
THE LEGAL IMPLICATIONS OF VIRTUAL INFLUENCERS AND AI PERSONAS ON SOCIAL MEDIA PLATFORM: A COMPARATIVE ANALYSIS OF GLOBAL JURISDICTIONS

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ABSTRACT

The digitization of the business promotions, advertisements, branding and endorsements has given a rise to a new species of influencers which is AI-generated personas and virtual influencers—who are responsible in reshaping the landscape of social media, marketing, and entertainment. Unlike human influencers, these virtual entities are entirely created by algorithms, yet they mimic human traits and often achieve significant social and commercial impact. However, their emergence poses novel legal challenges, particularly concerning personality rights. These challenges include questions of consent, ownership, and liability for the unauthorized use of human likeness and traits.

This paper aims to address these issues through a comparative legal analysis of three key jurisdictions: India, the United States, and the European Union. By examining the strengths and weaknesses of existing legal frameworks, the study seeks to provide actionable recommendations for creating a robust and harmonized regulatory environment.

Keywords: AI-driven virtual influencers, Global legal framework, Personality rights, Intellectual Property (IP) Laws, Digital identity protection.

Introduction:

The advent of the digitization had led to opening doors for monetization and expansion of business via using the exposure of online arena. This includes usage of the online platforms by the business entities as well as the individuals who owns business for the purpose of promotions and advertisements which is primarily conducted in social media platform which is predominantly used by almost 63.8% of the global population as per the data provided by *DataReportal*¹. Initially the promotion was made on the basis of either advertising about the brands or products, movies, musical works via posting the same on social media platform and subsequently this was emerged into the promotion which is done by the so-called social media users known as the 'influencers' wherein the organisation or brands approach them for promoting their products towards their particular set of targeted audience and with the further advancements this gave birth to the concept of persona that exist in the virtual world infamously referred to as Artificial Intelligence (AI) that removed the engagement of the actual existing being to interfere in promoting the products and which aided the cutting the cost of promotional and advertisement expenses to a considerably humongous levels. These Artificial Intelligence helps for aiding and assisting the consumers as well as far as Mobile Applications are concerned where it eliminated the human intervention or reading the whole user manuals for smooth usage of those applications. Subsequently, this led to the emergence of a parallel similar concept known as **Virtual Influencers** which is nothing but, in simpler terms, referred to a digital persona that has been created by the development and advancement of Artificial Intelligence and Computer-Generated Imagery (CGI) predominantly designed for the purpose of engagement of audience in the social media platform. These life-like characters imitate human behaviours and personalities and often build a significant number of followings via sharing contents in these platforms that are relatable to the targeted set of followers, endorsement of the brands and take part in the digital marketing campaigns. Unlike traditional influencers, virtual influencers do not face human limitations such as availability or personal controversies, making them an attractive option for businesses aiming to connect with their target audience. Their rise reflects the increasing intersection of technology and social media, transforming how brands engage with consumers in the digital age. The most prominent virtual influencer is Lil Miquela,² a self-proclaimed musician and arts student that has gained almost 3 million

¹ <https://datareportal.com/social-media-users>

² See www.instagram.com/lilmiquela

followers and makes a considerable amount of profit for her creators by “modelling” clothing for brands such as Prada and Calvin Klein,³ showing off Isamaya Beauty makeup⁴ and enjoying Haribo candy.⁵ While we can say that this is an era of the predominance of the Virtual Influencers and that made the usage and marketing and brand endorsement so easier and flexible, it is also pertinent to note that there is a threatening alarm considering the authenticity and reliability on these personas. Also, since this is the toddler stage of the social media era, there is a lack of legal mechanism and to address the infringement that took place in the social media platforms. These AI personas, while innovative and captivating, challenge traditional legal frameworks, particularly concerning personality rights. Personality rights, also known as the right of publicity, are rooted in an individual's ability to control and monetize the commercial use of their image, name, voice, and other identifiable attributes. While the concept has long been applied to human personalities, the emergence of AI-driven characters raises pertinent questions: Can virtual influencers infringe upon the rights of real individuals? What happens when these virtual entities resemble or replicate real people? And how do jurisdictions across the globe address these issues?

This article delves into the intricate legal implications of virtual influencers and AI personas on personality rights, examining how various legal systems—including those of the United States, European Union, India responds to these challenges. By exploring regulatory gaps, landmark cases, and ethical dilemmas, this analysis aims to provide a comparative understanding of how global jurisdictions grapple with the intersection of technology and legal frameworks.

