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Deepfakes

Simon Parham

CREA General Counsel



Tom Hanks says AI version of him used in dental plan ad without his consent

The People Onscreen Are Fake. The Disinformation Is Real.

Who is behind spread of Taylor Swift's deepfake AI-generated images? Here is how the images were made and posted online

Biden Audio Deepfake Alarms Experts in Lead-Up to Elections



Deepfakes

- Protecting Your Organization
- Creating Deepfakes Responsibly

Deepfakes: the Law

- Deepfake-specific law:
 - Intimate Images Legislation dealing with altered images:
 - British Columbia, Prince Edward Island, Saskatchewan, New Brunswick

Deepfakes: the Law

- Possible Causes of Action:
 - *Criminal Code*
 - Copyright infringement
 - Defamation
 - Privacy
 - Appropriation of Personality

Deepfakes: the Law

- Possible Causes of Action:
 - Intentional infliction of mental suffering
 - Harassment

Protecting Yourself Against Deepfakes

- Photos:
 - Share with care
 - Watermark photos
- Detecting Deepfakes:
 - Look for clues
 - Deepfake image detection software
 - Real-time verification

Company out \$35M after scammers stage video call with deepfake CFO, coworkers



By **Kathryn Mannie** • Global News
Posted February 5, 2024 3:40 pm · 3 min read



Using Deepfake Technology

- Complete Ban
- AI Policy

CREA's AI Policy

- Publicly available vs. Enterprise AI
- Publicly available cannot involve:
 - Personal information (except with permission of Chief Privacy Officer)
 - Confidential information
 - Writing code
 - Permanent, public-facing uses

CREA's AI Policy - Publicly Available

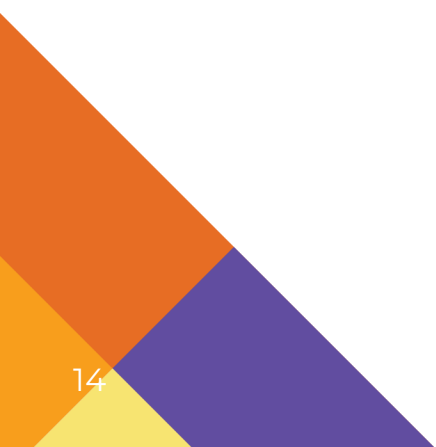
- Otherwise have fun with publicly available AI
- Approval required:
 - Major business decision
 - Non-permanent public-facing use
- Staff responsible for their use of AI

CREA's AI Policy – Enterprise AI

- Any use approved for purpose
- Managers only need to be consulted if there are questions

Final Thoughts on Deepfakes



- Policy is generic – not Deepfake specific
 - AI policies will evolve
 - Use judgement
- 

Questions?

False Light

Alim “Eastwood” Jessa

CREA Legal Counsel

Agenda

- What is *False Light*?
- U.S. and Canadian examples
- Relevance to boards and associations

Canada's Four Privacy Torts

- Misappropriation of personality
- Public disclosure of private facts
- Intrusion upon seclusion
- False light

False Light

- **What does it protect?**

- Your right to control how you are portrayed in the public eye.

- Liability may arise if:

- Someone publicizes a misrepresentation about you;
- A reasonable person would find it highly offensive; and
- The individual did so knowingly or recklessly.



**Wait a minute – this
sounds like...**

Defamation!

False Light vs Defamation

- False Light:
 - Focused on invasion of privacy and **damage to an individual's emotional state**;
- Defamation:
 - False representations that would **lower the reputation of an individual** in the eyes of a reasonable person;
- Available defences



Nellie vs. the Tabloid

- U.S. tabloid ran story:
 - *Pregnancy forces granny to quit work at age 101;*
- Tabloid used 97-year-old Nellie's picture;
- Nellie sued for defamation and false light;
- Nellie won the suit and the appeal.



Nellie vs. the Tabloid

How much was awarded at trial?

