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Moosavian, R. (Accepted: 2026) Saving 'Souls'? How Misuse of Private Information Could Protect Targets of Intrusive Deepfakes. In: Bennett, T. B. and Moosavian, R., (eds.) Deepfakes and the Law: Challenges, Responses, and Critique. Routledge. (In Press)

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Saving 'Souls'? How Misuse of Private Information Could Protect Targets of Intrusive Deepfakes

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Abstract

This chapter focuses on Article 8 ECHR-based protections for individual image set out in the English misuse of private information (MPI) tort. It demonstrates how MPI doctrine has the latent potential be incrementally developed and applied so as to protect individuals depicted in intrusive deepfakes. It argues MPI can cover false text-based information, and therefore its extension to false audio-visual depictions is a logical necessity. However the courts must first clarify whether MPI will fully adopt the Continental approach to image. The chapter proceeds to argue that the MPI test would need to evolve if MPI is to remain relevant in the digital age. The flexible, purposive stage 1 Murray test should be developed to include factors that take account of digital cut and paste culture. Legitimate concerns about over-protection as a result of any extension of MPI would need to be addressed by similar adjustments to the stage 2 balancing of Articles 8 & 10. The Axel Springer balancing factors should be supplemented by principles drawn from wider Art 10 jurisprudence so the balancing exercise can account for a wider array of expression by net-users in order to protect artistic and satirical deepfakes.

Introduction

The modern liberal-legal understanding of privacy emerged across Western jurisdictions in the late 19th Century in response to urbanisation and new media technologies, including the mass press and especially photography.¹ Social anxieties about intrusive newspaper gossip and disputes about the unauthorised use of individuals' portraits instigated the earliest privacy laws and discourse, in times that bear certain parallels with our own.² Privacy law's historic and current treatment of photographed individuals is therefore an essential starting point in any analysis of how such laws can and should respond to deepfake technology. 'Deepfake' is an AI-based technology that enables highly realistic video clips of individual 'targets' to be created from photographs of them. The resulting footage depicts the target in fake circumstances that never actually occurred. Though the capacity for manipulation has been a feature of video and photographic technologies since their inception,³ deepfakes arguably enhance the plausibility and sheer scale of fakery, resulting in widespread social anxieties that echo those of our 19th Century forebears. The emergence of deepfakes has spawned an array of legitimate creative uses, but also pernicious, harmful applications, the most significant of which are the focus of various chapters across this collection. However, it should be noted that not all deepfakes are harmful or privacy violating *per se*, and any privacy law protections for individual deepfake targets must account for a range of positive applications - e.g. for creative or entertainment purposes - so as to not unduly restrict them.

This chapter focuses on the privacy law implications of deepfakes, building upon my ongoing research into legal protections for the individual photographic subject.⁴ It focuses on Article 8 European Convention of Human Rights-based protections for individual image as upheld in the English misuse of private information (MPI) tort. It considers how the tort could and should be developed to regulate deepfakes and protect the privacy of the individuals they depict. To date there has been a decent spread of literature concerning privacy harms to deepfake targets. Much of this concerns non-consensual intimate deepfakes, and is focused on criminal law,⁵ or US law.⁶ The select articles covering English private law are shorter pieces that provide a

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- Thanks to the convenors and participants at the 'Privacy & the Digital Generation' symposium, Manchester University in May 2023 for their comments on an early presentation of this chapter. Thanks also to Tom Bennett & Paul Wragg for their very helpful comments on an earlier draft of this chapter.

¹ Megan Richardson, *The Right to Privacy, Origins & Influence of a Nineteenth Century Idea* (Cambridge 2020).

² Rebecca Moosavian & Lee McConnell, 'Privacy Law & Commodification: The Influence of the Possessive Individual' [2024] 4, IPQ 257-288, 265-276.

³ See e.g.: Andie Tucher, 'I Believe in faking': The Dilemma of Photographic Realism at the Dawn of Photojournalism' (2017) *Photography & Culture* 10:3 195-214; Jennifer Mnookin, 'The Image of Truth: Photographic Evidence & the Power of Analogy' (1998) *Yale JL & Human*, Vol 10(1), 1-74.

⁴ Rebecca Moosavian, 'Stealing "Souls"? Article 8 and Photographic Intrusion' (2018) *NILQ* 69(4), 531-58; Rebecca Moosavian, 'Public Image (Un)Limited: Privacy Rights of the Photographic Subject in England and New York Compared' in Andras Koltay & Paul Wragg (eds) *Comparative Privacy & Defamation* (Edward Elgar 2020) ch 9, p.150; *Pavesich v New England (1905)* in Paul Wragg & Peter Coe (eds) *Landmark Cases in Privacy* (Hart 2023), ch 3; Moosavian & McConnell (n 2).

⁵ See, e.g.: Clare McGlynn & Ruya Tuna Toparlak, 'The "New Voyeurism": Criminalising the Creation of Deepfake Porn' (2025) 52 *Journal of Law & Society* 204-228. The authors critique the term 'deepfake pornography' as it connotes consensual adult material and trivialises the effects on victims. They adopt Citron's term 'sexual digital forgeries'. Though this article keeps the 'deepfake' label due to its widespread use, it avoids using 'pornography' or similar terms.

⁶ See, e.g.: Michael P. Goodyear, 'Dignity & Deepfakes' (2025) 57 *Arizona State Law Journal* 931; Jane Ginsburg & Graeme Austin, 'Deepfakes in Domestic & International Perspective' (2025) 48(3) *Columbia Journal of Law & the Arts* 297-324; Nancy Menagh, 'When the Screen Lies: Navigating Privacy & Publicity in an AI World' (2025) 94 *Fordham LR* 337-381; Chesney & Citron, 'Deepfakes & the New Disinformation War: The

general-level overview across various doctrines.⁷ As such, this is the first sustained doctrinal analysis setting out precisely why – and crucially *how* - MPI should be developed to address intrusive deepfakes.

Part 1 starts by identifying precisely how deepfake technology may engage the privacy interests of the individuals it depicts, by threatening their dignity, autonomy and capacity to form relationships. But it also establishes that such footage violates the target's Art 8 privacy right in some (but not all) circumstances, and to varying degrees of severity. The chapter proceeds to argue that the domestic MPI tort has the latent potential be incrementally developed so as to protect individuals depicted in intrusive deepfakes. As Part 2 argues, MPI already covers false text-based information, and therefore its extension to false audio-visual depictions is a logical necessity. However the courts will first need to resolve a doctrinal ambiguity; whether to fully adopt the Continental Reklos-based approach which offers stronger protection for one's image *per se*, or maintain a more sceptical domestic position.

Parts 3-4 argue that the 2-stage MPI test would need to evolve in order to respond to new challenges that arise in the digital online context if MPI is to remain relevant and avoid becoming a relic. Part 3 examines the stage 1 test that the claimant must have a reasonable expectation of privacy (REOP). Though many of the *Murray* factors that determine a claimant's REOP at stage 1⁸ have clear relevance to unauthorised deepfakes, others remain 'old media'-focussed and are thus difficult to map onto this new technology. The flexible, purposive *Murray* factors should thus be developed to take account of digital cut and paste culture. Part 4 argues that valid concerns about over-protection as a result of any extension of MPI would need to be addressed by similar adjustments to the stage 2 balancing of the competing Article 8 privacy and Article 10 free expression rights. It considers how the *Axel Springer* balancing factors⁹ apply to common types of deepfake, including sexually explicit and creative deepfakes. It argues that three factors – debate of general interest, public figure and content, form and consequences of publication – will be particularly relevant in deepfake disputes. Furthermore, additional factors should be drawn from wider Art 10 jurisprudence to guide right-balancing in this context, namely: whether the expression entails satire or parody; whether it is discriminatory or hateful; and whether it is clearly fictional. By incorporating these additional principles, the balancing exercise could account for a wider array of expression from a range of net-users beyond traditional mass media defendants in order to protect legitimate deepfakes such as artistic and satirical creations.

[1] Article 8 Protections for Deepfake Targets

Coming Age of Post-Truth Geopolitics, (2019) *Foreign Affairs* vol 98(1), 147-155; Mary Anne Franks & Ari Ezra Waldron, 'Sex Lies & Videotape: Deepfakes & Free Speech Delusions' (2019) 78 *Maryland LR* 892-898.

⁷ See: Kelsey Farish, 'Do Deepfakes Pose a Golden Opportunity? Considering Whether English Law Should Adopt California's Publicity Right in the Age of the Deepfake' (2020) *J.I.P.L.P.* vol 15(1) 40-48; Edvinas Meskys, Aidas Liaudaskas, Julija Kalpokiene & Paulius Jurcys, 'Regulating Deep Fakes: Legal & Ethical Considerations' (2020) 15(1) *J.I.P.L.P.* 24-31; Tsachi Keren-Paz, 'Pornographic Deepfakes: Liability for Breach of Privacy in Cases of Parody' (2025) *Journal of Tort Law* 18(2) 553-577. At an EU level, see: Bart van der Sloot & Yvette Wagenveld, 'Deepfakes: Regulatory Challenges for the Synthetic Society' (2022) 46 *Computer Law & Security Review* 1-15.

⁸ *Murray v Express Newspapers* [2008] EWCA Civ 446 [36]

⁹ *Axel Springer AG v Germany* [2012] ECHR 39954/08

This part articulates how deepfake technology potentially engages the privacy interests of the individuals (or 'targets') they depict by threatening their dignity, autonomy and capacity to form relationships. It also confirms that such footage potentially violates the target's Art 8 privacy right in some (but not all) circumstances, and to varying degrees of severity.

Three related, overlapping justifications for protecting individual privacy feature across theoretical literature and Article 8 case law. First, privacy is said to ensure respect for human dignity,¹⁰ and this rationale features prominently in continental privacy and human rights discourse.¹¹ Dignity is an inchoate concept rooted in the Kantian notion of respect for persons as ends in themselves.¹² This encompasses self-respect, physical and moral integrity¹³ and even 'in some sense a spiritual interest'.¹⁴ Violating a person's privacy potentially offends their dignity as it entails treating them as a means to an end (usually for financial gain), thereby undermining their self-respect. In this sense, MPI and ECtHR judgments have repeatedly articulated the importance of dignity as an underlying value of Art 8.¹⁵ Second, privacy is viewed as an important pre-condition of individual autonomy,¹⁶ and this has also been recognised across case law.¹⁷ It allows individuals a degree of autonomy over what to reveal and how to portray themselves to others.¹⁸ Decisions about self-revelation and self-restraint¹⁹ are an inherent aspect of various personal and professional relationships that require us to act in different ways,²⁰ and privacy facilitates such decisions. Third, privacy fosters intimacy and is necessary to a range of human relationships across various social contexts.²¹ It provides the conditions for forming close relations of love, friendship and trust by enabling the selective sharing of information.²² So widely publicising private information against a person's will inhibits their ability to maintain such relationships. Again, the ECtHR has confirmed that Art

¹⁰ David Feldman, 'Human Dignity As A Legal Value - Part I' [1999] PL 682 685-687, 690, 694; David Feldman, 'Secrecy, Dignity or Autonomy? Views of Privacy as a Civil Liberty' *Current Legal Problems* (1994) 47(2) 41-71, 68. James Whitman, 'Two Western Cultures of Privacy: Dignity Versus Liberty' (2004) vol 113 *Yale LJ* 1151, 1164. See also *Campbell v Mirror Group Newspapers* [2004] UKHL 22, [50]-[51] per Lord Hoffman.

¹¹ Whitman (n 10) 1164-1202.

¹² Christopher McCrudden, 'Human Dignity & Judicial Interpretation of Human Rights' *E.J.I.L.* (2008) 19(4), 655-724, 723, 656-663.

¹³ Feldman, Human Dignity (n 10) 685-687. See also: Charles Beitz, 'Human Dignity in the Theory of Human Rights: Nothing But A Phrase?' (2013) 41:3 *Philosophy & Public Affairs* 259-290.

¹⁴ E.J. Bloustein, 'Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser' (1964) 39 *New York University Law Review* 962, 1002.

¹⁵ *Campbell HL* (n 10) [50]-[51] (Lord Hoffmann); *PJS v News Group Newspapers Ltd* [2016] EWCA Civ 393, [34]; *Mosley v News Group Newspapers Ltd* [2008] EWHC 1777 [7], [214]-[216]; *Richard v BBC* [2018] EWHC 1837 (Ch) [350], [352]; *Ali v Channel 5* [2018] EWHC 298 (Ch) [148]-[151]. At ECtHR, see: *Avram & Others v Moldova* [2011] ECHR 41588/05 [36].

¹⁶ Westin identifies protecting autonomy as the first function of privacy: Alan Westin, *Privacy & Freedom* (Ig Publishing 1967), 35-37.

