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# **Removing the Mask: Understanding and Regulating Deepfakes**

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# Deepfakes in 2017

- ❑ The term deepfakes originates from Reddit community r/deepfakes on which users shared manipulated videos with the heads of celebrities superimposed on pornographic video
- ❑ Creating realistic deepfakes required coding and specialized software that leveraged machine learning techniques like Generative Adversarial Networks (GANs)



**Deepfakes: The face-swapping software explained**

28 February 2018

# Deepfakes in 2024

- ❑ Sophisticated tools for generating deepfakes are widely available as mobile applications and require no technical expertise
- ❑ Nefarious actors have seized on deepfake technologies to perpetrate fraud, defame public figures, and spread election misinformation

The  
Guardian

August 26, 2024

How did Donald Trump end up posting Taylor Swift deepfakes?

Organizations have also adopted many **legitimate uses** of deepfakes:

- Entertainment and creative arts
- Healthcare and synthetic data
- Educational and training uses
- Marketing and influencers

# Virtual influencers



- Luxury brands have invested in the promotion and creation of **virtual influencers (i.e. digital avatars or CGI)** like Lil Miquela and Shudu – these figures have appeared in ad campaigns, videos, social media
- The emergence virtual influencers allows brands to make interactions with the public more compelling and enables avatars that convincingly resemble real people

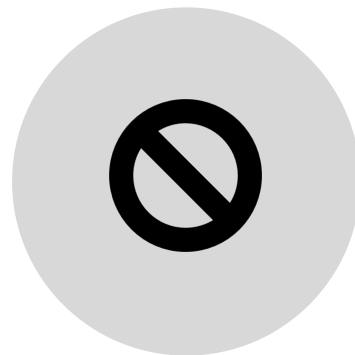


# Deepfakes Regulation: Focus Areas



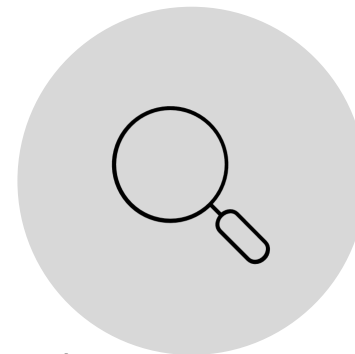
Rights of publicity

Election integrity



Criminal penalties  
(esp for explicit deepfakes)

Detection and  
watermarking



# Rights of Publicity Legislation



## California AB 1836 (signed 2024):

- establishes cause of action for the unauthorized use of a digital replica of a deceased personality's voice or likeness

### Other recent legislation:

- California AB 2602 (signed 2024): contract provisions that allow for the creation and use of digital replicas are unenforceable in certain circumstances
- Tennessee Ensuring Likeness, Voice, and Image Security (ELVIS) Act (signed 2024): Prohibits distribution of tools whose primary purpose is the unauthorized production of an individual's photograph, voice, or likeness
- Illinois Digital Voice and Likeness Protection Act (signed 2024): Provides that a provision in an agreement between an individual and any other person for the performance of personal or professional services is contrary to public policy and is deemed unenforceable



# Election Integrity Legislation

## Arizona SB 1359 (signed 2024):

- Prohibits creation and distribution of deepfakes of political candidate within 90 days of an election unless the message includes a clear and conspicuous disclosure



### **Other recent legislation:**

- Alabama AL HB172 (signed 2024): Criminalizes the distribution of materially deceptive media in an attempt to influence an upcoming election
- California AB 2839 (signed 2024): Prohibits the knowing distribution of an advertisement or other election communication containing deepfakes with the intent to influence an election or solicit funds for a candidate or campaign
- Idaho Freedom From AI-Rigged (FAIR) Elections Act (signed 2024): a candidate whose action or speech is deceptively represented through the use of synthetic media in an electioneering communication may seek injunctive relief and damages

# Criminal Deepfakes Legislation

## Hawaii SB 2687(signed 2024):

- Establishes criminal liability for distributing materially deceptive media



### Other recent legislation:

- Idaho HB 575 (signed 2024): Criminalizes the disclosure of explicit synthetic media
- Indiana HB 1047: Provides that certain images created by AI or similar means constitute an intimate image for the crime of distributing an intimate image.
- South Dakota SB 79 (signed 2024): establishes crime for possessing or distributing AI generated child pornography

# Detection & Watermarking Legislation

## Federal Advisory for AI-Generated Content Act (S. 2765) (introduced 2024):

- Would require watermark on AI-generated materials



### **Other recent legislation:**

- California AI Transparency Act (SB 942) (signed 2024): Requires a covered provider to create an AI detection tool to allow users to query the extent to which text, image, video, audio, or multimedia content was created by a generative AI system and allow users to include a manifest or latent disclosure in AI generated content

# Best Practices

- ✓ Continue to monitor legislative developments – the landscape is evolving rapidly
- ✓ Create an inventory of AI applications used and developed by your organization
- ✓ Incorporate AI diligence into your procurement and contracting processes

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