- A. \$20,000
- B. \$50,000
- C. \$375,000
- D. \$650,000



Nellie vs. the Tabloid

How much was awarded?

- A.
- B.
- C.
- D. \$650,000**



Cyberbully vs. an Ex-Spouse

- Family law matters;
- Individual publicized falsities and misrepresentations through websites, videos, and emails;
- Negative portrayals of his ex-spouse, children, lawyer, and a judge;
- Court found that the misrepresentations caused serious harm; and
- Commentary - False Light vs. Defamation.



Cyberbully vs. an Ex-Spouse

How much was awarded at trial?

- A. \$20,000
- B. \$50,000
- C. \$100,000
- D. \$650,000



Cyberbully vs. an Ex-Spouse

How much was awarded?

- A.
- B.
- C. **\$100,000**
- D.

Cautionary Notes



- This area of law is still evolving;
- *Publicize* is a broad term – could include posting to private forums if content goes viral;
- Creating, circulating, or even hosting a misrepresentation may attract liability;
- False Light may be claimed in situations where media has been altered to create a misrepresentation; and
- False Light has a lower evidentiary burden than defamation claims.

Relevance to Boards and Associations

- False Light may be avenue to seek remedy for claims of misrepresentation;
- Actively monitor web properties for publicized misrepresentations;
- Circulating a misrepresentation may attract liability;
- Risk mitigation – review your terms of use;
 - Require login to post or comment;
 - Prohibition against posting content which may breach privacy laws;
 - Implement a complaint procedure; and
 - Remove offensive content.

Questions?

AI: A New Intellectual Property Frontier

Isaac “Maximus” Martin

CREA Legal Counsel



Overview

- Key questions
- Opportunities and challenges
- Case studies
- Canadian approach
- Practical implications

Key Questions



- Who is the “author” of AI-generated works?
- Who owns the rights to works generated by AI?
- Who is liable for AI outputs?
- What does AI regulation look like?
- What ethical guidelines should govern the use of AI?

