

## **The Dutch and Danish proposals for legislation on deepfakes**

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This article contains a summary and a brief comparison of the Dutch and Danish proposals for legislation relating to deepfakes.

The Dutch proposal is an initiative of member of parliament ms. [Rosemarijn Dral](#), based on an article published in October 2024 (available on [SSRN](#)).

The Danish proposal was submitted for consultation on 7 July 2025 and will be introduced by the Danish government to the Danish parliament in the winter of 2025/2026.

### **The Danish proposal**

The Danish proposal contains the following clauses to be added to the Danish Copyright Act.

Performers get an additional right:

Section 65 a.

1. Realistic digitally generated imitations of a performer or artist's artistic performance may not be made available to the public without the consent of the performer or artist.
2. The protection in subsection 1 shall last until 50 years have elapsed after the year of death of the performer or artist.
3. The provisions of section 2(3) and (4), sections 3, 11, 13, 13a, 16a, 16c-Sections 16 f and 17-17 b, 17 c(2), (3) and (4), 17 d-17 e, 18(1) and (2) 19(1) and (2) and sections 21-23, 24 b, 25, 25 a, 27, 28, 30 a, 33, 34, 35, section 47(1) and (2), sections 49, 50-57, 58a, 61 and 62 shall apply correspondingly to digital realistic imitations of performers' performances or of artists' artistic performances.

In section 86, a new subsection is inserted after subsection (1):

2. The provision in section 65a applies to imitations of persons who are citizens of or resident in a country within the European Economic Area.

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### *Core provision*

#### *Protection against realistic digitally generated imitations of personal characteristics*

§ Section 73 a.

1. Realistic digitally generated imitations of a physical person's personal, physical characteristics may not be made available to the public without the consent of the imitated person.
2. Subsection 1 does not include imitations that are primarily expressions of caricature, satire, parody, pastiche, criticism of power, social criticism or the like, unless the imitation constitutes misinformation that may seriously jeopardise the rights or essential interests of others.
3. The protection in subsection (1) lasts until 50 years have elapsed after the year of death of the impersonated person.

### *Applicability*

#### *Special provision on protection against digitally generated imitations of personal characteristics*

§ Section 86 a.

The provision in section 73 a applies to imitations of all natural persons, including foreign nationals.

### **The Dutch proposal**

In the Dutch proposal new sections are added to the [Dutch Neighbouring Rights Act](#). In this way the existing legislative framework for the protection of performing artists also applies to this new right. This makes this solution also easy to implement in all other EU countries.

### *Definition*

A definition, based on article 3 sub 60 of the AI Act, is added to section 1:

w. deepfake of a person: an image, audio or video material generated or manipulated by artificial intelligence that bears a resemblance to an existing or deceased natural person and may be falsely assumed by a person to be authentic or truthful.

### *Core provision*

The core provision is a new section 7c

#### *Section 7c*

1. Subject to the limitations established by law, any person shall have the exclusive right to authorize:

- a. the making of a deepfake of his person;
- b. to reproduce a deepfake of his person;
- c. selling, renting, lending, delivering or otherwise putting into circulation a deepfake of his person, or a reproduction thereof or importing, offering or stocking for these purposes. Section 2, subsections 2 through 5, shall apply *mutatis mutandis*.
- d. broadcasting, making public by transmission by cable or other means, making available to the public or otherwise disclosing a deepfake of his person or a reproduction thereof.

Section 2, subsections 7 through 9, shall apply *mutatis mutandis*.

2. Any person, even after he has given permission or has transferred a part of the right as referred to in subsection 6 of Section 9, shall have the right to oppose any deepfake of his person which could cause damage to his honour or name.

### *[non] transferability*

To Section 9 the following subsections are added:

- 4. In derogation of subsection 1, the rights referred to in Section 7c shall not pass upon succession and, except pursuant to subsection 6, such rights shall not be transferable and shall not be subject to attachment. The consent shall be granted in writing. The consent shall include only those powers which are stated in the written consent or which necessarily result from the nature and scope of the consent granted.
- 5. The rights referred to in Section 7c, after the death of the person concerned, shall accrue to the person designated by that person by a disposition of property upon death, and in the absence thereof to the relatives. Section 25a(1) of the Copyright Act shall apply *mutatis mutandis*.<sup>2</sup>

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<sup>2</sup> Section 25a of the Dutch Copyright Act reads as follows: “For the purposes of this Part, “relatives” means parents, spouse or registered partner and children. The rights of relatives may be exercised by each of them individually. In the event of a dispute, the Court may is-sue a decision which will be binding upon them.

6. The rights referred to in Section 7c(1)(b) through (d) with respect to a deepfake of a person produced with consent for a particular film work or for a particular phonogram shall be transferable to the producer of that film work or phonogram. The transfer includes only those rights necessary for or for the purpose of the exploitation of the film work or phonogram for which the deepfake was produced and shall relate only to the deepfake produced with consent as part of the film work or phonogram.

#### *Limitations (including parody)*

Furthermore all existing limitations on neighbouring rights contained in Sections 10 and 11 will also apply to this new right regarding deepfakes.

This means that section 10 sub j also applies:

The following shall not be regarded as infringements of rights [...] “a caricature, parody or pastiche, provided that the use is in accordance with the rules of what would normally be sanctioned under the rules of social custom”.

The same goes for instance for section 10 sub b on quotation, section 10 sub d on public reporting of current events and section 10 sub k on investigation of criminal activities, public security or to safeguard the proper progression of an administrative, parliamentary or judicial procedure or media coverage thereof.

#### *Term of protection*

The following subsections are added to Section 12, reading:

8. The rights referred to in Section 7c shall expire on the expiration of 70 years counting from the 1<sup>st</sup> of January of the year following the year of death of the natural person to whom the deepfake relates.

9. If the deepfake of a person has been included in a particular film work with their consent, the rights referred to in Section 7c, in derogation from Subsection 8, shall expire simultaneously with the copyright in such film work.

10. If the deepfake of a person has been included in a phonogram with the consent of the persons concerned, the rights referred to in Section 7c shall, in deviation from Subsection 8, expire simultaneously with the phonogram producer's right in that phonogram.

#### *Intermediary liability*

Section 15e will also apply, which means that internet intermediaries may be required to take action.

### *Criminal law*

The criminal law clauses, sections 21, 22 and 24 will also apply.

### *Applicability*

A subsection shall be added to Section 32 to read:

10. The preceding sections shall, with respect to the rights referred to in Section 7c, apply to everyone, irrespective of origin, nationality or place of residence, with the exception of the statutory claims for equitable remuneration, which shall apply in the event that the person to whom the deepfake relates is a national of one of the Member States of the European Union or of a State party to the Agreement on the European Economic Area of 2 May 1992 and the deepfake constitutes a significant part of a phonogram or film work released for commercial purposes.

### **Comparison**

- Both proposals introduce new rights, comparable to copyright and so called neighbouring rights. In the Danish proposal this is done in the existing Copyright Act, in the Dutch proposal it is done in the existing Neighbouring Rights Act.
- In the Danish proposal these rights last until 50 years after the death of the person in question, in the Dutch proposal this is 70 years. The Dutch proposal has separate rules for deepfakes created with permission which become part of a film or phonogram with permission.
- In both proposals the most important rights also apply to foreign (non-EU) citizens. Some rights are however reserved for EU-citizens, in the Danish proposal more so than in the Dutch proposal.
- The Dutch proposal contains some more details regarding (non) transferability and exercise of the right after the death of the person concerned.
- Both proposals contain exceptions for caricature, satire, parody, pastiche, criticism and other legitimate uses.

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