The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

Ownership and Commercial Exploitation of Digital Avatars: An Intellectual Property Perspective

Rishav Shekhar

Abstract

While avatars have been a staple of digital worlds for decades, they received new public attention due to the emergence of artificial intelligence (AI). AI is creating lifelike models of real people that are so realistic that they can be mistaken for actual photographs. When the fictitious characters created by AI look so lifelike, it is hard to distinguish between a real person and the fictitious character. The legal issues that arise are even more complicated in light of the nature of the character and the medium through which the characters are rendered. When there are no 'living' characters to convince, what's the harm? It will be shown that many digital avatars or characters can be misleadingly or inaccurately tagged with the owner of the digital avatar character, raising legal issues related to incorrect attribution that many people do not consider until they are directly affected by the appearance of those avatars. Countries have different judicial, legislative, and executive answers to new sales and marketing strategies. Member states of the United States and the European Union recognize some protection of a digital avatar developed from material identified as an algorithm or copyrighted work of fiction. But how that protection occurs, and what limitations and exemptions are considered outweigh the value of artistic and creative freedom varies. Faced with author, creator, user, and social circumstances that differ from all perspectives, some key aspects of the law must be addressed independently even though the legal issues are the same. As is often the case, there is no uniformity between the countries involved on copyright protection for these AI-generated avatars. Some countries protect avatars as intellectual property and some protect them as IP rights. Two examples are AI-generated avatars and

characters, which some countries protect with novel IP rights and others place avatars in the realm of general personality rights (or publicity rights).

Keywords: Digital Avatars, Intellectual Property, Right of Publicity, Copyright Authorship, Artificial Intelligence, Metaverse

1. Introduction

Digital avatars have taken the world by storm, with billions of dollars being generated from the likes of video games, metaverse, virtual concerts and even influencer marketing. Avatars not only have the ability to be used in all of these mediums but are also considered as a digital asset, which is why they have tremendous amounts of money being invested in them, very often sold for insane amounts of money. Since Neal Stephenson published the dystopian science fiction book "Snow Crash" in 1992[1], describing how avatars were able to transcend the real world and "meet" people in virtual spaces, the evolution of avatars has moved beyond merely being a 2-dimensional caricature. The future of augmented reality, where avatars will be able to not only provide a superimposition in real world but will also be able to respond to it and act in a contextually relevant manner, has now become a reality. So has the ability to interact with these avatars in what is referred to as the metaverse. As is the case with anything new, there also comes up the question of legal implications. The more sophisticated the avatar gets, the more complex the merging of real life and virtual life becomes. By the very nature of these avatars being able to transcend the physical and into someone else's panorama, there raises the question of whose rights are preserved and resonated with. If damaging avatars in an online gaming platform can be seen as a civil wrong, then which jurisdiction's laws can be applied to adjudicate damages? Copyright, trademark, right of publicity are just a few of the plethora of legal issues and protection that avatars will generate in their evolution, which isn't limited to just software. Some of the instances where the not-so-backwards-compatible laws with avatars will come into the foray are in the case of fraud, which can easily be committed by assuming someone else's avatar identity and using their digital likeness for wrongful exploitation. Even though it is quite outdated, the Computer Fraud and Abuse Act (CFAA) could be used to prosecute financial criminals committing the above-mentioned act, however different circuits have applied it differently as seen in the situation of the Second Circuit where they held that mimicking

[1] Neal Stephenson, Snow Crash (Bantam Books 1992).

online identity was not a violation of CFAA since 'unauthorised access' was not made.[2] It would be interesting to see how similar laws throughout different jurisdictions will evolve with avatars themselves. Similarly for NFTs which are considered to not be infringing on copyright but the software that is used to create them. With the avatars becoming so well-renowned and having their own capabilities, there are two sides to the swords of intellectual property: avatar-generated property protection- such as a music produced by an AI avatar- and property misuse (such as licensing the avatar without the creator, who had made it, knowledge) that will warrant protection. Presumably target-specific laws were created for the protection of avatars, but that would lead to extremely convoluted laws protecting avatars and their subsequent property, which does not befit the requirements of the very rapid development of avatars. The faster and more diverse the technology becomes, the more incapacity there is for laws to adapt. This leads to avatars being protected under any applicable law(s), whether it is intellectual property, corporate, tort, cybersecurity, etc.