Opportunities



1

Creation

- Accessibility
- Efficiency

2

Registration

- Applications
- Examinations

3

Protection

- Compliance
- Enforcement

Challenges



1

Processes

- Training/outputs
- Transparency

2

Infringement

- System limitations
- Evidence

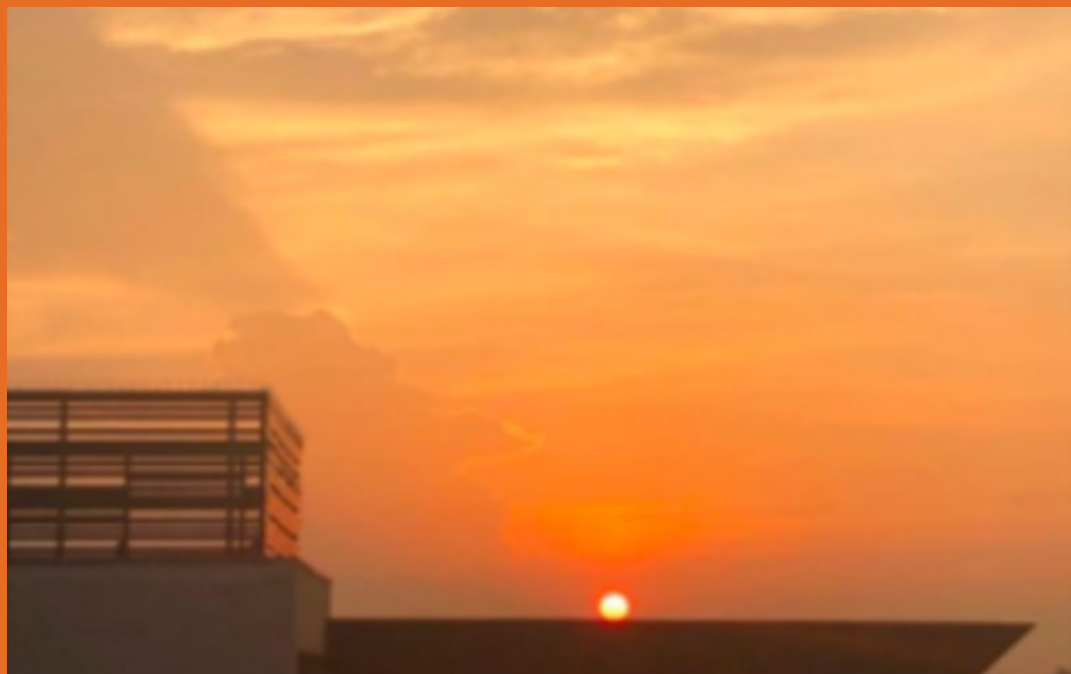
3

Liability

- Users?
- Creators?

Case Studies

- *Thaler v. Perlmutter (D.D.C., 2023)*
- Midjourney & Stability AI
- SURYAST



SURYAST

- Artist's Original Photo (Top)
+
- Style Image of *The Starry Night* (Bottom)
=
- AI-generated Image (Next Slide)



Canadian Approach

- *Artificial Intelligence and Data Act (AIDA)*
- [Voluntary] GenAI Code of Conduct
- Legislative Consultation (*Copyright Act*)
- Guide on the use of generative AI (federal institutions)

Practical Implications

- Listing content and listing databases
- Board and association content
- Contracts and license agreements

Questions?

Competition Law and the REALTOR® Code

Paul “Jack Sparrow” Feuer
CREA Senior Competition Counsel

REALTOR® Cooperation

New FAQs

- Assignments in new construction developments
 - Falls under exemption if prior to transfer of title
- Branch offices
 - Not public marketing if branch office is under same broker of record
- One-to-one direct communications between
 - Listing REALTOR® and a REALTOR® from another brokerage (Receiving REALTOR®)
 - Receiving REALTOR® and a potential buyer
 - Receiving REALTORS® should not forward the listing on to other REALTORS®
 - Listing REALTOR® and a potential buyer
- Real estate shows are public marketing if the advertisement includes listing information for specific properties
 - e.g., photos, address, street name, property details, etc.

Common questions so far...

- **Does it ban exclusive listings?**
 - No.
- **What about the “lawful instructions of my client”?**
 - We all must abide by various laws, regulations and policies of the government or private organizations that we join.
 - Only relevant if REALTOR® Cooperation creates a direct conflict.
 - Rule 9.1: “No obligation under the REALTOR® Code is to be read as requiring a REALTOR® member to violate the law.”

And most importantly...

- **Isn't this policy anti-competitive?**

- Short answer: No. We would say the opposite. It's arguably pro-competitive.
- Long answer: glad you asked...

REALTOR® Cooperation: The Long Answer

- **Why did we create the REALTOR® Cooperation Policy?**
 - Harmful effects of limited marketing tactics
 - MLS® Systems are cooperative selling systems
 - Harms REALTORS® and their clients
- Benefits REALTORS®: more professional results with a more robust MLS® System
- Pro-consumer:
 - Sellers may get more and better offers, houses sell faster
 - Buyers get to see more homes that may fit their needs

Benefits of MLS[®] Systems

WIN

For Sellers

Placing a listing on an MLS[®] System provides more exposure to potential buyers.



WIN

For Buyers

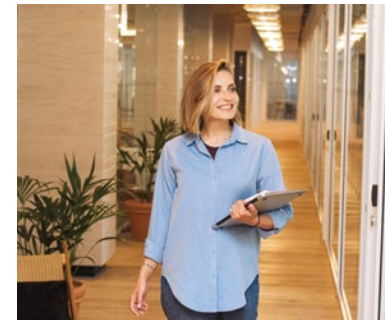
More sellers on MLS[®] Systems mean more choices for buyers.