¹⁷ *Campbell HL* (n 10) [51]; quoted in *Murray v Express CoA* (n 8) [31]; *Mosley HC* (n 15) [7], [214]; *Weller & Others v Associated News* [2015] EWCA Civ 1176 [61]. At ECtHR, see: *Avram v Moldova* (n 15) [36].

¹⁸ Helen Nissenbaum, 'Protecting Privacy in an Information Age: The Problem of Privacy in Public' (1998) 17 *Law & Philosophy* 559-596, 583-4, 592.

¹⁹ Robert Murphy, 'Social Distance and the Veil' in Ferdinand Schoeman (ed) *Philosophical Dimensions of Privacy: An Anthology* (Cambridge, 1984) Ch 2, 34-5, 37. See also: Thomas Nagel, 'Concealment & Exposure' (1998) 27(1) *Philosophy & Public Affairs* 3-30, 4

²⁰ James Rachels, 'Why Privacy is Important' (1975) 4 *Philosophy & Public Affairs* 323-333, 326-331; Alan Westin, 'The Origins of Modern Claims to Privacy' in Ferdinand Schoeman (ed) *Philosophical Dimensions of Privacy: An Anthology* (Cambridge, 1984) Ch 3, 62; Murphy (n 19) 51.

²¹ Rachels (n 20) 326, 329, 331; Westin (n 20) 62; Murphy (n 19) 51.

²² Charles Fried, 'Privacy' (1968) 77 *Yale LJ* 475, 490, 484.

8 ensures development of an individual's personality via their relations with others, including family and professional or business connections.²³

For these various reasons, Art 8 protects various aspects of an individual's privacy. At core, Art 8 encompasses an individual's physical and psychological integrity,²⁴ which is taken to include one's mental health.²⁵ It can also protect one's physical or social identity,²⁶ and this can include indicia such as a person's name or image.²⁷ Despite the fact that reputation was originally not included in the text of Article 8, subsequent ECtHR jurisprudence has confirmed that it can also encompass this.²⁸ The domestic MPI tort has also developed to protect reputation where a core privacy interest is also at stake.²⁹

1.1 How deepfakes pose privacy challenges

As noted above, deepfakes have many legitimate applications. Indeed, there are notable, though rare, instances where deepfake technology has been used to protect the privacy of targets. For example, the documentary 'Welcome to Chechnya' depicted LGBTQ+ people fleeing from organised persecution.³⁰ To resolve the ethical dilemma of how to depict subjects without endangering them further, the faces of US-based LGBTQ+ activist volunteers were overlaid onto the subjects as a 'human shield' or 'face veil'. But despite such beneficial applications, the technology may engage a target individual's privacy in three common ways that undermine their dignity, informational autonomy and/or capacity to form and maintain relationships.

First, and most severely, sexually explicit deepfakes may be created without the target's consent. Deepfake's initial use was predominantly to create sexually explicit material, with a 2019 study reporting that 96% of online deepfake videos were pornographic in nature, nearly all of which involved female subjects, primarily working in the entertainment industry.³¹ As with its earlier counterpart non-consensual intimate imagery – colloquially termed 'revenge porn' – such deepfakes entail highly gendered harms that disproportionately injure individual targets, and women more generally.³² LGBTQ+ individuals are also disproportionately targeted by such content.³³ Though platforms such as Twitter and Pornhub initially banned

²³ *Pfeifer v Austria* (2007) ECHR 12556/03 [33]; *Pretty v United Kingdom* [2002] ECHR 2346/02 [61]; *Varapnicktaite-Mazyliene v Lithuania* (2012) ECHR 20376/05 [43]; *Bensaid v United Kingdom* [2001] ECHR 44599/98 [47]; *X v Iceland* (1976) 6825/74.

²⁴ *A v Norway* [2009] ECHR 28070/06 [63]; *Soderman v Sweden* [2013] ECHR 5786/08 [80]; *Karako v Hungary* [2009] ECHR 39311/05 [21].

²⁵ *Bensaid v United Kingdom* [2001] ECHR 44599/98 [47].

²⁶ *Pfeifer v Austria* (n 23) [33]; *Pretty v UK* (n 23) [61]; *A v Norway* [2009] ECHR 28070/06 [63]; *Mikulic v Croatia* [2002] ECHR 53176/99 [53].

²⁷ *Pfeifer v Austria* (n 23) [34]; *Eerikainen & Others v Finland* [2009] ECHR 3514/02 [61], [70] (publication of the applicant's photo was a more substantial interference than the 'mere' communication of a person's name).

²⁸ *Pfeifer v Austria* (n 23) [35].

²⁹ *Bloomberg v ZXC* [2022] UKSC 5

³⁰ 'Welcome to Chechnya', David France (dir) (HBO Films, 2020).

³¹ Henry Ajder, Giorgio Patrini, Francesco Cavalli & Laurence Cullen, *The State of Deepfakes: Landscape, Threats & Impact* (Deeprace 2019) Foreword, p.1, 6, 8
<https://regmedia.co.uk/2019/10/08/deepfake_report.pdf> accessed 13 March 2026.

³² McGlynn & Toparlak (n 5) 206-213. On the harms of 'traditional' NCII, see: Clare McGlynn, Kelly Johnson et al. 'It's torture for the soul': The harms of image-based sexual abuse' (2020) *Social & Legal Studies*, vol 30(4), 541-562; Tsachi Keren-Paz, *Egalitarian Digital Privacy, Image-Based Abuse & Beyond* (Bristol University Press 2023), chapter 6

³³ Franks & Waldron (n 6) 892-898.

sexually explicit deepfakes,³⁴ this has not prevented their wider proliferation online, and concerns about such content continue, most recently with Grok AI.³⁵ The online prevalence of unauthorised sexual deepfakes has led to UK legislation that criminalises sharing (or threatening to share) such content,³⁶ and more recently to criminalise its creation;³⁷ these are the focus of analysis by Maguire *et al* in this collection.³⁸ Though this combination of platform policies, user terms and criminal laws aim to stem the tide of unauthorised sexually explicit deepfakes, Art 8 and MPI also have a potential role to play by affording a further layer of protection for targets depicted in unauthorised sexual deepfake footage. In particular, this private law can afford targets remedies such as damages³⁹ or injunctions against named or anonymous uploaders.⁴⁰

In *Dudgeon v UK* the ECtHR confirmed that sexuality constitutes 'a most intimate aspect of private life', and Art 8 protects it as 'an essentially private manifestation of the human personality'.⁴¹ Domestically, MPI cases have consistently held that the unauthorised dissemination of intimate footage or imagery is a clear and serious violation of the subject's Article 8 privacy right.⁴² For example, in *Mosley*, Justice Eady held that the unauthorised filming and publication of footage and stills of the claimant consorting with sex workers was highly intrusive and unjustifiable in Art 10 terms.⁴³ Similar points were reiterated in *Contostavlos* and *AMP*, which involved claimants seeking to restrain the publication of intimate images taken to share with their partners.⁴⁴ Furthermore, the Supreme Court has confirmed that an individual will usually have a reasonable expectation of privacy in relation to their nude body and intimate details of personal relationships.⁴⁵ Collectively, these authorities demonstrate that intimate sexual images or footage of individuals engages cogent Art 8 claims that go to the core of what the right seeks to protect.

Second, deepfakes may harm the reputation of the target individual by falsely depicting them doing or saying something that never happened. For example, deepfakes of politicians making

³⁴ Alex Hern, 'Deepfake Face-swap Porn Videos Banned by Pornhub and Twitter', The Guardian Online (7 Feb 2018) <<https://www.theguardian.com/technology/2018/feb/07/twitter-pornhub-ban-deepfake-ai-face-swap-porn-videos-celebrities-gfycat-reddit>> accessed 13 March 2026

³⁵ Ofcom has launched a formal investigation into Grok AI (owned by X) to determine whether a tool that has led to a deluge of illegal non-consensual intimate images and child sex abuse material on the platform it has breached its OSA obligations: Ofcom statement (12 January 2026) <<https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/ofcom-launches-investigation-into-x-over-grok-sexualised-imagery>> accessed 13 March 2026.

³⁶ Sections 187-188, *Online Safety Act 2023* amended the *Sexual Offences Act 2003* to create new criminal offences of sharing or threatening to share intimate images (including deepfakes) without consent (at section 66B).

³⁷ Section 138, *Data (Use & Access) Act 2025* amended the *Sexual Offences Act 2003* to create new criminal offences of creating, or requesting others to create, unauthorised intimate deepfakes (at section 66E-G).

³⁸ Aislinn O'Connell, Jill Marshall & Rachel Maguire, 'Deepfake Pornography: Legal & Human Rights Responses' (in this volume).

³⁹ *FGX v Gaunt* [2023] EWHC 419; *Mosley HC* (n 15).

⁴⁰ *AMP v Persons Unknown* [2011] EWHC 3454; *Contostavlos v Mendahun* [2012] EWHC 850.

⁴¹ *Dudgeon v United Kingdom* (1981) 7525/76 [52], [60]. See also: *Avram v Moldova* (n 15) [36]; *Armoniene v Lithuania* [2008] ECHR 36919/02 [35].

⁴² See, e.g.: *COS v PER & PHO* [2021] EWHC 475 [4], [6], [11]; *Reid v Price* [2020] EWHC 594 [51] ('the more intimate the information and more extensive the disclosure, the greater the award [of damages]'). Regarding text-based intimate details of sexual conduct, see: *Bull v Desporte* [2019] EWHC 1650 [94]-[95]. [113].

⁴³ *Mosley HC* (n 15) [17], [23], [104], [111], [134].

⁴⁴ *AMP v Persons Unknown* (n 40) [27]; *Contostavlos v Mendahun* (n 40) [25] ('Details of a person's sexual life have ... been recognised for very many years as high on the list of matters which may be protected by non-disclosure orders.'). See also: *YXB v TNO* [2015] EWHC 826 (QB) [61](ii).

⁴⁵ *Bloomberg SC* (n 29) [52].

discriminatory remarks may be circulated during an election period.⁴⁶ Defamation law may provide redress for a target where their false depiction in a deepfake clip causes serious harm to their reputation.⁴⁷ Though Article 8 encompasses protection for reputation, the focus of this chapter is MPI, and a full examination of defamation is beyond the scope of this chapter and examined elsewhere.⁴⁸ Nevertheless, some privacy-invading deepfakes may also engage reputational interests of the target, a notable example being unauthorised non-consensual intimate deepfakes that may also seriously harm the depicted woman's reputation due to sexual double-standards in wider society.⁴⁹

Third, deepfake footage may engage a target's Art 8 privacy right by depicting a non-sexual private aspect of their life, such as their medical or physical condition, mental health, or family relations. Posting such footage online without the target's consent exposes to this aspect of their lives to the unwanted attention and scrutiny of online audiences. However, it is possible that even a clearly non-private, prosaic deepfake may come to engage a target's privacy if the clip goes 'viral' and rapidly spreads their image to thousands or millions of online users across the globe. This digital age phenomenon - termed 'forced faming' by Boshier⁵⁰ - is not restricted to deepfakes, and may involve authentic photographs or video clips.⁵¹ But either way, it engages the previously unknown individual subject's privacy by exposing them to unwanted publicity, attention (and possibly ridicule), often on an arbitrary basis. As Part 3 demonstrates, though select unauthorised deepfakes may conceivably give rise to arguable Art 8 claims for the target where they pertain to private matters, such claims will be inherently weaker and less clear-cut than in relation to non-sexual deepfakes.⁵²

In summary, not all deepfakes – even unauthorised ones - will violate the Art 8 privacy rights of the individuals they depict. However, there is clear potential for violating use of the technology. Indeed, the most common online application of the technology – unauthorised intimate deepfakes – clearly falls squarely within the remit of Art 8, severely undermining the dignity, autonomy and psychological integrity of targeted individuals. Select other types of deepfake may also violate the target's Art 8 right, albeit to a far lesser degree. It is therefore salient to consider how the MPI tort might deal with potentially intrusive uses of the technology.

⁴⁶ For a discussion of the role of deepfakes in elections, see: Subhajt Basu and Garima Saxena, 'Deepfakes and Democratic Vulnerabilities: Safeguarding Electoral Integrity in India' (in this volume).

⁴⁷ Section 1(1), *Defamation Act 2013*.

⁴⁸ See: Moosavian in Helen Fenwick & Fiona Brimblecombe (eds) *Media Law in the Internet Era* (Oxford 2027 forthcoming).

⁴⁹ Keren-Paz (n 32) 200-206.