Even when terms of service state that the goodwill is not claimed as an extension of the platform (i.e.: utility does not extend beyond the platform), avatars are used by different platforms that are completely separate from the original service, and if the 'first' platform then files for infringement, it might be construed as an extension and lead to the granting of the service. Arguing for 'cross-platform avatars' and resilience to be a trait of avatars runs the risk of letting them be uncontrolled and ungoverned by any state enforcement. Due to the complexity of use and evolving state of technology, the protection provided to avatars is imperfect. The weirdly convoluted and absolutely ambiguous shape of laws regarding avatars leaves open the risk of lack of enforcement, leading companies to shy away from investing in them when the returns can be overridden by any controller.

2. Literature Review

Introduced and nascent technologies do not often elicit immediate regulatory scrutiny; rather, governing principles develop and wrap around the nascent technologies as they develop and proliferate. We stand at a moment in time where the intersection between digital avatars is making itself known to previously non-technical legal regimes: a recognition that with each other, these concepts have matured to the point that the other must be dealt with directly and

[2] United States v. Valle, 807 F.3d 508 (2d Cir. 2015); Computer Fraud and Abuse Act, 18 U.S.C. § 1030 (2018).

in detail. This recognition is evidenced by the unprecedented growth of scholarly literature concerning digital avatars: the focus areas vary between the proprietary status of virtual items in video games, the iterative copyright problems that have emerged since the Supreme Court's decision in the feist Publications, Inc. v. Rural Telephone Service Co. case[3], and issues around copyright in Artificial Intelligence (e.g. The U.S. Copyright Office latest guidance on whether works generated by Artificial Intelligence can itself be copyrighted, in 2023 post- ChatGPT moment[4]). And while the traditional suite of publicity rights and state laws have evolved as well to accommodate entertainment and video game realities, there remains a gap in the literature on whether likenesses generated from Artificial Intelligence can give rise to a right of publicity violation, even though the first right of publicity case was over a hundred years ago.[5] Likewise, the use of likenesses in AI-generated products to make video games and films has elements of threat and protection; if "pictures" programed by computer codes can be a left field risk to the underlying business model of video games, they are also suited to transform rapidly-growing end products in gaming and entertainment into popular and desirable modules and brands with far-reaching positive economic consequence. In another large set of examples, from landmark case studies like Hart v. Electronic Arts to the NCAA student-athlete litigation[6], the evolving recognition of Avatar as a digital extension of the physical human body is advancing the frontiers of justified publication of likeness rights.

3. Methodology

The ownership of a digital world intrinsic to a digital avatar – referred to as 'avatar rights' and wherein avatars not only represent their respective owners for their interests in online platforms (social or professional) but can also be created and owned by a person born as a digital entity (digital beings) – continues to remain a grey area across the globe. Existing judicial precedents in a few jurisdictions exist around online blogs, professional pages, online gaming – where avatars can be created, traded or transferred, but these do not offer an outcome to help achieve a solution for what should be the right legal regime to claim

[3] Feist Publications, Inc. v. Rural Telephone Serv. Co., 499 U.S. 340 (1991).
[4] Thaler v. Perlmutter, 687 F. Supp. 3d 140 (D.D.C. 2023).
[5] Pavesich v. New England Life Ins. Co., 50 S.E. 68 (Ga. 1905).
[6] Hart v. Electronic Arts, Inc., 717 F.3d 141 (3d Cir. 2013); In re NCAA Student-Athlete Name & Likeness Licensing Litig., 724 F.3d 1268 (9th Cir. 2013).

ownership over avatars that can be created, traded, transferred and made a primary medium of business or entertainment in the digital world.

