

Deepfakes, Digital Replicas & Intellectual Property Rights: An Examination of Copyright, Trademark & Publicity Rights in Pakistan

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Abstract. This study examines the current state of legal protections for individuals against the unauthorised creation and use of deepfakes and AI-generated digital replicas under Pakistani law. The use of artificial intelligence to create AI-generated media works has grown rapidly. However, Pakistan's existing intellectual property laws, including the Copyright Ordinance 1962 and the Trade Marks Ordinance 2001, as well as other protection mechanisms, do not provide sufficient protection to regulate or control the non-consensual use of an individual's likeness, voice, or persona. The study adopts a doctrinal legal method to analyse the relevant provisions of copyright and trademark law, as well as personality and publicity rights under Pakistani law. It argues that both the Copyright Ordinance 1962 and the Trade Marks Ordinance 2001 are not equipped to protect digital identity in the era of artificial intelligence. The analysis also applies the comparative law method and draws on international experiences and legislative developments from other jurisdictions. The study recommends the adoption of a statutory intellectual property right to persona in deepfakes and digital replicas in Pakistan. This proposed persona right would provide individuals with protection over their digital likeness. The article concludes with a proposal for legislation aimed at modernising Pakistani law to effectively address the growing legal and ethical challenges of synthetic media, deepfakes, and digital replicas by extending intellectual property rights to digital identity. The study is limited to intellectual property perspectives and does not examine criminal liability or legal implications of deepfakes, which remain areas for future research.

Keywords Deepfakes; digital replicas; Pakistani law; personality rights; publicity rights; copyright, trademark; artificial intelligence.

Introduction

Deepfakes refer to videos, audio recordings, or images that have been synthetically generated or substantially manipulated using deep learning-based artificial intelligence (AI) techniques to imitate real individuals with high degrees of precision, with the intent of presenting fabricated actions, expressions, or speech as authentic (Altuncu et al., 2022). While a digital replica refers to a computer-generated representation that mimics a person's appearance, including their facial features, body, voice, and movements (Curren, 2023). With the rapid advancements in artificial intelligence and the widespread availability of generative AI tools, the creation and dissemination of deepfakes have become increasingly pervasive across digital platforms (Shoaib et al., 2023). This proliferation of deepfakes has led to a significant increase in their misuse, encompassing a range of serious concerns, including the creation of explicit or non-consensual content, political manipulation, the dissemination of disinformation, and broader forms of digital deception (De Ruiter, 2021). These deepfakes have challenged the very notion of "identity" itself (Öhman, 2022). For instance, AI-generated pornographic images of Taylor Swift circulated widely across social media in 2024 without her consent. Similarly, actor Tom Hanks publicly warned consumers against an AI-generated advertisement that falsely used his likeness

(Thomas, 2024). These incidents demonstrate that deepfakes do not merely pose technological concerns but are also a serious threat to personal identity.

To protect identity in digital space, existing intellectual property laws have sought to offer a few solutions by regulating deepfakes and digital replicas. Denmark, for instance, is proposing an amendment to its copyright law to grant citizens proprietary rights over their voice and physical likeness, and enable them to control, remove, and seek compensation for unauthorised use of their AI-generated replicas (Bryant, 2025). Similarly, re-examining existing trademark law to protect individual identity offers a balanced approach that addresses deepfake-related harms without overextending intellectual property rights (Sawyer, 2025). However, the application of copyright law is limited to the protection of original works of authorship, but it does not prevent the unauthorised duplication of an individual's image or voice. Likewise, the trademark law is aimed at preventing consumer confusion over commercial goods, and is not designed to protect personal identity. The United States Trademark law, the Lanham Act, covers false endorsement or origin, but only in a commercial context where consumers might be misled about sponsorship. The US Courts require proof that the use is likely to cause confusion about endorsement by the depicted individual. This effectively limits trademark claims to situations involving famous personalities or brands in advertising (United States Copyright Office, 2024).

A private individual whose likeness is deep-faked or used in a digital replica, especially outside any commercial market, would struggle to meet those requirements. Hence, traditional intellectual property laws, such as trademark, copyright, and torts of passing off, have proven inadequate to confront harms originating from deepfakes. Modern technologies could have harmful impacts on a person on a scale not envisaged before (Khan et al., 2024; Khan et al., 2025). In the event of failure of copyright and trademark law, the right of publicity could address the unauthorised appropriation of identity. Although the right to publicity was conceived before the advent of AI, a more adaptive version of the right offers a more coherent remedy than existing intellectual property rights (Spitz, 2024). One such iteration of the right to publicity is the right of publicity used over likeness and voice in digital replicas, which has recently been introduced in the bill; the Nurture Originals, Foster Art, and Keep Entertainment Safe Act of 2024, "NO FAKES Bill". The NO FAKES bill creates a federal intellectual property right to the voice and likeness of a person (Gollin, 2025).

