

Comments on Issues Paper:

Issue 8: Deep Fakes

- Rights of Publicity / Personality Rights¹ are well-developed in some countries (e.g. the US) but not in others. Should such rights (or other sui generis rights) be developed in countries which do not have them to protect against unauthorized creations of deep fakes?
- Damages/royalties from Publicity Rights are typically proportional to the monetary value associated with licensing one's likeness (i.e. higher for celebrities) - does this change if a non-famous individual's likeness can be used to generate revenue, for example, via a customer service avatar? If a non-famous individual's digital avatar becomes famous (without input from the individual beyond the initial digitization of their likeness) who should benefit from the Publicity Rights – the individual, or the company who invested in the digital avatar?
- Hyper-realistic voices and faces can be created by blending between voices and visual likenesses of several real human individuals – currently the law uncertain as to which degree of resemblance to an individual is “in the likeness” of the individual – should the law clarify this?
- With random generation of deep fakes (e.g. <https://www.thispersondoesnotexist.com/>), it is possible that by pure chance, a deep-faked image or voice is in the likeness of a real person. Does the real person have any rights in these circumstances?

Issue 6: Authorship and Ownership:

- Where is the line drawn when works are mostly generated by AI, but also involve some human oversight/input?
 - For example, when Machine Translation improves to the stage that it can be mostly relied on to translate literary works into new languages, does a final human review automatically make the human the creator, even if the human has not needed to “correct” any of the translation?

Issue 7: Infringement and Exceptions

- Regarding the issue of whether an AI application learning from Machine learning infringes Copyright (Issue 7), do views on this issue change when envisaging human-like or “general AI”, designed to learn like a human does, from “real-life” experiences, which may include reading books and watching movies?
 - *“One of the most endearing depictions of a robot in popular fiction is surely Johnny Five, star of the Short Circuit films. Although programmed with the ability to learn, he initially lacks the right type of knowledge base to interact properly with his environment and human beings. This changes when the romantic lead of the film, Stephanie, gives him access to her books, including an encyclopaedia. Speed-reading through the pages, Johnny Five not only acquires their knowledge, but also a personality that is shaped by the type of literature he has been given. But what would the copyright situation have been, had this occurred in real life? Did his “reading” of the books not also involve making a digital copy, stored in his memory? In the remainder of the film it becomes obvious that he has not copied (stored) the information, but also “understood” it in the sense that he is capable of applying the information to new situations. At the same time, he continues to give verbatim quotes from the encyclopaedia, indicating that he has kept a copy in his memory storage which he did not delete once the learning process was completed—very much a human behavioural trait”²*

Also, see WIPO's Symposium on Intellectual Property aspects of Artificial Intelligence in 1991:

https://www.wipo.int/edocs/pubdocs/en/wipo_pub_698.pdf

¹11 Chap. L. Rev. 521 (2007-2008) Intellectual Property Expansion: The Good, the Bad, and the Right of Publicity <https://heinonline.org/HOL/LandingPage?handle=hein.journals/chlr11&div=26&id=&page=>

² Schafer, Burkhard, Komuves, David, Zatarain, Jesus Manuel Niebla and Diver, Laurence "A fourth law of robotics? Copyright and the law and ethics of machine co-production" (2015) 23 217.