The project focuses on the legal frameworks surrounding ownership, commercialization of avatars, their possible future use as a main source of livelihood like a business, to understand if avatars as a digital asset fall within the ambit of the intellectual property rights.

The research project is primarily focused on identifying the intellectual property dimensions (copyrights, trademarks, and patents) of avatars. The doctrinal research method has been used for the research wherein primary sources have been analyzed (statutes, judicial decisions, and regulatory guidance) and compared with other relevant jurisdictions (US, India and the EU) to find for similarities on the aspect identified in the project objective. Additionally, the research would include a comparative analysis with similar digital assets to analyze the closest applicable intellectual property right (if found applicable).

The research will not include an empirical methodology with any surveys or quantitative data. The core focus of the research is to help lay a strong foundation for a new interdisciplinary stream of scholarly discourse focusing on the intellectual property rights surrounding avatars as a wider aspect along with emerging developments in the technologies surrounding avatars (like virtual reality, AI, metaverse) in the future.

4. Analysis

4.1 Copyright and Digital Avatars

As we move farther into the digital age, new technical realities prompt us to re-evaluate the perception of creativity and copyright law, forcing us to change the lens through which we view authorship and the multiple layers of ownership involved in the process of creation effectively. A major part of our tedious human experience is the creation and evolution of things that are not real. In some ways, we prefer them over their real counterparts. The world of fantasy presents us with visual promises that we refuse to embrace in reality. For instance, admiring augmented beings which seem to have no significance in our physical world but still drawing more people than those that walk the surface of the planet. Why and how does that happen? Marvelling at the process of creation and almost the art of it. To refer to this art by the term Avatar or Digital Avatar is misleading. The term does not reflect the characters, beings and aesthetic that this reality includes. It is poorly invented since the meaning it refers to is not a substantial reality. ‘Avatars’ such as the one we refer to, must be termed digital

beings. Using that term hereafter stands. While digital beings are a part of a high concept of being creative and imagining life in a fantasy world, there are definitely boundaries of ethical and moral acceptance that surround this reality. Such as ownership. There is a distinct base that governs the ownership of a digital being. To understand the same, one must detach the digital concept of the being from the 'being' itself. Similar to the concept of the creator of a book and the book itself in a physical form. Who does it belong to? When we look at copyright ownership we automatically assume the principle of the author being the owner and this specifically arises from the very origin of the saying "Copyright Act is a statutory expression of the principles of the common law of Copyright" which points to the Creator as the owner completely ignoring the complexities of the modern day when collaboration is a huge part of creation. This point of view makes it difficult to weigh ownership of the work based on different perspectives of machines, human creativity and fantasy. Ultimately however, the ownership must be fixed on a person or entity and hence the first right of ownership must go to the creator and its scope restricted from a definitive perspective.

The digital characters that 'fight' inside the screen can be owned by the company that came up with the idea and the groundwork for the same and hence the first leg of ownership. But these characters exist in a visual sense but are incomplete without the sounds and events that make them alive. Adding upon this leg of ownership are the Developers of the game. They could also be referred to as the 'actual authors, creators, makers, and dealers' and hence in compliance with the work-for-hire doctrine[7] definitely have a sense of ownership concerning the screenshots, digital graphics and general look of the matter however that could only be the portion of ownership combined with their contribution. The same argument could also be proposed for the Writers of the game. So who owns the avatars fully? Do they really have an ownership at all? This actually falls into the pit of existing where digital life is meaningless compared to real-world currency.

In the United States the main crux of the definition of Copyright ownership lies in the fixation and originality of the copies of work[8]. While the argument of a machine creating the work does not fit into these heads legal complications over time have established a new doctrine of authorship and ownership of machines and AI. While no quotas can be set for the

[7] 17 U.S.C. §§ 101, 201(b) (2018) (defining and governing works made for hire).
[8] 17 U.S.C. § 102(a) (2018).

working of AI, for example, the use and process of the utilization of the same must be set by a human. The event of the digital work is initiated by the human treated in the likeness of the human as desired. And hence to clear the matter of ownership of the avatar the use of the AI and the machine in the making must be considered. Hence the creative flow is passed down to the human respectively and hence ownership of the Copyright in the end is put into the hands of the human creator.