⁵⁰ Hayleigh Boshier, 'Forced Faming: How the Law Can Protect Against Non-Consensual Recording & Distributing of a Person's Voice or Image' (2023) *Communications Law* 28(3) 119-131.

⁵¹ See, e.g.: Rafqa Touma, 'Melbourne Woman 'Dehumanised' by Viral TikTok Filmed Without Her Consent' *The Guardian Online* (14 June 2022) <<https://www.theguardian.com/technology/2022/jul/14/melbourne-woman-dehumanised-by-viral-tiktok-filmed-without-her-consent>>; BBC News Online, 'We Got a Lot of Grief When Our Photo Became a Meme' (18 January 2021) <<https://www.bbc.co.uk/news/newsbeat-55704468>> both accessed 13 March 2026

⁵² It should be noted that alternative doctrines – such as passing off, data protection or defamation – may be available if the claimant can establish the elements.

[2] Misuse of Private Information & False Images

Though image-based disputes have played an integral role in shaping MPI doctrine,⁵³ no cases regarding deepfakes have yet reached the courts. MPI is well-placed to address synthetic deepfake content as it already protects false (or potentially false) text-based information. However, authorities conflict regarding whether to follow the Continental approach to image or retain the traditional English scepticism to image rights, and this ambiguity needs to be clarified going forward.

2.1 MPI & Truth/Falsehood

One potential objection to applying MPI to deepfakes is that, unlike photographs or video footage, they depict events that never actually happened.⁵⁴ How can deepfakes invade the target's privacy if they are synthetic, or fictional? This objection rests on the crucial distinction between a 'revelation' (where a previously unknown private truth is revealed to the world) and a 'depiction' or representation (which is fictional and thus inherently incapable of revealing any such truth). However, this objection is misplaced and is addressed in doctrine.

In many MPI cases the disputed information is true, or its veracity is not in issue. Nevertheless, MPI is largely unconcerned with the truth or falsity of such information, and will protect it in any event if the doctrinal requirements are met. As Lord Hamblen stated in *ZXC v Bloomberg* (2022), 'the purpose [of MPI] ... is to protect an individual's private life in accordance with Art 8 ... *whether the information is true or false*.'⁵⁵ Three MPI cases are germane to deepfakes as they illustrate the operation of this principle in contested literary depictions of claimants. In *McKennitt v Ash*, the claimant succeeded in preventing her former friend publishing a book about their relationship. The parties disagreed about the veracity of select allegations in the defendant's book, including a property dispute, but the trial judge found the defendant's account to be untrue. When the case reached the Court of Appeal the defendant sought to argue that the Art 8 protection did not apply to falsehoods, and that the claimant should thus have brought a defamation action against her instead. But the Court of Appeal categorically rejected this approach, claiming that the sole issue was the private nature of the disputed information. As Longmore LJ stated:

*'The question in a case of [MPI] is whether the information is private not whether it is true or false. **The truth or falsity of the information is an irrelevant inquiry in deciding whether the information is entitled to be protected** and judges should be chary of being side-tracked into that irrelevant inquiry.'*⁵⁶

Bull v Desporte (2019) entailed very similar facts to *McKennitt*, albeit the parties had been involved in a sexual relationship rather than a friendship. Though the claimant disputed various allegations in the defendant's book, Knowles J reiterated that their truth or falsity was not

⁵³ Photographs were the disputed content in the two earliest leading cases that set out the foundations for the MPI tort: *Campbell HL* (n 10); *Douglas & Others v Hello!* [2005] EWCA Civ 595.

⁵⁴ See, e.g.: *Farish* (n 7) 45-46 (discussing why MPI will not protect deepfake targets, and why a US-style publicity right is justified). I have encountered similar scepticism about the capacity of MPI to address deepfakes in discussions at academic conferences.

⁵⁵ Emphasis added. *Bloomberg SC* (n 29) [111]

⁵⁶ Emphasis added. *McKennitt v Ash* [2006] EWCA Civ 1714 [86]. See also: [80] (Buxton LJ). Quoted with approval in *Ferdinand v MGN Ltd* [2011] EWHC 2454 [67].

relevant to whether the information was private and restrained publication accordingly.⁵⁷ Finally, in *P v Quigley* (2008) the claimant couple succeeded in obtaining an injunction to restrain the threatened online publication of a novella that depicted them in thinly-disguised form as engaging in 'unsavoury and fictitious sexual activities'. Eady J stated the couple's Art 8 rights were plainly engaged as publication would cause distress, embarrassment and constitute a clear 'unacceptable intrusion into a personal and intimate area of their lives'.⁵⁸

A detailed examination of this truth/falsehood point was recently undertaken by Fordham J in *Mullen v Lyles* (2025). Though his observations should be viewed on the case's specific facts, in particular contested allegations of sexual assault by the claimant, the judge offered further detail on how truth/falsehood operates in MPI claims. First, he confirmed that the 'irrelevancy of truth/falsity' applies at the stage 1 REOP assessment:

'Stage 1 is about whether the information is private. It is not about whether information is false or true. ... The point is whether this [information] is – by its nature – information which is none of anybody else's business; whether the individual is to be protected from intrusion; whether the individual remains in control.'⁵⁹

However, Fordham J also noted that the irrelevancy of truth/falsity is not an all-embracing, rigid rule, but rather a principle that 'permits a nuanced approach'⁶⁰ Thus, the truth or falsity of the information is invariably irrelevant to determining a claimant's REOP in respect of it, *but* there is no hard, fast rule that permanently excludes it from the stage 1 assessment.

Though the falsity of disputed information will not undermine or eradicate a claimant's Art 8 claim, it may assume relevance at stage 2 rights-balancing. As Fordham J stated in *Mullen*, it may be necessary to appraise the veracity of allegations for the purposes of determining any public interest arguments at stake.⁶¹ Furthermore, the truth may assume a significance where the information exposes hypocrisy, i.e. where the defendant is correcting the claimant's falsehoods.⁶² More generally, the veracity of information is set out in *Axel Springer* as a factor relevant to the rights-balancing process, and falsity is likely to reduce the weight a court attaches to the Art 10 free expression right in that information.⁶³ Though the ECtHR discussed this factor exclusively in terms of journalistic accuracy, domestic courts have indicated that falsity may support a claimant's Art 8 claim in non-journalistic disputes.⁶⁴ The relevance of falsity at stage 2 is discussed further at Part 4.4

Though these MPI cases do not fully articulate a detailed rationale as to precisely *why* the veracity of information is irrelevant to Art 8 protection, three reasons can be discerned. First,

⁵⁷ *Bull v Desporte* (n 42) [86]-[88].

⁵⁸ *P v Quigley* [2008] EWHC 1051 [6]-[7].

⁵⁹ Emphasis added. *Mullen v Lyles* [2025] EWHC 645 [27]-[28]. He adds that alleged falsity of the disputed information makes the stage 1 enquiry very difficult as it is a fact-sensitive assessment: [30].

⁶⁰ *ibid* [29], [32].

⁶¹ *ibid* [31][41]. See also: *Bull v Desporte* (n 42) [89].

⁶² *Campbell HL* (n 10). As Pete Coe and I have argued elsewhere, this 'exposing hypocrisy' principle sets a high bar for defendants, succeeds in only a minority of cases and occupies a fairly modest role in MPI doctrine: Rebecca Moosavian & Pete Coe, 'Balancing Privacy Against Free Speech: In Defence of Exposing Hypocrisy' in Megan Richardson, Damian Clifford & Normann Witzleb (eds) *Research Handbook on Privacy & Confidentiality in Media Law* (Edward Elgar 2026).

⁶³ *Axel Springer v Germany* (n 9) [93]. See also: *McKennitt CoA* (n 56) [86] (Longmore LJ).

⁶⁴ *GYH v Persons Unknown* [2017] EWHC 3360 [36]-[38] (a series of false allegations about a sex worker's sexual conduct, practices and sexually transmitted diseases constituted harassment and misuse of private information).

as Buxton LJ briefly stated in *McKennitt*, this approach was supported by European cases indicating that Art 8 protects reputation.⁶⁵ Second, there are practical benefits to sidelining truth/falsity as it avoids drawing judges into having to make factual findings when considering interim applications. Third (and especially pertinent in the context of deepfakes) whether true or false, the information engages the claimant's privacy in any event because it encourages unwanted discussion and attention. Furthermore, audiences may believe the information to be true irrespective of its falsity. Such concern is evident in *XJA v News Group* (2010), a celebrity-tabloid dispute concerning unspecified private information. The claimant argued that the disputed story was false and, if published, would place him in an 'invidious position'. If he remained silent on the allegations, he and his family would endure speculation and questions, but publicly addressing the allegations as false would also invite intrusive attention.⁶⁶ Sharp J held that though the veracity of the allegations was yet to be determined, the severity of interference with the claimant's Art 8 right was a relevant factor in favour of maintaining his anonymity.⁶⁷ Similarly, in *Cooper v Turrell* (2011) the defendant's publication of the claimant CEO's health problems, which he incorrectly identified as a brain tumour, was held to constitute a clear MPI. Tugendhat J focused on the fact that, as a result of this false disclosure the claimant had been 'compelled' to share the true state of his health with the company board, various groups and clients in order to correct the position, causing him much discomfort and distress.⁶⁸

In short, in MPI the nature of the disputed information is a key issue, and its alleged falsity does not preclude MPI protection.⁶⁹ MPI may protect private information whether it is true *or* false (or even where it is true but potentially creates a false impression).⁷⁰ Furthermore, MPI has the clear capacity to protect claimants from false (or potentially false) text-based depictions that impinge upon their Art 8 rights.

Images & Truth/Falsehood

Only two MPI cases - both Northern Irish - involve disputes about manipulated photographs.⁷¹ In *J20 v Facebook* (2016) the claimant brought an MPI action against the platform for its failure to expeditiously remove a page containing posts and photographs criticising his involvement in loyalist parades.⁷² He argued that a photograph of him standing in front of a union jack flag with a loyalist politician was doctored and violated his Art 8 REOP regarding his image.⁷³ Colton J rejected this claim, finding the photograph was authentic, and that J20 had no REOP in relation to the image because the protests were highly public events and the picture had been taken in public.⁷⁴ In *EC v Sunday Newspapers* (2017) the claimant had historically been

⁶⁵ *McKennitt CoA* (n 56) [80].

⁶⁶ *XJA v News Group Newspapers Ltd* [2010] EWHC 3174 (QB) [8], [4].

⁶⁷ *ibid* [15].

⁶⁸ *Cooper v Turrell* [2011] EWHC 3269 [3][6][42]-[43][51][84][102][107]

⁶⁹ See also: *LJY v Persons Unknown* [2017] EWHC 3230 [30] (blackmail threat to publish false allegations that the claimant had committed a serious criminal act constituted MPI).

⁷⁰ *Bloomberg SC* [112] (publication of the fact claimant was under investigation by UK law enforcement could lead some to suspect he was guilty or had given cause for such investigation); *Wan-Bissaka v Bentley* [2020] EWHC 3640 [6]-[7] [23] (defendant's Instagram posting of screen-shotted text messages with claimant during an earlier relationship created the impression of adultery and constituted MPI).

⁷¹ But see also: *GYH v Persons Unknown* (n 64) [36]-[38]. This case also involved altered intimate images of the claimant, though the allegations were dealt with as a whole and there was no separate consideration of the images because Warby J deemed all of the allegations to concern information 'towards the upper end of the Art 8 hierarchy': [19](6); [32]).

⁷² *J20 v Facebook Ireland* [2016] NIQB 98

⁷³ *ibid* [5], [19]-[20]

⁷⁴ *ibid* [21]-[22], [25]-[26]

convicted for manslaughter following an accidental teenage shooting.⁷⁵ He brought various claims, including MPI, against the defendant for a story that criticised his opening of a recreational war-games business near the family of his victim. The story was accompanied by photographs of EC in military gear holding replica guns, taken from his Facebook feed, then cropped and enlarged.⁷⁶ The court rejected EC's argument that the photographs constituted MPI, stating that the cropped images did not 'unfairly represent or distort the way in which [he] was depicted in the originals.'⁷⁷ Interestingly, in both cases, the claimants' Art 8 arguments regarding the images failed on the specific facts, but succeeded in relation to other categories of disputed information.⁷⁸ *J20* and *EC* indicate that MPI can accommodate arguments about manipulated images. However, they shed limited light on how MPI might treat deepfake material because the image doctored in both cases was rejected or minor. Nevertheless, they do indicate that even where an image is doctored, the nature of the disputed information and wider factual context of a case will still be central to determining whether MPI has occurred.