While legislative proposals concerning the regulation of deepfakes and digital replicas are actively being considered in several jurisdictions, no parallel debate or legislative initiative currently exists within Pakistani legal discourse. Under the Copyright Ordinance 1962, protection is afforded to original literary, artistic, musical, and cinematographic works and recordings, with human creativity and fixation in a tangible form (Iqbal & Khan, 2024). Similarly, the Trade Marks Ordinance 2001 provides for the protection of distinctive signs used in the course of trade, primarily to distinguish the goods and services of one undertaking from those of another (Mukhtar et al., 2018).

This article argues that the provisions of Pakistan's current Copyright Ordinance 1962 and Trade Marks Ordinance 2001 are inadequate to address the challenges posed by AI-generated deepfakes and digital replicas. These legislative instruments do not recognise or safeguard individual likeness, voice, or persona against unauthorised replication in digital space. The lack of a dedicated statutory right of replication creates a significant legal vacuum in Pakistan's regulatory landscape. Furthermore, there is currently no academic study or legislative deliberation in Pakistan that systematically analyses or examines the protection of persona and likeness within the context of deepfakes or digital replicas. The lack of scholarly engagement creates a notable gap in knowledge. Accordingly, this research seeks to fill that gap by proposing a legal framework aimed at protecting individual identity against emerging AI threats while ensuring compatibility with the needs of the digital era. The research seeks to explore whether the current trademark, copyright, and personality rights laws protect the identity of a person against unauthorized replication in digital space, if not, what should Pakistan do to ensure protection of these rights in digital space.

Methodology

The paper adopts a qualitative doctrinal legal method, which involves the interpretation and critical analysis of primary legal sources, such as statutes and case law, to determine the structure, scope, and content of the law (Hutchinson & Duncan, 2012). It examines the provisions of the Copyright Ordinance, 1962, and the Trademark Ordinance, 2001, as well as the legal concepts of publicity and personality rights in the context of Pakistani law, to assess whether the copyright and trademark laws offer protection against the unauthorized use of a person's image, face, or likeness in the form of digital replicas or deepfakes. The doctrinal method enables the researcher to answer research questions and uncover both the current legal concepts and the limitations of their applicability to deepfakes and digital replicas. In addition, the study employs comparative legal analysis to explore the legal practices and experiences of other jurisdictions in regulating deepfakes and digital replicas from an intellectual property law perspective (Al Abiad & Masadeh, 2024). This comparative law approach enables the researchers to acquire a more informed and evaluative assessment of Pakistani laws by comparing them to the concepts in foreign laws (Al Abiad & Masadeh, 2024).

Methods

This study adopts a doctrinal legal methodology, supported by comparative analysis. Relevant statutes, judicial decisions, legislative proposals, and authoritative policy documents were selectively examined based on their relevance to the regulation of deepfakes and digital replicas under intellectual property law (Memon et al., 2024). The essential documents include: The Copyright Ordinance, 1962, Trademark Ordinance, 2001, The United States Copyright Act of 1976, The Lanham (Trademark) Act, 1946, the Nurture Originals, Foster Art, and Keep Entertainment Safe Act of 2024, Bill, the Ensuring Likeness Voice and Image Security Act, 2024 and the United States Copyright Office Report: Copyright and Artificial Intelligence Part 1: Digital Replicas. These documents are selected for their relevance in illustrating the concept of intellectual property in persona and for providing analysis of existing copyright and trademark law, along with comparative insights from other jurisdictions to support legal reform.

Data Collection Process

The data collection process involves gathering both primary and secondary legal sources related to copyright, trademark, and publicity rights applicable to deepfakes and digital replicas (Sunandini, 2022). Primary materials include statutes and judicial decisions, while secondary sources encompass scholarly literature, legal analysis, and publications from regulatory bodies (Sunandini, 2022). The collection focuses on extracting information relevant to key legal concepts, including personality and publicity rights, the idea-expression dichotomy, trademark disclaimers, and the application of intellectual property law to deepfakes and digital replicas, and the violation of fundamental rights by these technologies. In addition, recent policy documents such as the U.S. Copyright Office's report on digital replicas are examined to understand how copyright law applies to deepfakes and digital replicas.

The Findings and Discussion

Examination of Persona Rights under Copyright Law

The purpose of copyright law is to protect creative expression in literary, artistic, musical, and other intellectual works fixed in a tangible medium (Bhagyamma, 2023). It grants the authors exclusive rights to control the use, reproduction, and dissemination of their creations. In Pakistan, the legal framework governing copyright is primarily governed by the Copyright Ordinance, 1962. This statute extends the scope of protection to various categories of works, including literary, musical, dramatic, cinematographic, and artistic expressions. Under the Ordinance, the duration of copyright for these rights extends to the lifetime of the author plus fifty years after the death of the author (Gujjar et al., 2024). To qualify for the protection afforded under the Copyright Ordinance of 1962, a work must demonstrate some degree of originality and at least a minimal degree of creativity. This requirement secures for the author exclusive rights that allow the creator the

discretion to grant limited permission for others to reproduce the work (Shahzad, 2023). A foundational principle of copyright law is that it protects only the creative expression of ideas, and not the ideas themselves. For instance, under the U.S. copyright legislation, protection does not apply to elements such as ideas, procedures, systems, methods of operation, or factual content. Instead, copyright is conferred solely on the particular manner in which an author articulates or presents those ideas or facts (Fenwick & Jurcys, 2023).