In compliance with and contrary to this point of view (although admittedly rare) the Indian law binds itself to the Copyright Act 1967 and specifically governs the rights of the Copyright owner and the concept of ownership in general. The same is laid down in Section 17 of the Copyright Act 1957[9] and states "The author of the work shall be the first owner of the copyright therein." The word used here in the original form is 'author' which can be taken to understand as the creator provided in the basic nature of Copyright ownership. However the term in this statutory form must be looked deeper into since it has the fundamental and ambiguous nature of the Indian legal system. The question of whether it refers to the creator of the game or the game itself or any entity of the Digital Avatar. However Section 17 provides a base to proceed from. The Copyright Act also composes of 'Employer Ownership' in Section 17[10] as well which creates a larger haven of scope for authorship over ownership transpiring and hence whenever a creation of work is done under the employment of an individual or company, the ownership to that work automatically and entirely is given to the employer. Through this Section the actual Digital owner is created who has all rights to the concept and any discrepancies surrounding the creation of the avatars. While both Sections being applicable irrespective of each other do an excellent job at fixing the ownership through the company the provisions do not assist with the resolving of the Author of the digital bearer itself. The legal fix that a digital avatar has its own Copyright and can own one would never arise.

Ultimately while the ownership of the avatar as a whole is handed to the human and it is a virtual concept to make the game grow it must be imagined as an entity of itself. Just as many characters in comics and other fantasy worlds are given legitimacy to exist as an individual the digital avatar is similar. This creates this separate non existing entity as well who can be

[9] Copyright Act, 1957, § 17 (India).
[10] Copyright Act, 1957, § 17(c) (India).

the owner of the Copyright and would create no legal issues. Thus this emerging reality of life as such must be thought of broadly beyond the regulations of the existing factual legal basis of today.

A user-created avatar that serves as the digital representation of a real-world person may be one of the best forms of personal expression online. Likewise, a uniquely-sculpted and hand-painted digital sculpture of a frog, holding a shiny gold coin and wearing a crown, is the second-best form of personal expression online. Thumbs up or down?In any event, the primary appeal of such digital creations is that they are the authors', not the platforms' that allow the creations to be beamed all over the world. Now, perhaps, an overriding priority of the AI revolution is to steal that authorship from them. In February 2023, the U.S. Copyright Office issued guidance[11] to the effect that AI-generated images cannot be copyrighted because they lack a human author. Therefore, an avatar based on AI-generated images not modified in any meaningful way by a human is not a protected work, leading to such avatars being subject to being copied, resold, modified and otherwise exploited by others without any compensation to its creator.The guidance is stark: "The Office does not register works produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author." In other words, if AI does it, then anyone can do it without fear of infringement liability.

To its credit, the Office allows for copyrightability of only those elements of an AI-generated work that are the product of significant human modification—suggesting that the "mechanical" or "random" creation of those elements will not suffice. Imagine a user throwing an avatar of an AI-created frog sculpture on a platform without the user rendering any additional above-and-beyond creative expression in the sculpture (e.g., changing colors, posture, details like a necklace, etc.). The guidance is likely to be challenged not only because of its potentially negative impact on creators, like the user mentioned, but perhaps more importantly because, to the extent that the decision is not already final, the Office raises a question about the propriety of the creator being allowed to effectively "disclaim" all unmodified components of the AI-generated work from being copyrightable as a work made by "exactly" the process that "informs" the creation of the avatar in the instant case. The

[11] U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16,190 (Mar. 16, 2023).