Virtual personas - the celebrities of virtual media:

With the advent of the Metaverse, virtual personas are becoming increasingly prominent on social media platforms. These digital influencers are celebrated figures, amassing millions of followers who look to them for inspiration in fashion, lifestyle, online shopping, and the latest trends. They play a crucial role in shaping consumer behaviour and how brands engage with their audience, often blurring the lines between reality and imagination in the digital landscape.

³ See www.instagram.com/p/Bxhji4UHnmr/. See also B. ROBINSON, “Towards an Ontology and Ethics of Virtual Influencers”, *Australasian Journal of Information Systems* 2020, vol. 24, 2.

⁴ See www.instagram.com/p/ChfRdn9pJQG/

⁵ See www.instagram.com/p/CpS81tcvzkR/ and www.instagram.com/p/Cq8ZdFsLg75/.

Unlike traditional influencers, virtual personas are carefully engineered using machine learning, deep neural networks, and CGI technology.⁶ Their creators program them to interact, express emotions, and post content that feels personal and authentic. This seamless mimicry of human behaviour allows them to build loyal followings.

One of their most appealing advantages is their resistance to human controversies. Unlike real-life influencers, who may be involved in scandals, virtual personas maintain a flawless and controlled public image.⁷ Brands find this aspect particularly appealing, as it minimizes risks associated with human influencers who may engage in unpredictable behaviour.

Beyond their strategic advantages, virtual influencers also impact businesses economically. They allow brands to cut marketing costs, enhance brand consistency, and reach specific target audiences more effectively. **AI-driven influencers** can be customized for different cultural and demographic groups, ensuring hyper-personalized marketing campaigns.

However, these developments do not come without risks. The biggest concern is **deception**—audiences may not always realize they are interacting with AI-generated personas.⁸ Additionally, the legal ownership and intellectual property rights of these AI influencers remain ambiguous. Who owns a virtual influencer's identity? Can AI personas be recognized as independent entities? Furthermore, privacy and data protection concerns arise when virtual influencers are designed to look like real individuals without their consent.⁹ As digital personas continue to rise in prominence, a comprehensive legal framework is needed to establish accountability and protect personality rights in an AI-driven world.

Concerns regarding Personality rights of these virtual influencers- a comparison of legal frameworks:

One of the biggest legal concerns is the **unauthorized replication of human likenesses**. If an AI-generated persona closely resembles a real person, it may violate their personality rights by

⁶ AI and CGI Technologies in Digital Branding, MIT Technology Review.

⁷ Hewapathirana, Isuru, Navigating the age of AI influence: A systematic literature review of trust, engagement, efficacy and ethical concerns of virtual influencers in social media Vol - 8 , Journal of Infrastructure Policy and Development , 2024

⁸ They misled me! Digital literacy's dual role in AI marketing manipulation and unethical young consumer behaviour. UA Qadri, AMA Moustafa, M Abd Ghani - Young Consumers, 2025 - emerald.com

⁹ Privacy Concerns in AI Branding, European Data Protection Board

exploiting their identity without permission of such use.

In the **United States**, personality rights are protected under state laws. States like **California and New York** allow individuals to control the commercial use of their likeness. Under **California Civil Code California Civil Code, Section 3344(a)** states:

*'Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person's prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof.'*¹⁰

The landmark case **White v. Samsung Electronics America, Inc. (1992)** established that even robotic or AI-generated representations of a person could infringe on personality rights.¹¹

In contrast, the **European Union** regulates personality rights primarily through **data protection laws**, particularly the **General Data Protection Regulation (GDPR)**.¹² GDPR's provisions ensure that unauthorized digital replication of an individual's likeness constitutes a data privacy violation. Unlike the U.S., where enforcement varies by state, the EU's approach provides a centralized framework for managing such concerns.

In **India**, personality rights remain underdeveloped and are governed by a mix of privacy and intellectual property laws. Courts have acknowledged personality rights in cases like **Titan Industries Ltd. v. Ramkumar Jewellers (2012)**, but India lacks a dedicated legal framework to regulate AI-generated personas.¹³

While the **U.S. model** relies on case law and state regulations, the **EU approach** is more structured under GDPR, and **India** is still evolving in this area. The challenge lies in harmonizing these different frameworks to create a global regulatory approach that ensures consistency in handling personality rights violations by virtual influencers. Achieving this would require cross-border cooperation, international treaties, and the development of AI-

¹⁰ Section 3344(a) of California Civil Code

¹¹ White v. Samsung Electronics America, Inc., 971 F.2d 1395 (9th Cir. 1992).

¹² GDPR Guidelines on Digital Likeness.

¹³ Titan Industries Ltd. v. Ramkumar Jewellers, (2012) 50 PTC 486 (Del).

specific regulations that balance innovation with legal protections.