Beyond 'doctored' images, there is a significant body of caselaw examining the Art 8 privacy rights of photographed individuals. My previous analysis of judicial approaches in these cases reveals two key points that are highly pertinent to deepfakes.⁷⁹ First, photographic images have been consistently deemed 'special' and particularly intrusive in privacy terms because they convey events in far more detail than equivalent text-based accounts.⁸⁰ This was recently explicitly acknowledged in *FGX v Gaunt* (2023) when Thornton J deemed a case of online image-based abuse more severe than a written account of sexual activity featured in a book for the purposes of assessing the claimant's general damages.⁸¹ Second, judges have also acknowledged that photographs have a verifying function, a truth status,⁸² though this is ambiguous and parties may advance competing interpretations of the events captured.⁸³

Deepfake technology complicates these legal principles regarding photography and footage because it poses a threat to film-based truth. For example, a 2019 report claimed 'our historic belief that video and audio are reliable records of reality is no longer tenable',⁸⁴ and similar concerns have been expressed by legal academics.⁸⁵ Deepfake content potentially undermines video as broadly received truth in two distinct ways; it may lead an audience to hold false beliefs that the depicted events actually occurred when they did not. But deepfakes also create

⁷⁵ *EC v Sunday Newspapers Ltd* [2017] NIQB 117

⁷⁶ *ibid* [167], [177], [178], [181]

⁷⁷ *ibid* [135]

⁷⁸ *J20 v Facebook* (n 72) [34], [42] (identification of the claimant's children and their religion, and naming him as an 'informer' did constitute MPI); *EC v Sunday Newspapers* (n 75) [131]-[132], [139], [230] (though the defendant's story might have come within MPI's 'debate of general interest' justification, this did not apply due to the sensationalist way in which the defendant's story revealed EC's spent conviction).

⁷⁹ Moosavian, *Stealing Souls* (n 4) 535-536.

⁸⁰ *Douglas CoA* (n 53) [84]. Quoted in *Mosley HC* (n 15) [19]. See also: *Rothe v Austria* (App 6490/07) [2012] ECHR 2008 [74]; *Jagger v Darling & Others* [2005] EWHC 683 [11], [14], [15]. *Ferdinand* (n 56) [101]. See discussion in: Moosavian, *Stealing Souls* (n 4) 549-550.

⁸¹ (n 39) [41], [46].

⁸² *Douglas v Hello!* [2007] UKHL 21 [251], [288]; *Von Hannover v Germany (No 2)* [2012] ECHR 40660/08 [117].

⁸³ Moosavian, *Stealing Souls* (n 4) 555-556.

⁸⁴ Ajder et al (n 31) Foreword.

⁸⁵ Meskys et al (n 7) 25; Farish (n 7); Chesney & Citron (n 6); John Twomey, Didier Ching, Matthew Aylett, Michale Quayle, Conor Linehan & Gillian Murphy, 'Do Deepfake Videos Undermine our Epistemic Trust? A Thematic Analysis of Tweets that Discuss Deepfakes in the Russian Invasion of Ukraine' (2023) PLOS ONE 18(10) 1-22.

wider 'epistemic uncertainty' by fostering generalised doubt regarding the overall veracity of video footage.⁸⁶

In short, deepfakes have a particular capacity to mislead audiences into assuming that the events they depict actually happened, and this feature of the technology *strengthens* the justification for irrelevance of truth/falsehood to the MPI claim. For example, if a defendant writes a false text-based story that the claimant had a sexual liaison and seeks to publish it, MPI would protect the latter's Art 8 right and prevent publication, irrespective of the story's falsity. MPI would do this even though text-based falsehoods depict events that never occurred. Therefore, if MPI fails to offer equivalent protection for the same false story depicted audio-visually by a deepfake (which is deemed *more* intrusive and *more* likely to be believed by audience) then there is a logical gap in protection. This point is recognised by the criminal measure introduced by s.188 Online Safety Act 2023 which created a new offence of sharing or threatening to share photograph or film which 'shows *or appears to show*' a person in an intimate state without their consent.⁸⁷ This provision correctly recognises that the depicted individual is harmed irrespective of whether the footage depicts actual events, or it merely *appears to*.

In the digital deepfakes age, one's moving image becomes akin to one's name or static image in earlier technological waves. An individual's name is not private information *per se*; it may be publicly discoverable via directories or online profiles etc. But an individual's name is information that *could* be used in a way that invades their privacy because it is indelibly linked to the individual, enables them to be identified, and can be used in a way that situates them in a depiction concerning an aspect of their private life that draws unwanted attention. It is for this reason that many MPI claimants are granted interim and/or final orders to preserve their anonymity. MPI cases confirm that using an individual's name in a false text-based depiction may violate Art 8 (e.g. where it depicts the detail of a claimant's sexual activity). The same principles must therefore logically apply to use of their image in deepfake depictions.

In summary, MPI protects claimants from text-based falsehoods about their private life. Because it encourages unwanted speculation and/or may mislead the public about a claimant's private life, such false information has been deemed intrusive in any event. The case for applying this rationale to image-based footage – which judges deem *more* intrusive and potentially *more* likely to be accepted as true – is therefore cogent. But, as Part 3 explains, MPI's remit will be restricted to deepfakes that depict private events, as is squarely the case in sexual and/or nude deepfakes.

2.2 Image in English Law: A Sceptical or Continental Approach?

Addressing a deepfake-based dispute would require the courts to confront and address a significant ambiguity concerning how domestic MPI doctrine constructs the relationship between the individual and their image. There are two conflicting approaches to an individual's image in Art 8 photographic case law; the traditional English approach that is sceptical to an inherent right to one's image, and the alternative Continental-influenced approach in which

⁸⁶ Don Fallis, 'The Epistemic Threat of Deepfakes' (2020) *Philosophy & Technology*, Section 3; Regina Rini, 'Deepfakes and the Epistemic Backstop' *Philosophers' Imprint* (2020) vol 20(24) 1-16, 1-4, 7-8, 10.

⁸⁷ Emphasis added. This measure is afforded further analysis in: Aislinn O'Connell, Jill Marshall & Rachel Maguire, 'Deepfake Pornography: Legal & Human Rights Responses' (this volume).

one possesses one's image *per se*.⁸⁸ This section outlines both approaches, and argues that post-HRA Art 8 caselaw has introduced into English law the notion of one's image as an object of property (or quasi-property) which could form an apt basis for protecting targets depicted in some types of intrusive deepfakes.

Until the turn of the 21st Century, English courts had displayed a historic scepticism to image rights across a range of commercial intellectual property doctrines, including copyright,⁸⁹ trade mark law⁹⁰ and passing off.⁹¹ Post-HRA, English courts have extended privacy-based protections for the photographed individual. However, in keeping with this image-sceptical tradition, they have repeatedly stated that such protections do *not* amount to the existence of a general image right or Continental personality right in UK law; for example, this point has been expressed in the leading cases of *Campbell*,⁹² *Douglas*⁹³ and *Murray*.⁹⁴ Instead, Art 8 protection is highly context-sensitive and applies only where the photographic subject has a reasonable expectation of privacy in the circumstances. These have tended to cluster into three main types of case: intimate and/or sexual images; images of children; and photographs taken in a climate of paparazzi harassment. Such MPI protections offer redress for the publication of intrusive photographs, but are weaker concerning photographic capture.⁹⁵ This traditional image-sceptical approach would limit the protection that MPI could afford to a deepfake target because it rejects the proposition that an individual has a pre-existing right to their image *per se*. Instead, it focuses on specific factual contexts and provides Art 8-based protections regarding specific photographs of specific private situations. Yet despite repeated explicit denials that an image right has entered English law, MPI has resulted in a shift in how one's image is conceptualised that potentially affords greater protection to deepfakes targets.

A second approach to image, influenced by the personality-based Continental tradition, is also present in MPI caselaw. This Continental outlook is illustrated in the leading ECtHR Art 8 cases of *Von Hannover (No 2)*⁹⁶ and *Reklos v Greece* (2009). The latter involved a challenge by parents of a baby in a neonatal unit whose photograph was taken without their permission. In the course of finding that the applicants' Art 8 right had been violated by the taking and storing of the photograph, the court stated the following passage which encapsulates the Continental approach to image:

⁸⁸ Discussed further in: Moosavian, *Stealing Souls* (n 4) 543-547. The Court of Appeal in *Stoute* later noted this divergence, though doubted its significance in that case: *Stoute v News Group Newspapers* [2023] EWCA Civ 523 [47].

⁸⁹ *Merchandising Corporation of America v Harpbond* [1983] F.S.R. 32 (CA).

⁹⁰ *Elvis Trade Mark* [1999] R.P.C. 567 (CA); *Diana Trade Mark* [2001] E.T.M.R. 25.

⁹¹ *McCulloch v May* (1947) 65 R.P.C. 58; *Lyngstad v Anabas* [1977] F.S.R. 62.

⁹² *Campbell HL* (n 10) [154] (Lady Hale, distinguishing UK law from French and Canadian law where an image right is recognised).

⁹³ *Douglas HL* (n 82) [124] (Lord Hoffmann denying that finding in favour of the claimant entails creation of an image right); [293] (Lord Walker, dissenting). See also: *Douglas CoA* (n 53) [113] (Court of Appeal conceding that its finding 'breaks new ground' and has echoes of the French and German *droit a l'image*).

⁹⁴ *Murray CoA* (n 8) [54] (denying that finding for the claimant amounted to an image right). Though not explicitly dealing with an image right, see also: *Elton John v Associated Newspapers Ltd* [2006] EWHC 1611 [15], [21] (covert paparazzi photograph of the claimant on a public street did not constitute MPI); *Ferdinand* (n 56) [101]-[102] (publication of an 'unexceptional' photograph of the claimant did not cause additional harm or embarrassment, and did not constitute MPI).

⁹⁵ Moosavian, *Stealing Souls* (n 4) 543-547.

⁹⁶ *Von Hannover (No 2)* (n 82) [96].

*'A person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her peers. The right to protection of one's image is thus one of the essential components of personal development and presupposes the right to control the use of that image.'*⁹⁷

This passage has been widely cited in subsequent ECtHR jurisprudence.⁹⁸ Significantly, the *Reklos* court went on to state that the right to control one's image 'also covers the individual's right to object to ... the [unauthorised] reproduction of the image by another person.'⁹⁹ This terminology of 'unauthorised reproduction' - also present in copyright directives¹⁰⁰ - could *prima facie* cover deepfake footage where a target individual's image is reproduced without consent. The *Reklos* reasoning is also supported by ECtHR state surveillance jurisprudence which confirms that Art 8 considerations may arise once a permanent record comes into existence.¹⁰¹ However, it should be noted that the privacy right over such information is never absolute, but must be viewed in the context of Art 8's status as a qualified right.

In *Reklos*, the ECtHR confirmed that Art 8 provides protection to an individual's image as an essential aspect of their personality. As I have argued elsewhere, the *Reklos* judgment is strongly influenced by Continental personality rights in France and especially Germany. This tradition, rooted in the works of Kant and Hegel, focuses on the full development of one's personality via the exercise of free will and external social engagement with others (rather than simply seclusion). It also places a heavy premium on human dignity and a spiritual-moral 'inner space'.¹⁰² These features align closely with the dignity-, autonomy- and relationship-based justifications for privacy discussed in Part 1. This Continental view entails a positive, broader framing of the privacy right that, according to Van der Sloot, has gradually transformed Art 8 into a European civil-law style personality right, despite personality development being explicitly omitted from the original text of Art 8. He argues that this wider understanding is nevertheless better equipped to meet the privacy challenges of the big data age.¹⁰³ As such, this Continental-influenced approach offers potentially stronger protections for image and other external indicia of personality.

As McConnell and I argue elsewhere, this Continental personality-based approach has exerted a subtle but potentially profound influence on domestic MPI law.¹⁰⁴ The preceding *Reklos* passage has been quoted in domestic photograph-based MPI cases, including *Stoute*,¹⁰⁵ *Weller*¹⁰⁶ and *JR38*.¹⁰⁷ But more generally, this Continental influence has ushered in a highly

⁹⁷ *Reklos v Greece* (Ap 1234/05) [2009] ECHR 200 [40].

⁹⁸ *Rothe v Austria* (n 80) [42]; *Bogomolova v Russia* (App 13812/09) [2017] ECHR 571, [52]; *Couderc v France* (App 40454/07) [2015] ECHR 992, [85]; *Von Hannover (No 2)* (n 82) [96]; *Hajovsky v Slovakia* (App 7796/16) (2021), [29]; *Dupate v Latvia* (App 18068/11) (2021) 72 E.H.R.R. 34, [40].

⁹⁹ *Reklos v Greece* (n 97) [40].