implication is that if a protection-free work is made by AI, then so is any other human-altered derivative. Go figure. Whatever the eventual outcome, the guidance has generated a considerable amount of controversy in the copyright community. Nobody (outside of the Office) believes that the issue was decided, and there is considerable speculation and debate as to how the drafters came to the opinion they did. For those who, unlike the federal government, care about the overriding priorities of copyright law as a socially constructive organ of human activity, it is hard to see how allowing a machine to effectively deprive a real person of ownership rights in their own original work is in society's best interest. The best answer to the question provided by observers on both sides of the issue: because he who owns the means of production—here, the AI hardware and software—also controls the outputs. Another question: could AI replace a veterinarian as a pet owner's substitute for creating the avatar of one of her pets? In an even earlier tongue-in-cheek insight: if an AI can produce a painting of a tree that will pass successfully as being made by Monet, why shouldn't the current be prevented from treating it differently from Monet's? There was a deliberate effort to keep patents for new technologies that themselves, once created, would be replicated instantly and not garner any licensing revenue from third-party (whether that was a good or bad decision notwithstanding). Copyright is the opposite; its value derives not from the time and resources needed to create the protected work, but rather the limited monopoly granted the owner of the terms of the use, sale and disposition of the work. From people sharing as yet unknown qualities and characteristics of avatars of frogs in crowns to misshapen blobs, that has potential distinct problems for the intellectual property community as well as larger cultural, political and economic implications. With what appears to be a major shift in U.S. copyright policy per the Office, and the same question arising in the EU (and elsewhere) in the wake of its "AI Act" requiring that any handiwork of generative AI be disclosed as to its origin, there will no doubt be an uptick in and intensified debate about such a major policy change, as well as the issue of who is liable for a copyright infringement in a work nonetheless produced from hardware and other technologies that, in the abstract, suggest it is the creation of "machine(s)" (and not a human being, as the Constitution directs).

4.2 Trademark Protection of Avatar Identities

If a digital avatar tells people where a product or service comes from, it can qualify for trademark protection—and that's often a smart move. In the U.S., the Lanham Act covers

distinctive marks[12] used in business, so if your avatar stands out and has a strong, recognizable style, it can check those boxes pretty easily. Trademark protection brings some real perks for owners. First off, it doesn't expire if you keep using and renewing it. It also links protection to the way you use the avatar with your brand or service, not just to a single artwork or pose. When it comes to stopping knock-off merchandise or keeping competitors from using confusingly similar avatars, trademarks usually offer stronger tools than copyright. Still, there's one big catch: distinctiveness. If your avatar looks like a regular person—something photorealistic that could be anyone—it won't qualify as distinctive right away. You'll have to build up recognition through steady use and plenty of advertising before registration opens up. This leaves brand-new avatar brands a bit exposed for a while. And U.S. courts stick to this standard—they won't grant trademarks for avatars that are just names or simple likenesses if shoppers don't clearly associate them with your company.

Now that virtual influencers are popping up all over social media—take Lil Miquela, for instance—the trademark questions have gotten a lot more interesting. Companies pour a lot into building a look and identity for these fictional characters, so naturally, they want protection. Registering an avatar's name or stylized image as a trademark is a good start. But it doesn't stop others from making their own lookalike digital influencers. If they don't copy the specific images or trade dress you've registered, they're often in the clear. So, trademark protection really matters, but it isn't the whole story.

4.3 Right of Publicity and Likeness-Based Avatars

When digital avatars are based on real people, the right of publicity comes into play. This concept, first shaped in Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.[13], lets people control and profit from the commercial use of their identity—like their name, face, voice, and overall persona. It's not the same as copyright or trademark. Those protect creative works or brand names. The right of publicity protects the person. A lot of the fights over avatars and the right of publicity have involved athletes in video games. Developers put these athletes into games without getting their permission. In Hart v. Electronic Arts, Inc., for instance, the court said EA couldn't just use a college quarterback's likeness[14]—his jersey, looks, and

[12] Lanham Act, 15 U.S.C. § 1051 et seq. (2018).
[13] Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866 (2d Cir. 1953).
[14] Hart v. Electronic Arts, Inc., 717 F.3d 141, 166 (3d Cir. 2013).