This distinction is central as deepfakes and digital replicas copy the stylistic elements of a person, which is beyond the scope of protection of copyright law. The procedure of creating deepfakes entails the alignment of facial images belonging to two distinct individuals. An autoencoder is employed to extract and encode the facial features and expressions of one individual. These encoded attributes are subsequently integrated with the facial structure of the second individual. The outcome is a deep-faked synthetic facial representation that bears a close resemblance to the second individual (Alanazi & Asif, 2024). Due to the use of AI to generate these deep-faked representations, there is also a primary concern regarding the lack of 'originality and authorship' to reach the threshold of copyright protection for these deep-fakes (Guan, 2025). Since the issue of authorship of AI-generated content has not been clarified explicitly under the Copyright Ordinance 1962, there is also a lack of understanding as to who would own the copyright of AI-generated content (Mushtaq et al., 2024).

The US Courts have also affirmed that content generated using AI is not eligible for copyright protection. Recently, in *Thaler v. Perlmutter* (2023), the United States District Court addressed this matter when it upheld the U.S. Copyright Office's refusal to register a work autonomously generated by an artificial intelligence system. The Court affirmed that copyright protection under U.S. law is reserved for works created by human authors, adding that human authorship is a bedrock requirement of copyright eligibility. As AI-generated content lacks human creativity, it fails to meet the originality threshold required by the Copyright Act and is thus excluded from protection (Mainini, 2023).

Similarly, there have been conflicting judgments in the Chinese legal discourse regarding the copyrightability of AI-generated content. In the *Tencent Company v. Yingxun Technology* case, the court addressed the question of authorship by primarily focusing on the criterion of originality. It recognized AI-generated content as a protectable work. The court attributed authorship to Tencent and emphasized the role of human intellectual input in configuring and directing the AI system. On the contrary, in the *Beijing Film Law Firm v. Baidu* case, the court adopted a stricter interpretation, holding that a work must originate from a human creator to be eligible for copyright protection, and thus denied legal protection to the AI-generated content (Chen, 2023). This divergence in judicial reasoning illustrates an inconsistency under the Chinese copyright law in the treatment of AI-generated works. As a consequence, there is an ambiguity regarding authoritative jurisprudence on the authorship and protection of AI-generated content under Chinese law.

An examination of the copyright law in Pakistan illustrates that for a subject matter to receive protection, it should be a literary, artistic, or other form of work recognized by the Copyright Ordinance 1962, and should be original and show some degree of creativity, and finally, it needs to have been created by a 'Human Author'. If analysed under the Copyright Ordinance, both deepfakes and digital replicas can be construed as artistic works, as they are illustrated representations of art that mimic the likeness of a real person's voice, image, or appearance. As an art form, digital replicas can offer new ways of interacting with famous artworks (Matthes, 2017). However, as these outputs are generated through artificial intelligence rather than by a natural person, they arguably fail to meet the requisite threshold of originality as recognized under the Copyright Ordinance, 1962. In the absence of human authorship, a fundamental requirement under the prevailing legal framework, such AI-generated works are rendered ineligible for copyright protection. Consequently, since deepfakes and digital replicas are generated using AI, they are also excluded from the ambit of copyright protection in Pakistan.

In addition to the lack of protection of deepfakes and digital replicas at the output stage, at the input stage, a person cannot claim to have their face or likeness protected under copyright, since the face or likeness is not a protectable subject matter under Copyright law in the first place. As was seen above, copyright protects creative expression in literary, artistic, musical, and other forms of subject matter enumerated within the Copyright Ordinance 1962, which needs to be fixed in a tangible form. Unfortunately, a person's face,

likeness, and other features of personality cannot be copyrighted unless a person can demonstrate creative expression; failing which, the claim of copyrightability and restraining infringement cannot be substantiated. Since a person's face, likeness, and other features of personality are not a work of authorship fixed in a tangible medium, they are not copyrightable (Tantratian, 2020). Therefore, if an AI system generates a video depicting a politician delivering a deepfake speech using that politician's face, voice, or likeness, the politician cannot rely on copyright law to restrain the use since the copied element is not a copyrightable subject matter fixed in the tangible form of expression. In its recent examination of the application of copyright law to deepfakes and digital replicas, the US Copyright Office report notes that copyright is not the appropriate mechanism to regulate deepfakes (United States Copyright Office, 2024).