¹⁰⁰ Art 2 (author's reproduction right) Information Society Directive 2001/29/EC

¹⁰¹ *PG v United Kingdom* (2008) 46 EHRR 51 [57] ('*Private-life considerations may arise ... once any systematic or permanent record comes into existence of such material from the public domain. It is for this reason that files gathered by security services on a particular individual fall within the scope of Article 8, even where the information has not been gathered by any intrusive or covert method.*')

¹⁰² For a full discussion, see: Moosavian, *Stealing Souls* (n 4) 540-543.

¹⁰³ Bart van der Sloot, 'Privacy as Personality Right: Why the ECtHR's Focus on Ulterior Interests Might Prove Indispensable in the Age of 'Big Data'' (2015) 31(80) *Utrecht Journal of International and European Law* 25-50, 27-28, 32-35, 42-47.

¹⁰⁴ Moosavian & McConnell (n 2) 276-284.

¹⁰⁵ *Stoute CoA* (n 88) [25]-[26]

¹⁰⁶ *Weller v Associated Newspapers Ltd* [2014] EWHC 1163, [61]-[62]; *Weller CoA* (n 17) [28].

¹⁰⁷ By partially dissenting Lords Kerr & Wilson: *JR38* [2015] UKSC 42 [40]-[41]. NB: this was not an MPI case, but it used MPI concepts and terminology.

propertised notion privacy, and has introduced the fiction of the 'possessive individual' into English privacy law. The Lockean possessive individual is the underlying model subject who owns themselves, their body, what their body does (its labour) and their body's appearance (its image).¹⁰⁸ This is encapsulated in Laws LJ's statement in *Wood v Metropolitan Police Commissioner*, which concerned the Art 8 rights of a protester who had been photographed by the police:

'an individual's personal *autonomy* makes him—should make him—*master of all those facts about his own identity*, such as his name, health, sexuality, ethnicity, his *own image*... He is *the presumed owner of these aspects of his own self*; his control of them can only be loosened, abrogated, if the state shows an objective justification for doing so.'¹⁰⁹

Laws LJ's property-based understanding of the individual's image and other personal information is widely replicated across MPI, where caselaw occasionally casts the claimant as 'owner' of the disputed information,¹¹⁰ and information as the 'property' of the claimant.¹¹¹ So this post-HRA caselaw indicates that despite judicial rejection of a *sui generis* image right, English law now depicts the individual's image as a separate possessable object distinct from the individual, and gives that individual an associated right to control it in principle. Image – indeed private information generally – is 'owned', cast as 'property' and subject to owner's control, at least in certain circumstances. Ostensibly, constructing one's personal information and/or image as a distinct object of property (or quasi-property) serves to foster the individual's control over it, thus enhancing their autonomy. Though such a propertised privacy brings certain pragmatic benefits – rhetorically bolstering the arguments and position of claimants – elsewhere we have expressed concerns about the wider consequences of this commodify-to-protect strategy.¹¹²

Ultimately, in order to protect targets of unauthorised, intrusive deepfakes MPI doctrine will have to clarify whether the traditional English approach prevails, where there is no automatic right to one's image *per se*, but rather protection in certain private contexts. Or it should confirm whether this has been superseded by the Continental-influenced approach which assumes a right to control one's image *per se*, as an essential aspect of the individual personality that Art 8 protects. Though in most cases, either starting point will lead to broadly similar outcomes, the position of deepfake targets aptly highlights their diverging consequences. The Continental-influenced approach of treating the individual's image as property – or quasi-property - has clear potential to benefit deepfake targets by enabling them to object to (certain) unauthorised 'reproduction' of their image in deepfake footage. Crucially, it also provides wider protection, potentially covering the creation and storage of deepfakes, not only their

¹⁰⁸ John Locke, *Two Treatises of Government*, (Everyman's Library, 1989) Book II [27], [44], [173]. This Lockean possessive individual was highly influential in the first case where a US state supreme court upheld a privacy right at common law: *Pavesich v New England Insurance Co* (1905) 122 Ga. 190. For a full discussion, see: Moosavian, *Pavesich v New England* (n 4).

¹⁰⁹ Emphasis added. *Wood v Metropolitan Police Commissioner* [2009] EWCA Civ 414 [21]. Though note that 'ownership' is dependent upon conditions of privacy. Laws LJ's passage has been widely cited in private and public law. In the context of misuse of private information, see: *HRH Duchess of Sussex v Associated Newspapers* [2021] EWHC 273 [86]; *Hutcheson v News Group* [2011] EWCA Civ 808 [24]; *AVB v TDD* [2014] EWHC 1442 [60].

¹¹⁰ *Murray CoA* (n 8) [27]; *McKennitt CoA* (n 56) [11]; *Spelman v Express* [2012] EWHC 355 (QB), [31]; *AAA v Associated Newspapers Ltd* [2012] EWHC 2103, [63]; *Ferdinand* (n 56) [42].

¹¹¹ *McKennitt CoA* (n 56) [32], [28], [55]; *RocknRoll v News Group* [2013] EWHC 24 (QB), [18]; *OPO v MLA* [2014] EWCA Civ 1277 [39][43][45] (here the information was deemed the 'property' of the defendant).

¹¹² Moosavian & McConnell (n 2) 257-288.

publication. This rhetoric of self-ownership that discreetly pervades domestic MPI case law could technically support such an extension, and if developed further along Continental lines, could form the basis of Art 8-based protection for one's image *per se*. On this reasoning, the use of an individual's image in a deepfake would automatically engage their Art 8 right. However, as Parts 3-4 establish, the relative *weight* or *strength* of that right will depend on a broad range of factors.

[3] How Stage One Could Be Adapted

Even if the ambiguity regarding image rights could be clarified, the 2-stage MPI test would require further modifications in order to protect the targets of intrusive deepfakes. This part examines MPI's first stage which requires the claimant to establish a reasonable expectation of privacy (REOP).¹¹³ It demonstrates that while many of the *Murray* factors that determine a claimant's REOP have clear relevance to unauthorised deepfakes, others are difficult to map onto this new technology.

Whether a claimant has a REOP regarding disputed information is a highly fact-sensitive, context-dependent assessment. The multiple factors guiding this were set out by the Court of Appeal in *Murray* thus:

*“[The relevant circumstances] include the attributes of the Claimant, the nature of the activity in which the Claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the Claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher.”*¹¹⁴

Certain of these REOP factors have clear salience to unauthorised deepfakes. For example, **the attributes of - and effect upon - the claimant** are likely to be relevant factors. For example, where the claimant is a woman, this could strengthen her REOP in the case of an unauthorised sexual deepfake depiction due to the severe, ongoing gendered harms such material inflicts upon her, and indeed the wider gendered harms it causes.¹¹⁵ Curiously, there has been no explicit judicial acknowledgement of this point in MPI case law to date. Furthermore, a claimant target's attributes may assume a degree of relevance where they are a public figure, such as a politician or a celebrity, as this may be deemed a relevant factor reducing their REOP. However, as discussed in Part 4.3, case law is unequivocal that public figure status would not weaken their Art 8 rights concerning graphic sexual depictions.

The **absence of the claimant's consent** is a weighty factor in MPI case law concerning both the capture *and* publication of intimate images.¹¹⁶ These precedents support claimants' REOP in similar cases of unauthorised creation and dissemination non-consensual intimate deepfakes. But beyond intimate images, the presence or absence of consent has been afforded variable

¹¹³ *Campbell HL* (n 10); *Murray CoA* (n 8).

¹¹⁴ *Murray CoA* (n 8) [36].

¹¹⁵ McGlynn, Johnson et al. (n 32) 541–562; Keren-Paz (n 32) ch 6.

¹¹⁶ Re: unauthorised recording of intimate activity, see: *Mosley HC* (n 15) [104]. Re: unauthorised dissemination of intimate material that was initially captured with claimant's apparent consent, see: *AMP v Persons Unknown* (n 40) [5]; *Contostavlos* (n 40) [2].

weight in English law. For example, in image-based disputes such as *Ferdinand, John and Stoute* the claimants' lack of consent to capture and/or publication of photographs was afforded little weight.¹¹⁷ More significantly, in *Ali v Channel 5* the court held that the claimant's initial consent to the filming of his eviction from his home by a television crew did not amount to true consent.¹¹⁸ This was because the claimant had been awoken in a sleepy, confused state by the bailiffs and crew, had been given no information that he was being filmed, or the purpose of that filming, and he had expressed objections to the filming at set points, but had ultimately been pressured by circumstances into participating as 'the lesser of two evils'.¹¹⁹ Again, this point could be analogised to suggest that posting one's image online does not amount to true consent for that image to be used in highly intrusive and unforeseen ways (such as an unauthorised sexual deepfake).¹²⁰

The **nature of the information** is also a relevant REOP factor and crucial starting point. In *Bloomberg v ZXC*, Lords Hamblen and Stephens set forth a list of (overlapping) information types where an individual will 'normally' have a reasonable expectation of privacy.¹²¹ These include:

*'the state of a person's physical or mental health or condition; a person's physical characteristics (nudity); a person's racial or ethnic characteristics; a person's emotional state (in particular in the context of distress, injury or bereavement); the generality of personal and family relationships; a person's sexual orientation; the intimate details of personal relationships; a person's political opinions and affiliations; personal communications and correspondence; matters pertaining to the home; past involvement in criminal behaviour; involvement in civil litigation concerning private affairs; and involvement in crime as a victim or witness.'*¹²²

Again, this list suggests that deepfake footage concerning intimate and/or nude depictions of a target fall squarely within Art 8 protections. Other types of deepfake footage might come within one or more of the additional categories listed here, e.g. if they depict children or draw attention to (e.g.) the target's family life, physical or mental health. Such deepfakes may also give rise to an arguable Art 8 claim (particularly on the Continental-influenced approach to image), but the right at stake will be inherently less weighty than in the case of sexually explicit deepfakes. Lord Hamblen's examples are indicative, and information falling within the listed categories is not *automatically* protected. For example, MPI will not protect private or family information that is trivial, general or anodyne; rather, '*in the absence of special facts, [the courts should] generally expect people to adopt a reasonably robust and realistic approach to*

¹¹⁷ *Ferdinand* (n 56) [101]; *John v Associated News* (n 94) [21]; *Stoute CoA* (n 88) [45].

¹¹⁸ *Ali v Channel 5* (n 15).

¹¹⁹ *ibid* [171]-[178].

¹²⁰ This 'claimant's consent' factor overlaps with the 'circumstances in which the information came into the publisher's hands' factor, and is afforded further discussion later in this section.

¹²¹ In doing so they relied upon *Gatley on Libel and Slander*: R. Parkes KC and G. Busuttill et al (eds), *Gatley on Libel and Slander* (13th edn. Sweet & Maxwell, 2022), 798-801, [23.006].

¹²² *Bloomberg SC* (n 29) [52]. Their Lordships continued at [53] by outlining types of information that would not normally be deemed private, including: '*corporate information, a person's physical location, involvement in current criminal activity, a person's misperformance of a public role, information deriving from a hearing of a criminal case conducted in public, and the identity of an author*'. The *Bloomberg* passage was quoted with approval by the Court of Appeal in *Stoute* (n 88) [32].

living in the 21st century."¹²³ A crucial guiding principle of REOP entails the court asking whether a 'reasonable person of ordinary sensibilities' would be substantially offended by the disclosure.¹²⁴ As Moreham has explained, this ensures REOP is shaped by wider social norms and does not drift into over-protection on the basis of a claimant's subjective feelings.¹²⁵ This question would be a valuable guide in deepfake cases. It would strongly indicate that targets should have a REOP in relation to unauthorised sexual deepfakes, whilst acting as an appropriate check on inflated or frivolous Art 8 claims where the target's privacy is not truly engaged.

In contrast to the preceding REOP factors discussed, others in the *Murray* list are more difficult to apply in the case of potentially intrusive deepfakes. For example, **the nature of the activity in which the claimant was engaged** and **the place at which it was happening** factors assume an intrusion into actual events. As a result these two factors do not neatly map onto deepfakes because, as argued above, the depicted events never occurred and are not tied to an actual physical place such as a bedroom or a high street. Nevertheless, the line of cases on false text-based depictions (at Part 2.1 above) provides confirmation that a REOP could still be made out in the absence of such factors.

Another problematic REOP factor in the context of deepfakes is the **circumstances in which the information came into the hands of the publisher**. As explained earlier, deepfakes are constructed from multiple photographs of the target's face projected onto video footage. These photographs of the claimant are often publicly available online, e.g. posted onto social media platforms or websites. Though using these photographs may infringe the copyright of the owner of the photograph (usually the photographer),¹²⁶ the deepfake target will not generally have a REOP in relation to these individual images. This is because the photos may have been taken with their consent, as discussed earlier. Or they may have been captured on the street, and English law is clear that in contemporary society people may be photographed in public settings without their permission.¹²⁷ Furthermore, select cases indicate that online users may not enjoy a REOP in relation to material they post online.¹²⁸

Other cases, in contrast, suggest a greater degree of protection may be afforded to images or information posted to social networking sites and/or private information that is widely

¹²³ *Ambrosiadou v Coward* [2011] EWCA Civ 409 [30]. Quoted in *Prismall v Google UK* [2024] EWCA Civ 1516 [42].