playing style—without making real creative changes. The court shot down the idea that the First Amendment automatically protects this kind of use, saying creativity has to go beyond just copying someone's image. California has some of the toughest right of publicity laws in the country.[15] These laws protect not just living celebrities, but their estates after death, from unauthorized commercial use. More states are passing or updating laws to address AI, since companies are now using AI models trained on public footage to generate fake voices or images. Congress has floated the No Fakes Act[16] to make one national rule, but it's not law yet. Globally, the situation is patchy. India doesn't have a specific right of publicity law, but courts there recognize similar protections through privacy and misrepresentation claims. In Europe, the GDPR gives a lot of protection to personal and biometric data[17], which covers avatars made from real images. Still, there's no single EU-wide right like the ones in U.S. states, and each country handles things their own way. Deepfake technology is pushing these legal boundaries. When AI uses clips of someone to create a fake but convincing avatar, the old rules get stretched. The real challenge is proving that an AI-generated image or voice unmistakably resembles the real person. U.S. courts now say the right of publicity includes voices and other personal qualities, not just faces, but dealing with AI fakes is still a legal gray area.

4.4 Contractual Frameworks and Platform Terms of Service

When it comes to who really controls your avatar, it's rarely a matter of law or a court ruling. What actually matters are the platform's terms of service. Whether you're in a virtual world or a big-name game, most platforms write their terms to grab sweeping rights over anything you create — your avatars, your mods, your custom skins. They spell out that they can change or delete your creations whenever they like, and they make it crystal clear: you don't truly own your virtual items or characters. This sets up a pretty lopsided relationship. Players pour time, creativity, and often real money into personalizing avatars. Yet, the small print says, sorry, you don't get any lasting or transferable rights. From a contract law perspective, this usually holds up, as long as users see and agree to the terms. Still, it draws heat for being

[15] Cal. Civ. Code § 3344 (West 2020).
[16] Nurture Originals, Foster Art, and Keep Entertainment Safe Act (NO FAKES Act), S. 4875, 118th Cong. (2024).
[17] Regulation 2016/679, of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data (General Data Protection Regulation), 2016 O.J. (L 119) 1.

an "adhesion contract"[18] — legal boilerplate that takes advantage of the fact that users have zero negotiating power against these huge platforms. Some folks saw non-fungible tokens (NFTs) as a possible fix. They hoped that turning avatars into blockchain-based assets would give users actual, transferable ownership, separate from whatever the platform says. But it hasn't turned out that simple. Owning an NFT doesn't mean you own the copyright to the image or character — you just own a digital token, not the intellectual property itself. There have been plenty of lawsuits in the US claiming that NFT platforms misled people about what rights they were really buying.[19] Courts are now wrestling with how smart contracts fit into IP law, and whether they really transfer any actual rights at all. Meanwhile, Europe is starting to tighten the rules. Laws like the Digital Services Act and the upcoming AI Act[20] will force big platforms to be more transparent and accountable about how they handle user data and rights. This goes beyond old-school IP law, hinting that the future of avatar rights isn't just about user agreements or copyright. It's about real regulation of what platforms can — and can't — do.

4.5 Cross-Border and Comparative Observations

Digital avatars live in a world with no borders, but the laws that shape them are still stuck inside country lines. Imagine someone in India playing a game on a U.S. platform, with their avatar showing up for users in the European Union—that's three different legal systems right off the bat. And since there's no clear international rulebook for digital avatars and IP, everyone—users and platforms alike—has to wade through a tangled web of national laws, conflicting rules about whose law applies, and a mess of international agreements.

WIPO knows there's a gap here. In its issues paper on IP and AI[21], the organization points out that treaties like the Berne Convention and the TRIPS Agreement[22] simply weren't written with things like AI-generated content or digital identity in mind. The countries

[18] Restatement (Second) of Contracts § 211 (Am. Law Inst. 1981).
[19] Friel v. Dapper Labs, Inc., No. 21-cv-5837 (VM), 2023 WL 2162747 (S.D.N.Y. Feb. 22, 2023).
[20] Regulation 2022/2065, of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), 2022 O.J. (L 277) 1; Regulation 2024/1689, of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 2024 O.J. (L 1689).
[21] World Intellectual Property Org., WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI): Revised Issues Paper, WIPO/IP/AI/2/GE/20/1 (2020).
[22] Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris, July 24, 1971; Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C.

involved can't even agree on a common way forward. So, unless that changes, the rules around who actually owns digital avatars will stay patchy and inconsistent.