Hence, there are some issues concerning the application of copyright to deepfakes and digital replicas. Firstly, a deepfake or digital replica generated by AI may fail to satisfy the originality requirement necessary to qualify for copyright protection. Consequently, where such content is not protected by copyright, the unauthorized use of a person's face or likeness would not amount to copyright infringement to be claimed under copyright.

Trademark Law and the Rights to Persona

A trademark is any sign or symbol used in commerce to indicate the origin or source of goods or services. It serves as a legal mechanism to protect the goodwill and reputation of a producer, while also preventing consumer confusion and maintaining the integrity of the marketplace (Tahir et al., 2022). In Pakistan, the primary legislation governing trademarks is contained in the Trade Marks Ordinance, 2001. Under this Ordinance, a trademark may be registered and protected if it satisfies two essential criteria: it must be capable of graphical representation and must distinguish the goods or services of one undertaking from those of another, and should not be descriptive (Shah et al., 2024).

The scope of what constitutes a "mark" under the Ordinance is broad, encompassing devices, brands, labels, tickets, personal names, slogans, signatures, words, letters, numerals, figurative elements, or any combination thereof (Shah et al., 2024). Under the Ordinance, the term of protection of Trademarks is 10 years from the date of filing, with the possibility of renewal for successive terms (Gujjar et al., 2024). To classify goods and services, Pakistan has ratified and follows the Nice Agreement Concerning the International Classification of Goods and Services for the Registration of Marks (Gujjar et al., 2024). There are 45 classes of goods and services within this Nice classification, amongst which classes 1 to 34 are reserved for goods, whereas classes 35 to 45 represent services (Manjhi & Srivastava, 2024).

Deepfakes involve synthetic media generated through artificial intelligence techniques that produce audio, video, or images resembling real individuals, often by replacing a person in an existing visual or audio context with the likeness of someone else (Somers, 2020). The instances of whether a person's likeness, sound, or audio can be trademarked under the Ordinance 2001 have remained out of sight of contemporary research in Pakistan. A tacit examination of the trademark ordinance shows that a person's personal name, sound, and figurative elements such as face and other features can be protected by trademark if they are shown to have a distinctive character and are non-descriptive. It is pertinent to note that registration is an essential precondition, as only a proprietor of a registered trademark has the right to file suit for injunction and damages before the relevant courts in Pakistan (Mukhtar et al., 2019). Further, globally, with trademarks, there is a general rule that a trademark application for a specific good or service must be filed under a single class (Mashdurohatun, 2019). If protection is sought across multiple classes, a separate application must be submitted for each class to seek protection in that respective class (Mashdurohatun, 2019).

To obtain trademark protection against the unauthorized use of one's likeness, name, or voice in the context of deepfakes and digital replicas, an individual must first demonstrate that these elements are distinctive rather than descriptive and that they are used in the course of trade. Additionally, since trademark protection is limited to specific classes under the NICE Classification system, comprised of 45 distinct classes of goods and services, a person seeking protection would be required to file separate applications in each relevant class. Even assuming that an applicant undertakes the onerous task of applying in all 45 classes, there remains a significant likelihood that registration may still be refused. The trademark office may reject such

applications on the grounds that the name, likeness, or sound is not distinctive, is descriptive, or is confusingly similar to existing registered marks. As a result, individuals may be denied registration despite exhaustive efforts.

Additionally, during the registration of marks containing names, the Trademark Office issues a “disclaimer,” which essentially seeks to limit protection to a particular get-up of the trademark only, excluding the name itself from the ambit of protection. In one instance, a well-known celebrity named Junaid Jamshed had acquired protection of his name as a trademark, which was owned by his corporation, Junaid Jamshed (Private) Limited. Subsequently, a food company he had previously collaborated with was found to be using his name. Since the trademark “Junaid Jamshed” included a disclaimer over the name itself, the court held that Junaid Jamshed (Private) Limited did not have the exclusive right to use the name “Junaid Jamshed” unless the food company used it in the same trade dress and get-up as owned by Junaid Jamshed (Private) Limited (Anon, 2021). The effect of the disclaimer is that, even when a person obtains protection for their name, the presence of a disclaimer would preclude them from enforcing their rights against unauthorized use in deepfakes. This illustrates two issues with pressing trademark law into service against deepfakes. Firstly, trademark law protects the commercial branding of the mark rather than the individual himself. As a result, a deepfake depicting Junaid Jamshed would not necessarily amount to trademark infringement unless it creates confusion regarding the source of origin of commercial goods or services, and not the name of the celebrity itself. Secondly, even if such confusion with respect to the name is identified, a disclaimer would effectively limit the scope of protection for any celebrity name such as Junaid Jamshed.