WIN

For REALTORS[®]

Cooperation between REALTORS[®] is at the heart of every real estate transaction.



AI and Ethics: the REALTOR® Code

Possible Uses of AI




- Writing listing descriptions
- Assisting with lead generation
 - Lead scoring and personalized marketing
 - Creating new and imaginative advertising ideas
 - Brainstorming marketing efforts such as social media, blog content and emails
 - Writing content
 - Identifying your target audience
 - Proofreading
- Interacting with clients (e.g., chatbots)
- Augmented reality experiences (i.e., virtual reality tours)
- Image generation and editing

More
Creative

More
Balanced

More
Precise

Write a property description for a 2 bedroom bungalow in a quiet neighbourhood near a school with 2 and a half baths. The home is detached with brick and lots of windows.

 Your personal and company data are protected in this chat

This is Bing. I can try to write a property description for you. Here is what I came up with:

Welcome to this charming 2 bedroom bungalow in a quiet neighbourhood near a school. This home features 2 and a half baths, a spacious living room, a bright kitchen, and a cozy dining area. The exterior is brick with lots of windows that let in natural light. The backyard is fenced and landscaped, perfect for relaxing or entertaining. The basement is partially finished and offers plenty of storage space. This home is conveniently located close to amenities, parks, and public transit. Don't miss this opportunity to own this lovely home!

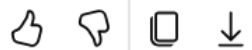


Write a property description for a 2 bedroom bungalow in a quiet neighbourhood near a school with 2 and a half baths. The home is detached with brick and lots of windows. My target audience is a high end buyer with lots of money.

 Your personal and company data are protected in this chat

This is Bing. I can try to write a property description for you. Here is what I came up with:

Experience the luxury and elegance of this stunning 2 bedroom bungalow in a quiet neighbourhood near a school. This home boasts 2 and a half baths, a grand living room, a gourmet kitchen, and a formal dining area. The exterior is brick with lots of windows that create a bright and airy atmosphere. The backyard is a private oasis with a pool, a hot tub, and a gazebo. The basement is fully finished and features a wet bar, a fireplace, and a home theatre. This home is conveniently located close to upscale amenities, parks, and public transit. This is a rare opportunity to own this exquisite home!



3 of 30 responses ●





Key Concerns

- Do not substitute AI for the exercise of professional judgement.
- Use of AI requires:
 - Supervision by REALTOR®
 - Oversight by brokerage

REALTOR® Code enforcement for unethical use of AI

- Article 1: Informed of Essential Facts
- Article 3: Primary Duty to Client
- Article 4: Discovery of Facts
- Article 12: Skilled and Conscientious Service
- Article 13: Advertising – Content/Accuracy
- Article 15: Advertising Claims
- Article 21: Conduct Unbecoming
- Article 22: Principal (Broker) Responsibility

Litigation Update

Changes to the Competition Act

Bill C-56: Affordable Housing and Groceries Act

- Royal Assent December 15, 2023
 - New power to conduct market studies into state of competition in a particular market or industry.
 - Financial penalty for abuse of dominance up to \$25 million for first order, \$35 million for subsequent orders.
 - Broadens factors to be considered in abuse of dominance analysis.
 - Civil anti-competitive agreements section extended to apply to non-competitors.

Bill C-59: 2023 Fall Economic Statement

- 2023 Fall Economic Statement (currently at 2nd reading)
- Expand access for private litigants to Competition Tribunal and enhance remedies
 - Extend ability to seek leave for civil anticompetitive agreements and misleading advertising;
 - Expand criteria for seeking leave; and
 - Enhanced remedies to seek damages.
- Increase focus on anti-competitive collaborations (civil): expanded grounds, improved remedies.
- Revise test for abuse of dominance, including “excessive and unfair selling prices”, and potential increase of other penalties.

Questions?

THANK YOU.



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