[NL] Report for Government on the regulation of deepfake technology

IRIS 2022-3:1/17

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On 5 January 2022, the *Wetenschappelijk Onderzoek- en Documentatiecentrum* (Research and Documentation Centre), of the Dutch Ministry of Justice and Security (WODC), published an important report on the legal challenges of deepfake technology. The report was sent to Parliament on 17 January 2022, along with a letter, from the Minister for Legal Protection (male), stating that the Cabinet had commissioned the research because of concerns about the rapid development and spread of deepfake technology. The study, carried out by researchers from Tilburg University, aims to inform the Government about the risks of deepfakes, the applicable legal framework, and the measures available to mitigate the risks.

The report focuses on the creation and dissemination of deepfakes in horizontal relations, i.e., from citizen to citizen. The central question is whether the existing legal regime is capable of adequately tackling (future) unlawful or criminal expressions of deepfake technology, or whether national laws and regulations must be amended in order to address its negative effects.

According to experts interviewed for the study, the amount of manipulated audiovisual content will grow exponentially as sophisticated deepfake technology is likely to become accessible to the general public within the next two to three years. Although the technology could have positive applications for democracy, e.g., in creating satire, the report warns that deepfakes have the ability to cause major societal harms. Media and journalists could become hesitant to use video evidence if they have to check all content for authenticity; legal proceedings may require longer investigations in order to rule out fabricated evidence; elections can be disturbed by fake clips discrediting political opponents; and the growth of deepfake pornography could negatively impact the position of women in society.

The report concludes that most problematic deepfake applications are already prohibited or restricted by law. Dutch criminal law seems generally well equipped to address specific deepfakes used for identity theft, fraud, and the distribution of non-consensual pornography. Additionally, the EU General Data Protection Regulation and the European Convention on Human Rights provide general rules on data processing and respect for private life that may restrict the production and distribution of certain deepfakes, for example, those that include sensitive

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personal data or unjustifiably violate someone's reputation and/or honour.

Although there is room for adjustments improving the existing substantive and procedural legal framework, a key barrier remains enforcement. As such, the report reflects on issues regarding, inter alia, time constraints, costs, scale, jurisdiction, technical means, and the role of internet intermediaries.

Based on the societal and legal analysis, the report has identified 12 regulatory options to be considered by the Dutch Government and Parliament, including amendments to ensure effective oversight and enforcement of (new) legal provisions. The Minister for Legal Protection (male) has indicated that the Government's official response, and particularly its evaluation of the recommendations, is expected in the spring of 2022.

B. van der Sloot, Y. Wagensveld en B.J. Koops, Deepfakes: De juridische uitdagingen van een synthetische samenleving, WODC Rapport 3137 (2022), Tilburg University – Tilburg Institute for Law, Technology, and Society

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https://www.tilburguniversity.edu/sites/default/files/download/Deepfake%20EN.pdf

Brief van de Minister voor Rechtsbescherming van 17 januari 2022, 3722941

https://www.rijksoverheid.nl/documenten/rapporten/2022/01/17/tk-bijlage-deepfake-nl

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