¹²⁴ *Campbell HL* (n 10) [92] [100] (Lord Hope). Quoted in *Murray CoA* (n 8) [29]-[30].

¹²⁵ Nicole Moreham, 'Unpacking the Reasonable Expectation of Privacy Test' (2018) 134 L.Q.R. 651.

¹²⁶ Section 9(1), 11, 16(2) of CDPA 1988. See also: Ogulcan Ekiz, 'Taking Down Deepfakes Through Copyright Law: These are not the *droits* you are looking for' (in this volume).

¹²⁷ *Campbell HL* (n 10) [73], [154]; *Stoute CoA* (n 88); *John v Associated News* (n 94) [14]-[15].

¹²⁸ *Soriano v Forensic News LLC* [2021] EWHC 873 [10]-[11], [104], [109][110] (complex case involving multiple publications, jurisdictional issues and flawed claimant pleadings. The claimant was a businessman who was very protective of his image. The sixth defendant published photos of him as part of a story about his links to Russian oligarchs and Israeli intelligence firms. The court held the claimant did not enjoy a REOP because the photos did not depict 'inherently private' matters, they had been posted to the claimant's child's public social media account, and had been circulating widely on the internet for months.); *J20 v Facebook Ireland* (n 72) (newspaper's use of Facebook photographs of the claimant to illustrate a story about him did not constitute MPI, though the story's sensationalist revelation of his spent manslaughter conviction was a misuse.); *BNC v Irish News Limited* [2018] NIQB 41 [7]-[9], [22] (claimant refused injunction to prevent newspaper's publication of a photograph of her taken from Facebook to accompany a story concerning her criminal proceedings for supplying drugs. The court indicated that a claimant's unrestricted privacy settings would affect their REOP).

circulating online.¹²⁹ In *Rocknroll* (2013) despite the temporarily lapsed privacy settings of a social media profile on which the claimant's friend had posted a semi-nude image of him, the claimant successfully obtained an injunction to restrain the defendant newspaper from publishing it.¹³⁰ And in *GYH v Persons Unknown* (2017) Warby J reiterated that the 'zonal approach' to privacy was discredited, and accepted that some online disclosure of the claimant's sex work (including her engagement with a customer's review of her services) did not mean she had entirely forfeited control over her online identity.¹³¹ More recently, *Hussein v Rahman* (2024) concerned a Muslim woman who posted photographs of her more liberal university lifestyle across various social media sites. She had been 'careful and circumspect' with her social media use, but had also occasionally lapsed or taken risks with privacy settings and followers. Justice Collins Rice found the sporadic public availability of some of her online images was neither fatal nor irrelevant to her REOP.¹³² The judge held that accessing those social media images was not a breach of privacy, but the first defendant's sharing of them with the woman's father was (albeit one that could not constitute MPI at stage 2 on proportionality grounds).¹³³ These disputes reflect the prescience of Nissenbaum's early concerns regarding privacy in the digital age. At the cusp of this era, Nissenbaum identified a 'theoretical blind spot' in privacy literature, arguing that it lacked explicit, coherent protections for 'privacy in public', i.e. privacy violations based upon re-use of information that individuals had initially shared willingly.¹³⁴ For Nissenbaum these new digital privacy intrusions entailed the more subtle harm of violating 'contextual integrity' by 'shifting information taken from an appropriate context and inserting it into one perceived not to be so'.¹³⁵ *Rocknroll* and *Hussein* etc. demonstrate that, in certain appropriate circumstances, MPI may protect individuals' Art 8 rights in relation to 'public' online images and information. Judicial approaches to claimant consent and how information came into the hands of the publisher can be nuanced; courts do not always assume that once an image is published online, the claimant is taken to provide blanket authorisation for any and all subsequent uses. A degree of social media posting is therefore not necessarily fatal to a privacy claim if images are later (mis)used in a particularly intrusive way.

In short, images can be gathered and deepfake footage constructed via a *prima facie* non-intrusive process but this does not mean that deepfakes are incapable of being restrained by MPI (especially where the resulting deepfake depicts e.g. intrusive intimate activity) for two reasons. First, as *Campbell* illustrates, even an ostensibly non-intrusive photograph of a claimant can be published in such a way that it becomes a violation. In *Campbell* the violating image was a *prima facie* generic shot of Campbell walking along a public street. In isolation, the image would not have violated Campbell's Art 8 right; it became a violation due to its part in a wider story that revealed intrusive medical details about Campbell's drug addiction and treatment. Creating a deepfake is arguably broadly analogous; the use of the target's publicly available image is not necessarily an Art 8 violation *per se* (even adopting the stronger Continental protections for image outlined above). But it may become so where that image is juxtaposed as part of an intrusive depiction, such as a nude and/or sexual clip. Second, we return once again to the false text-based depictions that MPI has also previously restrained. On

¹²⁹ *PJS v News Group Newspapers Ltd* [2016] UKSC 26. See further discussion in: Rebecca Moosavian, 'Jigsaws and Curiosities: The Unintended Consequences of Misuse of Private Information Injunctions' [2016] *Communications Law*, Vol 21(4), 104-115.

¹³⁰ *RocknRoll* (n 111).

¹³¹ *GYH v Persons Unknown* (n 64) [33]-[35]

¹³² *Hussain v Rahman* [2024] EWHC 116 [269]

¹³³ *ibid* [274]-[275]

¹³⁴ Nissenbaum (n 18) 564-565, 581.

¹³⁵ *ibid* 564-565, 584-586, 589.

analogous reasoning, these are also created via non-intrusive processes (they are allegedly 'made up') but have nevertheless been deemed intrusive due - it seems - to the speculation and unwanted attention they bring to the claimant.

Though many of the *Murray* factors that determine a claimant's REOP have clear relevance to unauthorised, intrusive deepfakes, others are difficult to map onto this new technology. Such difficulties provide support for Brimblecombe & Fenwick's claim that the REOP factors are mass-media-focused, driven by the fact that most early MPI cases involved traditional media intrusions.¹³⁶ These authors also show that MPI has made some incremental adjustments to the address disputes concerning private information online.¹³⁷ But if MPI is to remain relevant in the digital age and avoid becoming a relic, it arguably must continue to develop to meet the new challenges that technology poses to the Art 8 privacy rights of users. Due to its common law basis, and the purposive, flexible nature of the *Murray* factors, REOP has the potential to be evolved for the online era, e.g. by adapting factors that take account of digital cut and paste culture. Nevertheless, a development of REOP factors to cover intrusive deepfakes could result in legitimate concerns about the over-protection of image rights and stifling of digital free expression more generally. Any such development of the tort would therefore need to be addressed by similar adjustments to stage 2 balancing.

[4] Stage 2 Articles 8 v 10 Balancing

MPI's stage 2 rights-balancing is relatively unstructured, but is guided by principles set out in key ECtHR and domestic cases. Lord Steyn's principles in *Re S*¹³⁸ confirm that both rights start as equally weighted, but will be attributed relative strength based on the specific facts of the case. The ECtHR set out key factors relevant to privacy-v-free-expression disputes in *Axel Springer*.¹³⁹ As Moreham has noted, though these *Axel* factors are used across MPI law, they do not correspond directly with English MPI rights-balancing, but rather feature across both stages of the 2-stage test.¹⁴⁰ Furthermore, she notes a divergence between ECtHR and domestic approaches to determining the weight of the free speech at stake; rather than the *Axel* factors, traditional MPI sets out four categories of weightier public interest speech (including where expression exposes hypocrisy, pertains to an individual's fitness for public office and/or reveals serious misconduct).¹⁴¹ This section analyses how these stage 2 principles apply to common types of deepfake, including non-consensual, artistic and/or satirical deepfakes. Deepfakes can take a wide range of forms, and therefore much will - and should - turn on the precise content of the footage. It argues that the factors of debate of general interest, public figure and content, form and consequences of publication will be particularly relevant in deepfake disputes.

¹³⁶ Fiona Brimblecombe & Helen Fenwick, 'Protecting Private Information in the Digital Era: Making the Most Effective Use of the Availability of the Actions Under the GDPR/DPA and the Tort of Misuse of Private Information' (2022) vol 73 NILQ 26-73, 38-40

¹³⁷ *ibid* 40, 33-36.

¹³⁸ *Re S (A Child) (Identification: Restrictions on Publication)* [2004] UKHL 47, [17].

¹³⁹ These factors include: whether the expression makes a contribution to a debate of general interest; how well-known is the person, and what is the subject of the report; prior conduct of the person concerned; method of obtaining the information and its veracity; the content, form and consequences of the publication; the severity of any sanctions imposed (relevant to proportionality). *Axel Springer v Germany* (n 9) [89]-[95]; *Von Hannover (No 2)* (n 82) [108]-[113].

¹⁴⁰ Nicole A Moreham, 'Privacy, freedom of expression and legitimate audience interest' (2023) 139 LQR 412-435, 417-420.

¹⁴¹ *ibid* 426-435.

Furthermore, additional factors should be drawn from wider Art 10 jurisprudence to account for a wider array of online expression such as artistic and satirical deepfakes.

A number of the *Axel Springer* factors are pertinent to deepfake footage, in particular: the subject of the report; the method of obtaining the information and its veracity. The terminology of these factors – the focus on ‘reports’ and ‘obtaining’ information (rather than manufacturing it) – provides further evidence that they were created in response to, and are geared towards, ‘old media’ disputes. Furthermore, they overlap with the *Murray* factors discussed in Part 3.¹⁴² Nevertheless, the application of these factors at Arts 8-v-10 balancing stage will largely depend on the nature of the synthetic footage in question; the two most widespread forms are sexually explicit and creative deepfakes.

4.1 Non-consensual Intimate Deepfakes

As this chapter has indicated, disputes concerning unauthorised intimate deepfakes are the most straight forward category to resolve on existing MPI principles. Part 1 established that MPI provides remedy for the subjects of intimate photographs or footage, and that claimants’ Art 8 rights will be deemed cogent in relation to such material. Furthermore, the competing Art 10 rights of defendants to disseminate intimate images without the subject’s consent will be of correspondingly low weight. For example, in *Mosley* the court held that sexual footage of the claimant was mere audience ‘titillation’, incapable of falling within permitted public interest categories, and thus ‘extremely difficult to justify’ in Art 10 terms.¹⁴³ Later, in *AMP*, the court categorically ruled that the claimant’s Art 8 right regarding intimate photos of herself outweighed the Art 10 rights of online users to access and share those images. Ramsay J stated he was in ‘no doubt’ the balance fell ‘strongly’ in *AMP*’s favour, but did not provide further reasons for deeming the Art 10 rights weak, presumably on the basis that this was self-evident.¹⁴⁴ Therefore, the **purpose of publication** *Axel* factor will count against Art 10 in non-consensual sexual deepfake disputes, though ‘purpose’ will clearly vary according to who is deemed to be the ‘publisher’ of such content. As Keren-Paz has discussed in the context of non-consensual intimate images, an individual disseminating or accessing such content may have a combination of motives, including sexual gratification, revenge and/or commercial gain.¹⁴⁵ Publications motivated by malice or revenge will be attributed lower weight.¹⁴⁶ The hosting platform’s purpose is purely commercial; their business models are reliant on streams of user generated content to engage users’ attention and profit by data extraction and targeted advertising.¹⁴⁷ Though commercial speech may be afforded intermediate value in Art 10 terms,¹⁴⁸ commerce-driven arguments have been routinely outweighed by stronger privacy rights at MPI balancing stage.¹⁴⁹ It is therefore uncontroversial that the value of an unauthorised

¹⁴² The leakage between stages 1 and 2 of the MPI test has been criticised: Eric Barendt, ‘Problems with the Reasonable Expectation of Privacy Test’ (2016) 8 JML 129.

¹⁴³ *Mosley HC* (n 15) [132]-[134]

¹⁴⁴ *AMP v Persons Unknown* (n 40) [30]-[32], [35]. See also: *COS v PER* (n 42) [11]-[12]; *Quigley* (n 58) [7].

¹⁴⁵ Keren-Paz (n 32) 189-191.

¹⁴⁶ *CHS v DNH* [2015] EWHC 1214 [12].

¹⁴⁷ Shoshana Zuboff, *The Age of Surveillance Capitalism* (Profile Books 2019).

