Deepfake Pornography and Its Legislative Remedies

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A. Introduction

To the dismay of many football fans, but to the joy of many consumers of pop culture, the highly publicized pairing of Taylor Swift and Travis Kelce in late 2023 led to many National Football League (NFL) games covering Swift's travels to Kansas City. While most football fans angered at Swift's media coverage resorted to complaining on X (Twitter) or Facebook, some fans took their anger a step further and utilized artificial intelligence (AI) to create deepfake pornography, which was widely spread across various social media platforms.[1] Prior to her relationship with Kelce, Kanye West created a nude wax model of Swift without her consent, and used this wax model in a music video which is still available to watch on YouTube.[2]

According to an article published in *Social Sciences & Humanities Open*, "[d]eepfake pornography refers to video or image manipulation using AI technology to replace a person's face or body in sexually explicit content without the consent or knowledge of the individual involved."[3] Deepfakes can also involve the replication of voices and erotic chat logs, increasing the concern for the safety and privacy of the victims.[4] It has been claimed that 98% of deepfake videos online are pornographic, and 99% of these videos feature women.[5]

While Swift's experience with deepfake pornography may have made the issue more known in the public light, individuals across the world, including children, have been impacted by these AI creations. In February 2025, Eli Manning Heacock took his own life after falling victim to an extortion scam that involved AI generated sexually explicit images.[6] He was 16 years old.[7]

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[1] Halle Nelson, *Taylor Swift and the Dangers of Deepfake Pornography*, NATIONAL SEXUAL VIOLENCE RESOURCE CENTER (Feb. 7, 2024), https://www.nsvrc.org/blogs/feminism/taylor-swift-and-dangers-deepfake-pornography [https://perma.cc/7XFB-F4Y8].

[2] *Id.*

[3] Furizal et al., *Social, legal, and ethical implications of AI-Generated deepfake pornography on digital platforms: A systematic literature review*, 12 SOC. SCI. AND HUMANITIES OPEN 101882 (2025).

[4] *Id.*

[5] Matthew Lowe, *The Deeply Complicated Issues Surrounding Deepfakes*, NEW YORK STATE BAR ASSOCIATION (Feb. 3, 2025), https://nysba.org/the-deeply-complicated-issues-surrounding-deepfakes/?srsltid=AfmBOorhk8J1NRcrYf9P72q8YsBz_NOhMckEefgwJ-xGv4_XzLaJ7cZ1#_ednref31 [https://perma.cc/CFQ6-P3Z5].

[6] Ben Johnson, *'Absolutely Horrific': AI-Generated Child Porn Leads Teen to Commit Suicide*, THE WASHINGTON STAND (June 4, 2025), https://washingtonstand.com/news/absolutely-horrific-aigenerated-child-porn-leads-teen-to-commit-suicide [https://perma.cc/PQL3-SWKY].

[7] *Id.*

B. Legislative Background of Obscenity

Many cases in the United States' judicial history have attempted to legislate pornography and obscenity. In *Osborne v. Ohio*, the Supreme Court held that an Ohio law banning the possession of child pornography is constitutional due to Ohio's state interest in protecting child victims.[8] While this law, and numerous others cited in Justice Blackmun's majority opinion, provide for protections to victims of child pornography, it is unclear from *Osborne* how these laws apply to pornography generated through artificial intelligence.[9]

The legal standard for obscene language and images created in *Miller v. California* may be the most effective way to determine whether AI creations of pornographic depictions are protected by the First Amendment.[10] In *Miller*, the court sets out a three part test, "… whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest… whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and… whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."[11] Given the graphic sexual nature of these images, it is likely that the majority of deepfake pornographic images would meet the standard set forth in *Miller* to be excluded from First Amendment protected speech.

