinas Meskys, Aidas Liaudanskas, Julija Kalpokiene and Dr. Paulius Jurcys 2020 (Meskys - Attorney-at-law at Ellex (Vilnius) and the Head of Legal Department for the Baltics at the affiliate of one of the largest pharmaceutical companies in the world TEVA. Aidas Liaudanskas , M.Sc. (Cambridge). Machine Learning Engineer at Fyusion, Inc. (San Francisco). Julija Kalpokiene , LLM (Nottingham) Attorney-at-law assistant at Konsus (Kaunas). Dr. Paulius Jurcys , LL.M. (Harvard) Founder of data privacy company Prifina (San Francisco), teaching fellow Berkman Klein Center for Internet & Society (CopyrightX), member of the ILA Committee on IP and Private International Law) “Regulating Deep-Fakes:Legal and Ethical Considerations” January 2020 Journal of Intellectual Property Law & Practice (accessed 24 Oct 2021) <https://www.researchgate.net/publication/345383883_Regulating_deep_fakes_legal_and_ethical_considerations>

From the normative perspective, finding an efficient response to deep fakes used to affect political processes is especially challenging. Certain sanctions for disseminating false information could be imposed in criminal laws. However, granting excessive “censorship” rights to administrative agencies could be challenged as an unconstitutional restriction of the freedom of speech.

Impact: Compromising Freedom of Speech is really bad. It’s the foundation of nearly all other human rights

Prof. Stephen J. Wermiel 2018. (professor of practice of constitutional law at American University Washington College of Law) The Ongoing Challenge to Define Free Speech (article is undated but says it was written 227 years after the ratification of the Bill of Rights in 1791) <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/> (accessed 6 Oct 2021)

Freedom of speech, Supreme Court Justice Benjamin Cardozo declared more than 80 years ago, “is the matrix, the indispensable condition of nearly every other form of freedom.” Countless other justices, commentators, philosophers, and more have waxed eloquent for decades over the critically important role that freedom of speech plays in promoting and maintaining democracy.

Voting Impact: Harms of censorship outweigh “benefits” - James Madison 1791

Jackie Mansky 2018 (journalist) The Age-Old Problem of “Fake News” 7 May 2018 SMITHSONIAN MAGAZINE <https://www.smithsonianmag.com/history/age-old-problem-fake-news-180968945/> (accessed 24 Oct 2021)

Whether it's “fake news” fabrications like those promulgated by the Sons of Liberty or “fake news” stories that in reality break down to a difference of opinion, the tradeoffs of having a free independent press has been part of American politics since the beginning. “I think Madison was probably the best on that one when he basically said you have to tolerate some sedition in order to have free communication. You can’t root out all,” says Halperin. Writing anonymously in the *National Gazette* in 1791, Madison speaks to the power of the literati, which he classified as people who are writing things in newspapers and influencing public opinion. There, says Sheehan, he articulates the importance of a free press, partisan though it may be, writing: “They are the cultivators of the human mind—the manufacturers of useful knowledge—the agents of the commerce of ideas—the censors of public manners—the teachers of the arts of life and the means of happiness.”