¹⁴⁸ See, e.g.: *Krone Verlag GMBH (No 3) v Austria* [2003] 39069/97 [30] (states are afforded a wider margin of appreciation regarding commercial expression).

¹⁴⁹ See: Gavin Phillipson, ‘Leveson, the Public Interest and Press Freedom’ (2013) 5 JML 220, 232–233; Rebecca Moosavian, ‘Deconstructing ‘Public Interest’ in the Article 8 vs Article 10 Balancing Exercise’ (2014) 6 JML 234; 255–258. See also: *Perrin v United Kingdom* [2005] 5446/03 D(2), p.9 (*‘the present expression [hardcore pornography online] was purely commercial and there is no suggestion that it contributed to any public debate on a matter of public interest or that it was of any artistic merit: the applicant’s conviction cannot therefore be said to engender any obviously detrimental chilling effect’*).

sexual deepfake will be low in Art 10 terms, and will be easily outweighed by the depicted target's Art 8 privacy right. Yet the outcome of the Arts 8-v-10 stage 2 balancing exercise may be less clear-cut in other types of deepfake.

4.2 Artistic, creative &/or satirical deepfakes

Deepfake technology has been utilised by artists to create works for some years. For example, in the moving Emmy-winning short film 'In Event of Moon Disaster' (2019), a deepfaked Richard Nixon delivered the unread back-up speech written in case the Apollo 11 moon landings had failed.¹⁵⁰ Elsewhere, art collective Brandalism's 2019 Spectre project created a deepfake of Facebook owner Mark Zuckerberg confessed to controlling the stolen data of billions of users to highlight the company's surveillance capitalist business model.¹⁵¹ But deepfake technology is also more widely employed by online users to generate artistic, creative and/or entertaining clips to informally share online. Privacy law restrictions should therefore provide appropriate leeway for such uses where they do not entail harms.

MPI has not dealt with any art-based photography disputes to date. However, a number of disputes between photographic subjects and artists have arisen in New York law. In *Foster v Svenson* (2015)¹⁵² a critically acclaimed artist exhibited long-lens photographs of his neighbours (including children) that he had covertly taken through the large windows of their apartments. Strong First Amendment protection for artistic speech overrode the cogent privacy claims, prompting the New York State Appellate Division to call for legislative intervention (which later followed). But as I have previously noted, the New York approach to resolving privacy-free speech conflicts in photographic disputes entails crude (albeit clear) blanket categorisations, and is a lot less fact-sensitive than ECHR-based methods.¹⁵³

Though Art 10 jurisprudence does not formally delineate different categories of expression,¹⁵⁴ general principles inform the relative weighting afforded to particular types. In *Campbell* Lady Hale sketched out a broad non-exhaustive hierarchy of speech, 'some of which is more deserving of protection in a democratic society than others'. She placed 'political speech' at the 'top of the list' due to its crucial role in a functioning democracy. Next she identified 'intellectual and educational' and 'artistic' speech as vital, due to their role in democracy and individual self-development.¹⁵⁵ Though 'artistic expression' is not defined by the ECtHR, it covers a wide range of creative works decided on a case-by-case basis. The Court has confirmed that artistic freedom 'is a value in itself and thus attracts a high level of [Convention] protection'.¹⁵⁶ This is because artistic expression 'affords the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds'¹⁵⁷ and 'contributes to the exchange of ideas and opinions which is essential for a democratic

¹⁵⁰ 'In Event of Moon Disaster' (20 July 2020) <<https://www.youtube.com/watch?v=LWLadJFI8Pk>> accessed 13 March 2026

¹⁵¹ Interestingly, this footage is no longer available online but a shorter clip is available: 'I Wish I Could... (2019)' Brandalism Project (14 June 2019) <<https://www.youtube.com/watch?v=3f66kBWfMto>> accessed 13 March 2026

¹⁵² *Foster v Svenson* 128 AD3d 150, 158–60 (2015). See also: *Nussenzweig v DiCorcia* 11 Misc3d 1051(A) 1128 (2006); *Hoepker v Kruger* 200 FSupp2d 340, 348 (2002).

¹⁵³ Moosavian, Public Image (Un)Limited (n 4).

¹⁵⁴ *Muller & Others v Switzerland* [1988] 10137/84 [27]

¹⁵⁵ *Campbell HL* (n 10) [148]. See also: [117] (Lord Hope).

¹⁵⁶ Author's addition. *Jelsevar & Others v Slovenia* [2014] 47318/07 [33]

¹⁵⁷ *Linon, Otchakovsky-Laurens & July v France* [2007] 21279/02 & 36448/02 [47]

society'.¹⁵⁸ Such justifications confirm that artistic works have a social and/or political dimension, broadly understood. Artistic freedom can cover 'a degree of exaggeration, even provocation',¹⁵⁹ and expression that may 'offend, shock or disturb the State or any section of the populace',¹⁶⁰ though it should be exercised subject to certain duties and responsibilities. These general principles suggest that creative deepfakes – whether produced by artists or users – could in principle be afforded a reasonable degree of Art 10 protection. As Polymenopoulou explains, artistic expression is lower in the speech hierarchy than political expression, but it is afforded intermediate importance in Art 10 jurisprudence of ECtHR.¹⁶¹ Three *Axel Springer* factors will be particularly salient when courts assess the Art 10 value of such creative deepfake footage, namely: the extent to which it contributes to a debate of general interest, whether the target is a public figure and the content, form and consequences of publication.

4.3 Established Factors: Debate of General Interest & Public Figure

The contribution that disputed expression makes to a **debate of general interest** is a 'decisive' factor when rights-balancing in media disputes.¹⁶² As Polymenopoulou demonstrates, it also a crucial factor that increases the Art 10 value of certain artistic works.¹⁶³ The ECtHR has often afforded a high degree of Art 10 protection to artistic works with a strong political dimension,¹⁶⁴ and suggested there is little scope for restriction of such expression.¹⁶⁵ But creative or satirical expression that falls outside of this privileged category is afforded lesser protection. For example, in *Marina v Romania (2020)*¹⁶⁶ the ECtHR applied the *Axel* factors to a dispute where presenters of a satirical radio show had read out a letter from the applicant's sister that revealed his private information and named him. The ECtHR found that that the Romanian courts had failed to conduct 'a nuanced examination' of the extent to which the letter contributed to a debate of general interest.¹⁶⁷ So the 'debate of general interest' factor plays a central role in determining the Art 10 value of creative and/or satirical works, and is applicable to a broad range of such works beyond the traditional press and media reports that have hitherto dominated Arts 8 v 10 case law. Some deepfakes may contribute to a debate of general interest (e.g. where they are political in tone or have a wider social-moral message) and they would be afforded greater weighting on this basis. Applying this factor to deepfake content would be entirely uncontroversial and a mere continuation of established ECtHR and domestic jurisprudence.

A further relevant factor in traditional media Art 8-v-10 disputes is whether the claimant is a **public figure**, such as a politician, sportsperson or celebrity.¹⁶⁸ The ECtHR has confirmed that public figures, particularly politicians, enjoy a lower expectation of privacy than regular

¹⁵⁸ *Vereinigung Bildender Künstler v Austria* [2007] ECHR 68354/01 [26]

¹⁵⁹ *Kulis & Rozycki v Poland* (2009) 27209/03 [39]. See also: *Ziembinski v Poland (No 2)* [2016] 1799/07 (summary only).

¹⁶⁰ *VBK v Austria* (n 158) [26]; *Linon v France* (n 157) [45]; *Sousa Goucha v Portugal* [2016] 70434/12 [43].

¹⁶¹ Eleni Polymenopoulou, 'Does One Swallow Make a Spring? Artistic and Literary Freedom at the European Court of Human Rights' (2016) H.R.L.R. vol 16, 511-539, 516, 528

¹⁶² *Von Hannover v Germany (No 1)* [2004] ECHR 59320/00; *Axel Springer v Germany* (n 9).

¹⁶³ Polymenopoulou (n 161) 528-529

¹⁶⁴ *Linon v France* (n 157) [46], [48]; *Mariya Alekhina v Russia* [2018] 38004/12 [260]; *Karatas v Turkey* (1999) 23168/94 [50].

¹⁶⁵ *Linon v France* (n 157) [46].

¹⁶⁶ *Marina v Romania* (2020) 50469/14 (summary only).

¹⁶⁷ In particular, the national courts had ignored the radio show's failure to verify the letter's contents, which were untrue.

¹⁶⁸ 'How well known is the person & what is the subject of the report' is one of the *Axel* factors: *Axel Springer AG v Germany* [2012] ECHR 39954/08, [91].

individuals.¹⁶⁹ However, public figures retain a core Art 8 right, and this status cannot justify unnecessary and disproportionate intrusive coverage of their private lives.¹⁷⁰ As discussed in Parts 1 and 4.1, this clearly indicates that unauthorised intimate deepfake footage will be deemed to violate Art 8, irrespective of whether the target is a public or non-public figure. Indeed, public figures – especially women – are particularly vulnerable to this harmful form of depiction, and it is therefore essential that any ‘public figure’ leeway does not undermine vital protections against such content. However, as Part 1 explained, many creative deepfake clips depict public figures in ways that do not violate their privacy, or may depict them in less obviously intrusive, harmful ways. In this context the ‘public figure’ factor may therefore assume a relevance, weakening the target’s Art 8 right, as in *Sousa Goucha v Portugal* (2016).¹⁷¹ Here the applicant, a nationally renowned gay television host, brought an unsuccessful criminal defamation action in response to an entertainment show featuring a ‘joke’ which likened him to a woman. The ECtHR found that though the comment engaged Art 8 as it conflated gender and sexual identity, no Art 8 violation had occurred.¹⁷² It considered a range of relevant factors,¹⁷³ noting the applicant’s celebrity status, and confirming that ‘public figure’ was relevant to rights-balancing in this case, and generally.¹⁷⁴

Hughes has criticised the public figure doctrine because the scope of ‘public figure’ is uncertain, all-encompassing, and it also leads to inadequate reduced Art 8 protection for high profile individuals.¹⁷⁵ But such criticism overstates the influence of the ‘public figure’ factor. Though it may be relevant in rights-balancing, it is afforded variable weight across caselaw, and is merely one factor in a multi-faceted, fact-sensitive assessment. In various cases involving ‘public figure’ claimants it does not feature at all.¹⁷⁶ On other occasions, it may be factored into legal reasoning, but an Art 8 violation may still be found.¹⁷⁷ In short, such concerns fail to account for the fact that very many public figure claimants succeed in their MPI actions in whole or part. Non-sexual deepfakes will not necessarily depict the public figure target in obviously private contexts, and are more likely to pertain to their public work or profile. In such cases, ‘public figure’ should be included as a relevant pro-Art 10 factor because it acts to recognise the more public-facing aspects of celebrity personas and the audience’s role in constructing them.¹⁷⁸ However, in highly fact-sensitive assessments, much will turn on the nature of any disputed deepfake clip. A deepfake may depict ostensibly private (albeit non-sexual) activity, e.g. the target at home with their family or children, or may pertain to archetypal private matters such as their personal relationships, health, medical or other

¹⁶⁹ *Couderc v France* (n 98) [118]-[121]; *Axel Springer v Germany* (n 9) [97]-[99]. See also: *Von Hannover v Germany (No 1)* [2004] ECHR 59320/00 [42] (citing paras 6 and 9 of Council of Europe Resolution 1165 (1998), particularly paras [6] & [9]).

¹⁷⁰ *Couderc v France* [2015] 40454/07 [122]-[123]; *Von Hannover (No 1)* (n 162) [74]-[75]; *Von Hannover (No 2)* (n 82) [97]; *Sousa Goucha v Portugal* (n 160) [41]. See also: *Mosley HC* (n 15) [101]

¹⁷¹ *Sousa Goucha v Portugal* (n 160) [50].

¹⁷² *ibid* [27], [55].

¹⁷³ Factors included: the absence of a clear political dimension to the ‘joke’; the defendant’s intent; the audience reception. *ibid* [51], [53]-[55].

¹⁷⁴ *ibid* [48]

¹⁷⁵ Kirsty Hughes, ‘The Public Figure Doctrine & The Right to Privacy’ (2019) *Cambridge Law Journal* 78(1) 70-99.

¹⁷⁶ ‘Public figure’ is not mentioned in e.g.: *Contostavlos* (n 40); *YXB v TNO* (n 44); *LJY v Persons Unknown* (n 69).

¹⁷⁷ *Von Hannover (No 1)* (n 162). See also: *McKennitt CoA* (n 56); *Campbell HL* (n 10).

