

Authoring Identity: Copyright, Privacy, and Commodity Dissonance in the Digital Age

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In the age of artificial intelligence, smart machines are increasingly designed to embrace human identifiable characteristics. One of the biggest concerns emerging with the accelerating development of humanoid robots is whether they will threaten our sense of human identity. Anthropomorphic appearances may blur the identifiable distinction between humans and robots, instilling a growing anticipation over our inability to differentiate humans from machine. It would appear that one thing makes us uniquely human, and capable of individualizing that uniqueness within the human family, is our ability to consciously and cognitively author our own identity by controlling its expressive representations; it is also our ability to “read” others.

We humans are not only “smart” and “adaptive” — we are diplomatic, discerning, enterprising, social and political. Regarded from this perspective, our identity is narrative, historically specific, expressively personal, and culturally situated; its social existence is itself a work for which we seek legal protection and remedy. AI, however, appears to be threatening that capacity to author ourselves and in doing so, it also threatens to blur the identifiable distinction between humans and their nominate proxies.

In the copyright context, the author strives for self-narration, seeking control over the representations of the self. There is much debate as to whether copyright ought to be extended to machine generated works. Such recognition would advance an anomalous conception of authorship. It may also, paradoxically, generate a barrier for correcting algorithmic decision-making errors in our efforts to author our own identities, bringing into the spotlight and under sharp relief the commodity dissonance of the digital age.

This is an age in which identity is forged in discursive and symbiotic relation to the machinery of the internet, and in which we no longer labour to create just alienable, material things. Rather, today, we are the very thing that we create. This is also an age in which identity can be appropriated, distorted, misrepresented, and destroyed as much by algorithmic decision making as with human error with a click of a button. While identity harms may be perpetrated by people and protected against by the law of defamation, it may not always be the case that defamation will apply. And what of non-human errors?

While much of the focus in research is dedicated to exploring the efficiencies of artificial intelligence and the utility of machine learning, this paper is interested in exploring the nature of legal interests that may arise when AI makes identity based mistakes (moving beyond bias to matching errors) and the ability of the law to respond. The analysis draws on my personal experience with a merged digital identity based on a shared name; a name is only an approximation of the self, as anyone who has suffered from mistaken identity may attest. While copyright prefers to protect fictions, potentially privileging the “work” in which the error resides, privacy law seeks to protect facts. In this context, how might the law appropriately grant us the authority to author the author, now confronted by the growing capacity of AI? Whatever may be the status of an emerging right to be forgotten, is there a right to be remembered accurately? By corollary, how are we to author our own identities —our most important and carefully constructed work, in such uncertain terrain?