C. Legislative Remedies

Given the lack of case law specifically pertaining pornography created using artificial intelligence, state and federal legislatures have introduced legislation to curtail this problem and provide criminal and civil penalties. Specifically in response to Swift's case, the DEFIANCE Act was introduced at the federal level and provided for the ability of victims to take civil actions against those who created these AI depictions.[12] Introduced by Senator Dick Durbin, the DEFIANCE Act passed the Senate on July 23, 2024, and is currently held at the desk in the House of Representatives.[13]

On May 19, 2025, the Take It Down Act was signed into law after high levels of bipartisan support in Congress.[14] The Act sets forth elements to legislatively qualify what is considered

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[8] *Osborne v. Ohio*, 495 U.S. 103, 110-111 (1990).
[9] *Id.* at 109.
[10] *See* Julia Sturges, *Taylor Swift, Deepfakes, and the First Amendment: Changing the Legal Landscape for Victims of Non-Consensual Artificial Pornography,* XXV Geo. J. Gender & L. (2024).
[11] *Id.*; *Miller v. California*, 413 U.S. 15, 24 (1973).
[12] *See* Sturges, *supra* note 10.
[13] DEFIANCE ACT OF 2024, https://www.congress.gov/bill/118th-congress/senate-bill/3696/all-actions (last visited Sept. 13, 2025) [https://perma.cc/WUM7-VLYB].
[14] NEW FEDERAL AI DEEPFAKE LAW TAKES EFFECT: 4 STEPS SCHOOLS MUST TAKE UNDER THE "TAKE IT DOWN" ACT, https://www.fisherphillips.com/en/news-insights/new-federal-ai-deepfake-law-takes-effect.html (last visited Sept. 13, 2025) [https://perma.cc/Q59H-PCN4].

deepfake pornography, with less stringent requirements to define what is considered child deepfake pornography.[15] The Act sets forth criminal punishments for publication of and threats of publishing intimate deepfake depictions.[16] Finally, the Act provides for compliance measures that online platforms must take in order to ensure that deepfake pornographic depictions can be reported and subsequently removed from the platform.[17]

On the state level, numerous jurisdictions have taken steps to prevent AI pornographic materials from being distributed and viewed. There are 45 states that have enacted legislation criminalizing AI generated child pornography. States have been more proactive in enacting legislation to prevent child pornography from being disseminated, even if it is AI or computer generated.[18] For example, California clearly provides criminal punishment for those who generate AI child pornography in Assembly Bill No. 1831, Chapter 926.[19] The statute specifically references deepfakes by saying, "As technology evolves, so must our laws. California's law regulating CSAM must be updated to also prohibit artificially created images that depict the sexual assault and exploitation of children and that are obscene."[20]

However, Ohio is not one of these jurisdictions.[21] In 2025, the Ohio General Assembly passed Amended Substitute House Bill No. 96, which updated its statute regarding nonconsensual pornographic material of those over age 18.[22] The bill defines fabricated sexual image as, "[a] created, adapted, or modified image that depicts another person, the other person is recognizable in the image by the other person's face, likeness, or other distinguishing characteristic, and the other person depicted in the image is in a state of nudity."[23] The statutory scheme provides for felony punishment for those disseminating these images.[24] Going forward, Ohio should take action in the legislature to ensure that children are protected in a similar manner.

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[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] STATE LAWS CRIMINALIZING AI-GENERATED OR COMPUTER-EDITED CSAM, https://enoughabuse.org/get-vocal/laws-by-state/state-laws-criminalizing-ai-generated-or-computer-edited-child-sexual-abuse-material-csam/ (last visited Sept. 13, 2025) [https://perma.cc/2HUF-LS5V] [hereinafter *State Laws*].
[19] *Id.*; Assembly B. No. 1831, Ch. 926 (Cal. 2024).
[20] *State Laws*, *supra* note 18 (quoting Assembly B. No. 1831, *supra* note 19).
[21] *State Laws*, *supra* note 18.
[22] *Id.*; Am. Sub. H. B. No. 96, 136th G.A. (Ohio 2025).
[23] *State Laws*, *supra* note 18 (quoting Am. Sub. H. B. No. 96, *supra* note 22).
[24] *State Laws*, *supra* note 18.

D. Conclusion

While many can agree that the production of deepfake pornography has grave privacy and safety concerns for its victims, there are differing approaches to legal recourse. While some staunch First Amendment defenders may argue that the production of deepfake pornography is constitutionally valid and a form of free speech, one may interpret *Osborne* and *Miller* to strike down this thinking. Legislative remedies have provided for both the federal and state capacity to criminalize the dissemination and possession of this content. As artificial intelligence technology continues to evolve in our society, it is important that lawmakers and legal analysts continue to examine the impact this form of technology can have on the legal landscape in the United States, and the privacy of its citizens.