Another limitation associated with advancing a trademark-based argument is that trademark protection is generally confined to the unauthorized use of protected marks, such as names, logos, or other source identifiers. Consequently, where a digital replica reproduces Junaid Jamshed’s face, voice, or other attributes of his personality without using a protected trademark, trademark law is unlikely to provide an effective legal remedy. In such circumstances, the unauthorized appropriation of Junaid Jamshed’s identity falls outside the conventional scope of trademark protection, which depicts a significant gap in addressing identity-based harms arising from deepfakes and digital replicas.

Under the US Lanham Trademark Act, a claim against false endorsements can be brought under § 43(a) in respect of use in deepfakes and digital replicas; however, the plaintiff must demonstrate unauthorized commercial use (Ginsburg & Austin, 2024). However, it is noteworthy that the Trademark Ordinance 2001 does not prescribe any such right against false endorsements. The Ordinance is primarily designed to protect distinctive commercial marks, not personal identity attributes. Consequently, by its design and scope, the trademark regime in Pakistan does not offer an adequate legal remedy for individuals seeking to protect their rights in and against deepfakes and digital replicas.

The established jurisprudence suggests there is an implication that the names themselves might, on occasion, be excluded from the ambit of protection by way of a disclaimer, which essentially limits the options to protect an important and integral part of personality. Conversely, due to the narrow scope of the Trademark Ordinance 2001, for a person to protect their identity, likeness, voice, or other features of personality, one would have to seek protection separately for each category of works, and within each class enumerated within the NICE classification, which essentially makes the exercise cumbersome.

Right to Publicity

One of the closest property rights that could offer protection against unauthorized reproduction of one’s likeness, voice, and face against deep-fakes is the right to publicity. The United States, for instance, recognizes this right of publicity to safeguard an individual’s name, image, or other identifiable attributes of the person from being exploited commercially without their consent (Wyman, 2013). Whilst this right of publicity has been recognized as a common law right within the United States, some states have also established a statutory right to publicity within their respective jurisdictions to protect the rights of persons from being commercially exploited without their consent (Wyman, 2013). Although the right to publicity is a property right, its uses greatly vary across various states; some limit its application strictly to commercial contexts, while others

extend it more broadly. In some states, the right addresses only economic harm, whereas in others, it encompasses both economic and emotional damage (Ahmed, 2022).

Even though the right of publicity has been conceptualized as both a property right and a procedural safeguard against the unauthorized use of an individual's voice, likeness, or facial features in cases involving deepfakes or digital replicas, there are two significant issues with the current US iteration of this right. Firstly, the right of publicity is not governed by a unified federal statute; rather, it is recognized and enforced at the state level (Drinkwater, 2013). This results in a lack of harmonization and inconsistent application of the right across various states. Secondly, the right of publicity is primarily commercial in nature. Hence, in most states, a plaintiff must demonstrate that their identity has been exploited for commercial gain to establish a valid claim (Guan, 2025). This limits the scope of protection in cases where the use of someone's face, likeness, or voice is non-commercial in nature. This concern was also noted by the US Copyright Office in its recent report on digital replicas and copyrights. The Office highlighted that the commercial nature of this right to publicity is a major impediment that has restricted many aggrieved persons from seeking adequate remedies against unauthorized use of their persona being digitally replicated without consent. In its report, the Office had also advocated for a standalone federal digital replica law that should encompass the commerciality requirement (United States Copyright Office, 2024).

In India, although the right of publicity has not been expressly codified as a statutory right, the courts have recognized an iteration of this right referred to as personality rights to safeguard the interests of celebrities (Chandra, 2025). Recently, acclaimed singer Arijit Singh petitioned the Bombay High Court to restrain the unauthorized imitation and use of his voice in AI-generated, synthesized musical compositions. In response, the court granted a John Doe injunction, extending protection not only against current infringements but also against potential future violations (Chandra, 2025). Unlike the right of publicity in other jurisdictions, Indian courts have recognized the right to personality as vested in celebrities, primarily to protect the commercial value associated with their persona. In cases of infringement, the aggrieved party may seek a remedy under the tort of passing off (Salar & Sinha, 2021).

We could assume that, as per established Indian jurisprudence, this right can be invoked to obtain relief against the unauthorized use of a person's voice and likeness in deepfakes and digital replicas. However, the scope of this protection is largely confined to celebrities. Individuals who do not possess public recognition or celebrity status may not have adequate legal recourse to prevent the misuse of their identity attributes, such as deepfakes or digital replication. Consequently, if a deepfake falsely depicts Shah Rukh Khan endorsing a product, publicity rights may provide a remedy due to the commercial exploitation of his identity. However, when the same technology is used against an ordinary person, publicity rights would not provide adequate protection due to lack of commercial goodwill.

Similar to common law Countries, some civil law jurisdictions also protect the right to publicity under their respective legal frameworks. In Germany, the Federal Court of Justice (Bundesgerichtshof) has recognized this right as a constitutionally protected fundamental right, deriving its basis from the Grundgesetz, or the German Basic Law (Coors, 2014).