¹⁷⁸ Michael Madow, ‘Private Ownership of Public Image: Popular Culture & Publicity Rights’ (1993) *California LR*, vol 81(1) 126-240. See also: Jacob Rowbottom, ‘Power and The Public Eye: Why the Limits of Acceptable Criticism Are Wider for Public Figures’ [2025] *PL* 104-123.

sensitive matters. In such cases the public figure factor is also likely to feature in rights-balancing, though again, it will be only one factor among many.

4.4 Content, Form & Consequences of Publication

A third factor - the **content, form and consequences of publication** will also prove significant in deepfake disputes. Various principles pertinent to the content and form of disputed footage have been analysed across this chapter. However, key principles from wider Art 10 jurisprudence can (and should) be utilised to supplement this *Axel* factor in order to assist rights-balancing in relation to deepfake material. In particular, such jurisprudence focuses on whether expression entails parody or satire, and whether it is hateful or discriminatory (both relevant to content). It also places some emphasis on whether audiences are likely to be misled (i.e. the consequences of publication).

Many creative deepfake clips may entail satire or parody. Protections for parody and satire are built into the European copyright system¹⁷⁹ and, as a result, UK copyright law.¹⁸⁰ Similar exemptions are included in the recent *EU Artificial Intelligence Act*.¹⁸¹ Polymenopoulou also identifies an emerging ECHR 'defence' of satire or parody for creative works in Art 10 jurisprudence, though claims this is applied inconsistently.¹⁸² For example, in *Kulis & Rozycki v Poland* (2009) the ECtHR held the Art 10 right of the applicant magazine had been violated. Its publication of a cartoon and article strongly criticising a crisp company had been held by the Polish courts to damage the firm's reputation. But the ECtHR found the work to be a satirical criticism of the company's earlier controversial advertising campaign, and as such it raised issues of public importance.¹⁸³ The case of *Vereinigung Bildender Künstler v Austria* (2007) concerned a creative work that is arguably more analogous to deepfake content, namely a painting that depicted various public figures – including politicians and Mother Theresa – engaged in sexual activities. The subjects' bodies had been painted with photographs of their faces (eyes redacted by a black bar) superimposed. The artist had created the work in response to criticisms of his earlier works. Following an image right claim by one of the depicted politicians, the Viennese Supreme Court ordered the applicant artistic association not to exhibit it in the future. The ECtHR majority held that the applicant association's Art 10 right had been violated. It defined satire as 'a form of social commentary that uses exaggeration and distortion of reality to provoke and agitate', finding that the painting's 'portrayal amounted to a caricature of the persons concerned using satirical elements'. Any limitation on satire would be examined 'with particular care'.¹⁸⁴ Similarly, parody retains a particularly wide margin under Art 10.¹⁸⁵

¹⁷⁹ Under Art 5(3)(k) of the InfoSoc Directive 2001/29/EC, states may provide exemptions for 'caricature, parody or pastiche' of copyright protected works. The CJEU has defined a work of 'parody' as: (1) an expression of humour or mockery; (2) denoting the original work while being noticeably different from it: *Deckmyn v Vandersteen* C-201/13 [2014] ECDR 21 (CJEU). For a discussion of the differences and overlap between satire and parody, see: Sabine Jacques, *The Parody Exception in Copyright Law* (Oxford 2019).

¹⁸⁰ Section 30A Copyright Designs & Patents Act 1988. See also: *Shazam Productions Ltd v Only Fools The Dining Experience* [2022] EWHC 1379.

¹⁸¹ Article 50(4), Regulation (EU) 2024/1689.

¹⁸² Polymenopoulou (n 161) 530-532

¹⁸³ *Kulis v Poland* (n 159) [37]-[38]

¹⁸⁴ *VBK v Austria* (n 158) [33]. See also: *Sousa Goucha* (n 160) [50].

¹⁸⁵ *Sousa Goucha* (n 160) [50].

Yet Art 10 jurisprudence also decisively confirms that Art 10 cannot extend to creative content that is discriminatory or hateful.¹⁸⁶ In *Mbala v France* the ECtHR held that the French courts had not violated the applicant's Art 10 rights by convicting him for an antisemitic 'comedy sketch' because such expression was not protected by Art 10. It confirmed that expression must be examined in its whole context,¹⁸⁷ and that audience reception is a relevant factor.¹⁸⁸ But in this case, the applicant comedian was not acting as an artist; rather, his show became an antisemitic 'rally' 'under cover of a comedy show'.¹⁸⁹ Thus, deepfake material that is prejudicial or hateful to particular groups based on (e.g.) race or gender will fall outside the scope of Art 10, 'tilting the scales' in favour of a target's Art 8 right. As discussed above, non-consensual intimate deepfakes (arguably) provide one such example of expression that prejudices women generally, as well as violating the target individual.

Finally, the consequences of publication - specifically whether an audience is misled - have also been deemed relevant to determining the weight of expression at stake in creative works. Jacques' cross-jurisdictional study of 'parody' finds that the absence of harm caused, and the absence of audience confusion are both common influential factors that determine the scope and application of the term.¹⁹⁰ A similar position is discernible in *Vereinigung Bildender Künstler* (discussed above) where the ECtHR majority upheld the art institution's Art 10 right due to the artistic, satirical nature of the disputed painting.¹⁹¹ It found that the work was clearly fictional, stating '*the painting could hardly be understood to address details of [the politician's] private life, but rather related to his public standing as a politician*'.¹⁹² This was a crucial factor in the work's favour as it would not mislead any onlooker into thinking the politician had engaged in the depicted activities. Because deepfakes are constructed from photographic and video material, a clip may appear more realistic and less clearly fictional than (e.g.) a painting or collage. But, *Vereinigung* nevertheless provides authority for the proposition that obviously satirical, fictional depictions should be distinguished from misleading or ambiguous depictions for Art 10 purposes. In particular, clearly fictional deepfakes - which audiences perceive as such - are likely to be afforded more Art 10 weight, whilst misleading footage will be justifiably afforded lower weight. For example, the various deepfake clips satirising Donald Trump created by the Southpark team would arguably meet this requirement.¹⁹³ This 'carve out' for works that are obviously fictional is also reflected in the *EU Artificial Intelligence Act* which stipulates that the exception to transparency obligations only applies where a deepfake is '*evidently* artistic, creative, satirical [or] fictional'.¹⁹⁴ Ultimately then, this caveat would not benefit deepfakes that are created to

¹⁸⁶ *M'Bala M'Bala v France* [2015] 25239/13 [33], [39]-[41]; *Feret v Belgium* [2009] 15615/07 (summary only); *Leroy v France* [2008] 36109/03 (summary only).

¹⁸⁷ *M'Bala v France* (n 186) [37]

¹⁸⁸ *ibid* [37]

¹⁸⁹ *ibid* [39] [40]

¹⁹⁰ Jacques (n 179) 97-107

¹⁹¹ *VBK v Austria* (n 158) [38]-[39]

¹⁹² *ibid* [8], [34]. A further relevant factor was that the painting had been subsequently vandalised, and the applicant's figure covered with paint: [36]

¹⁹³ See, e.g.: Sassy Justice, 'Sassy Justice with Fred Sassy (Full Episode)' (26 October 2020) <<https://www.youtube.com/watch?v=9WfZuNceFDM>>; 'Sassy Justice: Official White House Address' (12 December 2020) <https://www.youtube.com/watch?v=h_jrebvmPlk> both accessed 13 March 2026. Despite the very strong Art 8 protections from non-consensual explicit deepfakes set out in this chapter, Art 10 counter-protections for satire could even arguably extend to the recent lewd, scatological deepfake and animated depictions of Trump in South Park season 28 (2025), particularly in exceptional, authoritarian times. For an interesting discussion of earlier seasons, see: Joe Thorogood, 'Satire & Geopolitics: Vulgarity, Ambiguity & The Body Grotesque in South Park' (2016) 21(1) *Geopolitics* 215-235, 221-223, 230-231.

¹⁹⁴ Article 50(4), EU Artificial Intelligence Act, Regulation (EU) 2024/1689

mislead audiences, or where the falsity is ambiguous or unclear.¹⁹⁵ Furthermore, it is not inconsistent with the core point (established at Part 2.1) that MPI may protect false private information because it would remain one factor among many in the fact-sensitive stage 2 weighting of the defendant's expression.

As Fenwick & Brimblecombe suggest, MPI doctrine is shifting away from traditional media defendants in the digital age.¹⁹⁶ In doing so, it is likely to confront a wider array of privacy-invading expression from net-users beyond the traditional low-value tabloid 'kiss-n-tell' material, and deepfakes occupy the current frontier of such challenging content. To address such developments stage 2 rights-balancing factors can be developed with guidance drawn from wider Art 10 jurisprudence. This will ensure appropriate freedoms for crucial creative and satirical deepfake expression, especially where content is clearly fictional, whilst maintaining protections against discriminatory, hateful and severely intrusive clips. These wider principles are already present in wider ECtHR jurisprudence and other areas of law, e.g. copyright, that have been dealing with creative works for some time; drawing upon them will help the courts balance rights more effectively

Conclusion

Like its predecessor, photography, deepfakes take an expansive range of forms. Unauthorised sexually explicit clips clearly violate the targets' privacy - undermining their dignity, autonomy and psychological integrity - and the position of these is clear and uncontroversial, as evidenced by recent criminal law responses. Other types of deepfake will entail far less severe, clear-cut intrusions, if any. MPI's flexible, fact-sensitive nature enables it to appropriately take account of this wide spectrum, as it has in the photograph-based disputes that have shaped it to date.

MPI has the inherent potential to protect targets from intrusive deepfakes if doctrinal ambiguity is clarified, and modest adjustments to the 2-stage test principles are made. Though MPI already covers false text-based information, its extension to false audio-visual depictions is a logical necessity. Furthermore, post-HRA, the groundwork has already been laid to potentially enable the protection of an individual's image *per se* (despite judicial claims to the contrary). The courts should clarify the nature and terms of image-based protection, particularly whether a Continental *Reklos*-based image right has taken root in English law. If so, this would provide the targets of intrusive deepfakes with clear MPI protection from publication – but also creation – of such content. However, even with explicit adoption of the *Reklos* model, MPI would remain ill-equipped to address 'forced faming' situations involving the viral spread of real or synthetic non-private images or footage.

Regarding other adjustments to the 2-stage test, though some of the *Murray* REOP factors are old-media-based, many can (and should) be sensibly adjusted to take account of deepfake technology and online culture. Though one is unlikely to have a REOP regarding one's image posted online, close scrutiny of MPI cases shows that the doctrine does not only cover private information *per se*. It also covers misuse of publicly available information about an individual – e.g. their name – when it is linked to other private information (e.g. about their sexual conduct) in a way that infringes their privacy. MPI provided protection to an innocuous

¹⁹⁵ A fuller discussion of this 'fiction defence' is beyond the scope of this chapter, shades into defamation law and will be afforded further discussion in: Moosavian (n 48).

¹⁹⁶ Brimblecombe & Fenwick (n 136) 40, 33-36.

photograph of an individual walking down a public street because of its use in a broader intrusive story about her treatment for drug addiction. In an analogous way, it could technically protect an individual whose image is publicly available online (where there is no REOP) but scraped and used in a broader work that violates their privacy (such as a non-consensual intimate deepfake). At stage 2, balancing principles – particularly debate of general interest, public figure, and content, form and consequences of publication - can be sensibly applied to resolve deepfake disputes in a fact-sensitive way. But these factors should be supplemented by principles drawn from wider Art 10 jurisprudence so that they account for a wider range of online expression, particularly creative, artistic and satirical expression, which represent a widespread, legitimate use of deepfake technology.

Without making these modest adjustments, MPI restricts itself to being a tort primarily concerned with traditional intrusions by the analogue media. Despite its claim to be concerned with the misuse of private information, the tort would render itself at least partly obsolete when facing new privacy threats in the digital realm. Nevertheless, any MPI developments, even modest ones, should be undertaken with caution to avoid wider unintended consequences. Any *Reklos*-based developments should not (and need not) entail an undesirable strengthening of image rights, which have a risk of unduly bolstering the commercial and external image-control capacities of powerful public figures. Circumspect application of MPI principles – with particular focus on whether the deepfake depiction pertains to an aspect of privacy set out in the Lord Hamblen's *ZXC* list, and whether the depiction would offend a person of reasonable sensibilities – should ensure MPI remains moored to its core concerns.

Ultimately, MPI is not a panacea to the various individual and social harms beyond privacy that deepfakes may cause. But, as I have argued, in select circumstances it could form an important layer of privacy protection alongside effective tech-company regulation, criminal and other measures. It is arguably only a matter of time before a deepfake-based dispute comes before the English courts and requires judges to decide what role, if any, MPI might play.