5. Discussion

So, looking at all this, it's clear that the current intellectual property laws just don't cover digital avatars in a consistent or complete way. Start with copyright: it does a decent job if a person creates an avatar, but when an AI makes it, things fall apart. Nobody's really "the author," so there's no copyright—those works just spill into the public domain. And that group is only going to grow as more people use AI for creative work.

Trademark law's a bit better, but only if your avatar actually becomes recognizable in the market. You need some real-world distinctiveness and commercial use for protection, so if you're just making something cool for yourself or you're not super famous, trademark isn't going to help much. It works for big, branded avatars, not everyday users or small creators. Now, the right of publicity—here, the problems really stand out. In the U.S., the laws are all over the place depending on the state. India doesn't have a clear, codified right at all, and the EU mostly tackles it through data protection rules, which only catch certain cases. All this means that if someone uses AI to create a synthetic version of your face or voice, they'll probably get away with it—at least under the current rules. Legal defenses like "transformative use"[23] or First Amendment arguments might occasionally protect speech, but courts haven't handled them the same way every time. And honestly, these defenses don't fit well when an AI model is simply riffing on someone's likeness with no human creativity involved. Contract law ends up being where most people actually feel the rules. The platforms set the terms, and usually those terms give the platform most of the control over your avatar and its rights—way beyond anything IP law would require. The EU has started to suggest a more public role for the law here, but for now, there's not much clarity about what that means for digital avatars specifically. From a policy angle, the smartest fixes probably come in two stages. First, governments need to decide if they want special laws just for AI-generated likeness and personality rights, instead of patching things over with old doctrines. The UK is asking these questions directly with its 2024 consultation on generative AI and IP

[23] Comedy III Prods., Inc. v. Gary Saderup, Inc., 21 P.3d 797 (Cal. 2001).

rights[24], and that's the kind of open conversation that helps. Second, at the global level, WIPO should work toward some kind of international guideline or treaty about digital identity and AI likenesses. That would help cut through the current mess of fragmented rules.

6. Conclusion

Digital avatars have turned into a big deal in today's digital economy. They're making a lot of money, but honestly, the law hasn't really caught up. This paper looked at how our current intellectual property rules—copyright, trademark, right of publicity, plus whatever platforms stick in their terms of service—deal with avatar ownership and profit. And, let's just say, none of them quite cover everything. Here's where things go wrong. First, AI-generated avatars raise the question: who's the actual author? Our copyright laws just don't have an answer. Then, if you have an avatar based on a real person, the rules for protecting their likeness aren't the same everywhere—that's confusing and leaves big gaps. On top of all that, platforms themselves hold almost all the cards by writing contracts however they want, pretty much unchecked. This matters in the real world. Artists and regular people whose appearance or creativity is used in these avatars might not have any real rights, even when they clearly contributed something unique. So, what should change? The paper suggests three big fixes. First, update copyright laws so they actually fit AI-created stuff. That could mean making a new kind of copyright for those cases or at least explaining how much a human needs to be involved before they get protection. Next, the U.S. should pass a federal law giving stronger and clearer rights for people's likenesses—and other countries like India and the EU should build their own versions and get them all working together, focusing straight on the problems created by AI. Finally, digital platforms need tougher rules. They should have to tell users what IP rights they keep or give away, and there should be real limits on how much platforms can grab from users through fine print. Digital avatars aren't going anywhere; as more people dive into virtual worlds, these legal blind spots will matter even more. The law's job isn't to kill creativity or slow down innovation, but it needs to actually protect people—both their artwork and who they are—so nobody gets left behind.

[24] UK Intellectual Property Office & Dep't for Sci., Innovation & Tech., Copyright and Artificial Intelligence: Consultation (Dec. 17, 2024).