A critical point of deliberation is that Pakistani law presently does not recognize personality or publicity as distinct legal rights, either through statutory enactment or common law jurisprudence. In contrast, the United States, India, and other jurisdictions have explicitly incorporated the right to publicity either through legislation or judicial precedent. While the misappropriation of an image or likeness in Pakistan is generally presumed to fall under the tort of passing off, the application of this tort in Pakistani case law has largely been confined to trademark disputes. The challenge with pursuing trademark infringement claims against unauthorized uses in deepfakes and digital replicas lies in the fact that disclaimers can curtail their scope. For example, in the *Junaid Jamshed* case, the inclusion of a disclaimer in the trademark registration effectively restricted the ability to claim exclusive rights over the use of the individual's name (Anon, 2021). Due to no statutory framework or a developed body of case law addressing personality or publicity rights, there is a significant gap in legal protection, which leaves individuals in Pakistan without adequate recourse against the misuse of their identity in deepfakes or digital replicas.

Emerging Global Legislative Approaches to Protect Personality against Deepfake Use

Since the copyright and trademark framework is inadequate, and the application of personality and publicity rights has also been criticized for their limited scope, there are calls for a standalone personality right against the unauthorized use of identity in deepfakes and digital replicas. To address this crucial gap in protection, some innovative legislative proposals have emerged that provide for a similar right of identity and likeness in the digital age.

As an illustration, the US State of Tennessee has adopted a property right against deepfakes and digital replicas in the form of the Ensuring Likeness Voice and Image Security Act, or the ELVIS Act (Taylor, 2024). This ELVIS Act extends protections against deepfakes by safeguarding an individual's voice from unauthorized use by AI. It also protects artists from uncompensated endorsements, misleading creative works, and fabricated messages (Taylor, 2024). Its primary goal is to protect artists and musicians from the unauthorized use of their likeness and work by AI technologies (Taylor, 2024). The legislation specifies certain circumstances in which a voice may be legally used and expands the scope of fair use for news coverage, public affairs, broadcasting, commentary, satire, parody, incidental inclusion, or advertising related to such works (Taylor, 2024).

At the federal level, a new law seeking to create a federal intellectual property right of persona titled the Nurture Originals, Foster Art, and Keep Entertainment Safe, or the NO FAKES Bill, has been proposed, but has not been passed yet (Brownell, 2024). This NO FAKES Bill does not require a commercial requirement for a Persona to obtain protection, and also expands the damages from beyond the requirement of commerciality (Reilly, 2025). Under the proposed NO FAKES Bill, an individual would be able to seek protection of their image, voice, or visual likeness in a digital replica for their lifetime, and 70 years following their death (Mammen & Okada, 2023). A civil cause of action arises from the unauthorized creation of a digital replica or from knowingly making such a replica public, whether through publication, distribution, or transmission, without the right holders' consent (Mammen & Okada, 2023). Each violation may incur liability of \$5,000 or the actual damages sustained by the harmed party (Mammen & Okada, 2023). However, if the person making the digital replica public lacked knowledge of its unauthorized status, this may serve as a defence against liability (Mammen & Okada, 2023).

In addition to the United States, legislative proposals to offer property rights over one's digital replica have also emerged in other parts of the world. Denmark, for instance, has also proposed a new copyright-like neighbouring right to protect its citizens from the use of works within deepfakes or digital replicas. Under this right, every person within Denmark would be entitled to manage and control the use of their likeness from being used in deepfakes. In order to control their likeness, the rightsholders would be entitled to ensure the take-down of infringing content and seek injunctive relief. However, there are certain exceptions to the proposed neighbouring right as per the proposal (Alite, 2025). Visser (2024) also proposes establishing a new right to protect artists and other persons from the use of their voice and likeness in deepfakes in the context of the Netherlands. These studies reflect broader policy deliberations around the world to address the unauthorized use of likeness from deepfakes.

It may be noted that other mechanisms, such as criminal liability, may offer deterrence against the unauthorized use of likenesses within deepfakes; these mechanisms fall short of addressing the broader issue of identity exploitation. Criminal sanctions are reactive, often requiring demonstrable harm, and are typically limited to specific categories of misuse such as obscenity, defamation, or harassment. In contrast, the recognition of a proprietary right in one's likeness, voice, or persona provides a more coherent, proactive, and individualized form of protection. Such a standalone not only empowers individuals to prevent unauthorized digital replication but also enables them to exercise control over both the commercial and non-commercial use of their identity, including through licensing or assignment.

Deepfakes and Unauthorized Digital Replicas Violate Constitutional Values and Social Norms

The Constitution of Pakistan guarantees the protection of fundamental rights, including the dignity of the person and their personal liberty. In accordance with Article 14 of the Constitution, dignity and privacy are recognised as inalienable fundamental rights (Raja, 2019). The proliferation of deepfakes and unauthorized

digital replicas also raises serious concerns regarding the violation of these constitutional values. The unauthorized replication and manipulation of an individual's likeness infringes personal autonomy and dignity by depriving individuals of control over their own identity (Ma'arif et al., 2025).

