How Deep Does the Virtual Rabbit Hole Go?
"Deepfakes" and the Ethics of Faked Video Content

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The Internet has a way of both refining techniques and technologies by pushing them to their limits—and of bending them toward less-altruistic uses. For instance, artificial intelligence is increasingly being used to push the boundaries of what appears to be reality in faked videos. The premise of the phenomenon is straightforward: use artificial intelligence to seamlessly crop the faces of other people (usually celebrities or public figures) from an authentic video into other pre-existing videos. While some uses of this technology can be beneficial or harmless, the potential for real damage is also present. This recent phenomenon, often called "Deepfakes," has gained media attention due to early adopters and programmers using it to place the face of female celebrities onto the bodies of actresses in unrelated adult film videos. A celebrity therefore appears to be participating in a pornographic video even though, in reality, they have not done so. The actress Emma Watson was one of the first targets of this technology, finding her face cropped onto an explicit porn video without her consent. She is currently embroiled in a lawsuit filed against the producer of the faked video. While the Emma Watson case is still in progress, the difficulty of getting videos like these taken down cannot be understated. Law professor Eric Goldman points out the difficulty of pursuing such cases. He notes that while defamation and slander laws may apply to Deepfake videos, there is no straightforward or clear legal path for getting videos like these taken down, especially given their ability to re-appear once uploaded to the internet. While pornography is protected as a form of expression or art of some producer, Deepfake technology creates the possibility of creating adult films without the consent of those "acting" in it. Making matters more complex is the increasing ease with which this technology is available: forums exist with users offering advice on making faked videos and a phone app is available for download that can be employed by basically anyone to make a Deepfake video using little more than a few celebrity images.

Part of the challenge presented by Deepfakes concerns a conflict between aesthetic values and issues of consent. Celebrities or targets of faked videos did not consent to be portrayed in this manner, a fact which has led prominent voices in the adult film industry to condemn

Deepfakes. One adult film company executive characterized the problem with Deepfakes in a *Variety* article: "it's f[**]ed up. Everything we do ... is built around the word consent. Deepfakes by definition runs contrary to consent." It is unwanted and potentially embarrassing to be placed in a realistic porn video in which one didn't actually participate. These concerns over consent are important, but Deepfakes muddies the waters by involving *fictional* creations and situations. Pornography, including fantasy satires based upon real-life figures such as the disgraced politician Anthony Weiner, is protected under the First Amendment as a type of expressive activity, regardless of whether those depicted or satirized approve of its ideas and activities. Nudity and fantasy situations play a range of roles in expressive activity, some with private contexts and some with public contexts. For instance, 2016 saw the installation of several unauthorized—and nude—statues of then-candidate Donald Trump across the United States. Whether or not we judge the message or use of these statues to be laudatory, they do seem to evoke the aesthetic values of creativity and expression that conflicts with a focus on consent to be depicted in a created (and possibly critical) artifact. Might Deepfakes, especially those of celebrities or public figures, ever be a legitimate form of aesthetic expression of their creators, in a similar way that a deeply offensive pornographic video is still a form of expression of its creators? Furthermore, not all Deepfakes are publically exhibited and used in connection with their target's name, thereby removing most, if not all, of the public harm that would be created by their exhibition. When does private fantasy become a public problem?

Beyond their employment in fictional, but realistic, adult videos, the Deepfakes phenomena raises a more politically-concerning issue. Many are worried that Deepfakes have the potential to damage the world's political climate through the spread of realistic faked video news. If seeing is believing, might our concerns about misinformation, propaganda, and fake news gain a new depth if all or part of the "news" item in question is a realistic video clip serving as evidence for some fictional claim? Law professors Robert Chesney and Danielle Citron consider a range of scenarios in which Deepfakes technology could prove disastrous when utilized in fake news: "false audio might convincingly depict U.S. officials privately 'admitting' a plan to commit this or that outrage overseas, exquisitely timed to disrupt an important diplomatic initiative," or "a fake video might depict emergency officials 'announcing' an impending missile strike on Los Angeles or an emergent pandemic in New York, provoking panic and worse." Such uses of faked video could create compelling, and potentially harmful, viral stories with the capacity to travel quickly across social media. Yet in a similar fashion to the licentious employments in forged adult footage, one can see the potential aesthetic values of Deepfakes as a form of expression, trolling, or satire in some political employments. The fairly crude "bad lip reading" videos of the recent past that placed new audio into real videos for humorous effect will soon give way to more realistic Deepfakes involving political and celebrity figures saying humorous, satirical, false, or frightening things. Given AI's advances and Deepfake technology's supercharging of how we can reimagine and realistically depict the world, how do we legally and ethically renegotiate the balance among the values of creative expression, the concerns over the consent of others, and our pursuit of truthful content?

Discussion Questions:

1. Beyond the legal worries, what is the *ethical* problem with Deepfake videos? Does this problem change if the targeted individual is a public or private figure?

2. Do your concerns about the ethics of Deepfakes videos depend upon them being made public, and not being kept private by their creator?

3. Do the ethical and legal concerns raised concerning Deepfakes matter for more traditional forms of art that use nude and non-nude depictions of public figures? Why or why not?

4. How might artists use Deepfakes as part of their art? Can you envision ways that politicians and celebrities could be legitimately criticized through the creation of biting but fake videos?

5. How would you balance the need to protect artists (and others') interest in expressing their views with the public's need for truthful information? In other words, how can we control the spread of video-based fake news without unduly infringing on art, satire, or even trolling?

Further Information:

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