Need for a Global Legal Framework:

As the influence of AI-driven virtual personas grows, it is crucial to establish a unified legal framework that ensures ethical and legal compliance across different jurisdictions. Without a standardized regulatory approach, businesses and individuals risk facing legal uncertainties, inconsistencies in enforcement, and potential violations of personality rights.

One of the major reasons for a global legal framework is the **cross-border nature of digital content**. Virtual influencers operate on global platforms like Instagram, TikTok, and YouTube, making it challenging to regulate their activities under a single national law. A harmonized approach would facilitate **international cooperation** in addressing identity theft, privacy violations, and unauthorized use of personal likenesses.

Additionally, **intellectual property laws must evolve** to accommodate AI-generated personas. Current IP laws do not clearly define ownership and rights concerning digital characters, raising concerns over who holds creative and commercial rights over virtual influencers. A global framework would provide clarity on these aspects, ensuring protection for creators while preventing misuse of digital identities.

Furthermore, **consumer protection is another key concern**. Audiences interacting with virtual influencers may not always be aware that they are engaging with AI-driven personas rather than real individuals. This raises ethical concerns regarding transparency, deception, and manipulation in digital marketing. Regulations should mandate disclosure requirements, ensuring that AI influencers are identified as such to prevent misleading advertising.

To develop an effective global legal framework, policymakers must:

- Establish **clear personality rights protections** that extend to both real and AI-generated personas.
- Define **standardized consent and ownership regulations** to prevent unauthorized digital replication.
- Develop **intellectual property frameworks** that provide guidance on AI-generated

content and branding.

- Implement **consumer protection policies** that mandate transparency in AI-driven digital engagements.
- Facilitate **international cooperation** to ensure uniform enforcement and legal consistency across borders.

A harmonized global approach would bridge the gaps between existing legal frameworks, ensuring that the rise of virtual influencers does not infringe on human rights, consumer trust, or ethical advertising standards.

Conclusion:

The rise of virtual influencers represents a significant shift in how brands connect with audiences. While AI-generated personas offer numerous advantages for businesses, they also introduce profound legal challenges, particularly in the realm of personality rights and digital ethics. As jurisdictions like the **United States, European Union, and India** attempt to address these concerns, legal frameworks must evolve to accommodate the rapidly growing influence of AI-driven digital personas. Establishing a **harmonized global legal approach** will be crucial in ensuring fair, ethical, and legally sound use of AI-generated influencers. With AI continuing to reshape the digital marketing space, lawmakers must act proactively to safeguard human identity, consumer rights, and ethical AI deployment in an era dominated by virtual influencers.

REFERENCE

1. Solove, Daniel J. *The Digital Person: Technology and Privacy in the Information Age*. NYU Press, 2004.
2. Samuelson, Pamela. "AI, Copyright, and the Challenge of Authorship." *Journal of Intellectual Property Law*, vol. 27, no. 2, 2020, pp. 1-28.
3. WIPO. "Artificial Intelligence and Intellectual Property: Policy Considerations." World Intellectual Property Organization, 2021.
4. Zuboff, Shoshana. *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. PublicAffairs, 2019.
5. European Commission. "Digital Services Act and AI Regulation." European Union, 2022.
6. Kaminski, Margot E. "The Right to Be Forgotten and Personality Rights in the Digital Age." *Berkeley Technology Law Journal*, vol. 34, 2019, pp. 1135-1172.
7. OECD. "Artificial Intelligence in Society." Organisation for Economic Co-operation and Development, 2019.
8. Litman, Jessica. *Digital Copyright*. Prometheus Books, 2006.
9. FTC. "Guidelines on AI-Driven Marketing and Consumer Protection." Federal Trade Commission, 2023.
10. United Nations. "Global Framework for Digital Cooperation and AI Governance." UN Report, 2022.
11. Benkler, Yochai. *The Wealth of Networks: How Social Production Transforms Markets and Freedom*. Yale University Press, 2006.
12. Calo, Ryan. "Artificial Intelligence and the Challenges of Regulation." *Harvard Law Review*, vol. 133, 2019, pp. 1701-1725.

13. Bhandari, Vrinda. "Regulating AI and Virtual Influencers in India: Legal and Ethical Perspectives." *Indian Journal of Law and Technology*, vol. 18, 2023, pp. 45-72.
14. Mayer-Schönberger, Viktor. *Delete: The Virtue of Forgetting in the Digital Age*. Princeton University Press, 2011.
15. World Economic Forum. "AI Ethics and Governance: Principles for the Digital Economy." WEF White Paper, 2022