The right to dignity and privacy has been consistently affirmed and protected by the courts in Pakistan. For instance, in *F.B. Ali v. Federation* (PLD 2010 SC 1), the Supreme Court of Pakistan held that an individual's privacy is an integral aspect of personal liberty and that any unjustified intrusion into it is impermissible. More recently, in *Bushra Bibi v. Federation* (2024 CLD 123), the Islamabad High Court, drawing upon the precedent set in *Benazir Bhutto*, observed that dignity constitutes an inviolable constitutional guarantee (Zaib et al. 2025). We could assume that the unauthorized insertion of a woman's facial likeness into AI-generated videos without consent may violate her constitutional rights to dignity and privacy even if no commercial exploitation takes place. The issues regarding deepfakes impinge directly upon the constitutional protection of the dignity of man and privacy. Although constitutional guarantees exist as safeguards against the violation of fundamental rights, they are not, in themselves, directly enforceable. To operationalize these rights, implementing legislation is required so that such guarantees may be realized in both letter and spirit (Barclay, 2024).

From a social perspective, such practices further conflict with deeply ingrained norms around consent, reputation, and personal honour, causing harm that extends beyond economic loss and affects the social standing and very existence of individuals (Brigham et al., 2024). Although these reputational harms are not adequately recognized by intellectual property doctrines that primarily focus on economic exploitation, they nonetheless represent tangible harms suffered by individuals whose likenesses are misappropriated without authorization. Accordingly, the lack of a rights-based framework addressing such conduct would deprive individuals of constitutional protections and violate social norms that would have otherwise been available to them.

The Need for Reforming Pakistan's IP Laws

The ubiquitous availability of generative AI technologies capable of deep-faking individuals' likenesses and voices has highlighted limitations in current laws in Pakistan regarding the potential misuse of a person's identity through unauthorized digital reproductions. The Trademark Ordinance, 2001, and the Copyright Ordinance, 1968, do not protect unauthorized replication of a person's persona in deepfakes. The research has found that the scope of copyright infringement under the Ordinance extends only to the unauthorized use of an original work of authorship fixed in a tangible medium of expression. As a result, copyright law provides limited recourse against the unauthorized reproduction of an individual's identity, likeness, voice, or other attributes of personality.

Similarly, this research identifies several limitations with advancing claims under Pakistan's trademark law to restrain the unauthorized use of identity and other personal attributes in deepfakes and digital replicas. Furthermore, the absence of a well-established jurisprudence on personality rights in Pakistan leaves rights holders with little or no legal recourse to prevent the unauthorized exploitation of their identity. Even if a comprehensive personality rights jurisprudence existed, the commerciality requirement within personality rights claims would substantially restrict protection for ordinary individuals, limiting the applicability of such rights to celebrities and those with commercial value attached to their persona.

In light of these limitations, the research calls for a standalone intellectual property right over "persona". In order to bring clarity in scope and application, the proposed legislation should define important subject matters, including: 1. Deepfakes, 2. Digital Replicas, 3. Proposed Persona Right, 4. AI-System, 5. Unauthorized use/replication, 6. Licensing and other subject matters that require clarification. Additionally, the proposed law should specify the term of protection afforded under this proposed law. Since the purpose of Intellectual Property laws is to create a balance between exclusive rights and promotion of science and technology, the right envisaged under this proposed law should have clear exceptions in the style of the ELVIS Act, allowing for uses related to news reporting, public affairs, broadcasting, commentary, satire, parody, incidental inclusion, advertising, or other activities aligned with the public interest.

Such a right may either be created through statute or established as a neighbouring right within the copyright laws. To facilitate legitimate use, this right should also be licensable to enable the commercial exploitation of identity by any person. It is worth noting that rules regarding effective enforcement mechanisms should also be established, including injunctive relief and monetary remedies in the event of a breach of the right envisioned in the law, to ensure comprehensive and enforceable protection. The court having appropriate jurisdiction, the procedure of the court, and the mechanism for appeal should also be provided within the proposed law. Similarly, the proposed law should provide for take-down mechanisms against online service providers as provisional measures to enable quicker remedy for those whose persona is used without their consent. This proposal could be effectuated through a formal "take-down" mechanism whereby a service provider would be obligated to take down content posted without the consent of right holders. This right would not only realize the constitutional goal of protecting privacy and dignity, but also conform to social norms and values.

Under this proposed right, if a person voluntarily licenses their digital replica for a commercial purpose, the licensor would be lawfully entitled to reproduce the person's likeness within the agreed contractual limits. However, any third party creating a similar digital replica without authorization would infringe the proposed persona right. It is observed that some aspects of deepfakes and digital replicas can provide for positive use cases. In particular, Pakistani Actors could use deepfake technology to create their digital replicas, allowing them to commercialize their likeness for advertisements, marketing campaigns, and film translations across different languages (Murphy et al., 2023). Such a right would provide an immediate remedy to individuals without requiring them to rely on the onerous requirements of copyright, trademark, or personality rights. It would also confer them with appropriate protection mechanisms to assign rights in persona.

Conclusion

Modern Generative AI systems have made the creation and proliferation of deepfakes and digital replicas easier. The systems have the ability to replicate a person's voice, likeness, sound, and other aspects of their personality with striking accuracy. As these capabilities to generate deepfakes and digital replicas advance, the question of protecting an individual's identity and persona through trademark and copyright laws in Pakistan has become increasingly relevant.

The research analyzed the current laws around trademark and copyright in Pakistan as they apply to deepfakes and digital replicas. The study found that these mechanisms are insufficient to protect persons against unauthorized use of their likeness and persona in deepfakes and digital replicas. A key limitation of trademark law is that, in order to obtain protection, an individual must apply for and secure registration across all relevant classes listed in the NICE Classification, which makes the exercise extremely difficult, if not impossible. Further, for each element, such as sound, face, likeness, and other elements, to be protected, a person has to prove that these elements are distinct and show their use in trade. Moreover, any protection granted may be accompanied by disclaimers that may exclude essential aspects of the identity the applicant seeks to protect, which greatly narrows the scope of legal protection being sought.

The study notes that under Pakistan's Copyright Ordinance 1962, two key issues arise concerning the regulation of deepfakes and digital replicas. First, an examination of the Ordinance reveals that AI-generated content, at the output stage, lacks the element of originality and therefore does not fall within the ambit of copyright protection. As such, deepfakes and digital replicas would not qualify as copyrightable subject matter, and individuals would be unable to claim copyright protection for such outputs. Additionally, at the input stage, a person's facial likeness or other personal attributes do not constitute original works and are thus excluded from the scope of copyright law. These features are not creative expressions, and consequently, a person cannot claim infringement or seek protection under copyright for the unauthorized use of their face or likeness. This position has also been acknowledged by the US Copyright Office, which has concluded that copyright is not an appropriate legal framework for addressing such forms of identity-based content.

From a constitutional perspective, unauthorized deepfakes and digital replicas are not only violative of social norms but also infringe upon the fundamental rights to privacy and dignity of an individual. In this context, a rights-based mechanism would not only help operationalize the constitutional aspirations for the protection of dignity and privacy but would also provide a more expeditious framework for the redressal of grievances. From the standpoint of social norms, the recognition of such a right is necessary to safeguard individuals against reputational harm and other forms of damage to their personality.

Although some countries recognize publicity and personality rights to protect an individual's unique personal attributes from unauthorized exploitation, these rights are typically limited to commercial exploitation. As a result, it becomes particularly burdensome for ordinary individuals whose voice, likeness, face, or other personal features are used in deepfakes or digital replicas without their consent, as they may lack the legal grounds under intellectual property law to restrain such use. In the context of Pakistan, there is neither developed jurisprudence nor statutory recognition or common law precedent for the protection of personality or publicity rights. This absence leaves the general population more vulnerable to the unauthorized appropriation of their identity in AI-generated content. Therefore, there is a pressing need to establish a distinct and standalone intellectual property right aimed at safeguarding individuals from the misappropriation of their attributes.

The study has identified gaps in the regulation of deepfakes and digital replicas through trademark, copyright, and publicity rights. It aims to fill the gap by proposing the creation of a standalone intellectual property right to persona to be incorporated either through statute or extension of existing rights. The proposed right should be assignable through licensing. Among other things, the proposed law should provide for the term of protection, important definitions, rights under the proposed law, a mechanism for enforcement, provisional take-down measures, along with exceptions to this persona right against AI-generated deepfakes.

The research has contributed to the intersection of intellectual property rights and deepfakes & digital replicas. This is one of the first comprehensive doctrinal examinations of the applicability of copyright and trademark laws, along with personality rights in Pakistan, to the unauthorized use of the likeness of a person. The study also demonstrates how the absence of a rights-based framework can result in violations of constitutional protections, such as the rights to privacy and dignity, as well as established social norms. Moreover, it reframes digital identity as a social asset rather than merely a vulnerable attribute susceptible to misuse. Drawing extensively upon the United States, the study proposes the creation of a standalone “right to persona against deepfakes and digital replicas”. This right would act as a safeguard against unauthorized replication in deepfakes and digital replicas, providing a policy framework in Pakistan to protect individuals against the misuse of their identity, which has become increasingly susceptible to exploitation in the digital space.

The research is limited to a doctrinal assessment of deepfakes and digital replicas under intellectual property laws in Pakistan. It does not examine criminal liability aspects of deepfakes and digital replicas under Pakistani law. Prospective future research could explore the regulation of deepfakes and digital replicas under existing criminal laws such as the Pakistan Penal Code (1860) and the Prevention of Electronic Crimes Act (2016).

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