

AI, media influence, and the legal challenges of freedom of speech

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The article examines the urgent need for regulatory changes in response to AI's influence on the information environment. Social media, while adopting new mechanisms, still use traditional audience manipulation, raising challenges for human rights and freedoms. AI-generated content and disinformation threaten democracy, yet legal frameworks remain inadequate. The article stresses balancing media freedom with the need to address harmful content responsibly.

Keywords: media; AI; freedom of speech; legal challenges; information; disinformation.

IA, influenza dei media e le sfide legali della libertà di espressione

L'articolo esamina l'urgente necessità di cambiamenti normativi in risposta all'influenza dell'intelligenza artificiale (IA) sull'ambiente informativo. I media sociali, pur adottando nuovi meccanismi, continuano a utilizzare metodi tradizionali di manipolazione del pubblico, sollevando sfide per i diritti umani e le libertà fondamentali. I contenuti generati dall'IA e la disinformazione minacciano la democrazia, mentre i quadri giuridici rimangono inadeguati. L'articolo sottolinea l'importanza di bilanciare la libertà dei media con la necessità di affrontare responsabilmente i contenuti dannosi.

Parole chiave: media; IA; libertà di espressione; sfide legali; informazione; disinformazione.

Introduction

The Internet has become a space where vast amounts of information are processed while simultaneously upholding the undeniable need for the protection of personal rights and privacy. It is a true paradoxical space. The use of anthropomorphic interfaces, such as human-like voices used by assistants like Alexa and Siri, raises new concerns regarding privacy and the protection of personal rights. Research in social sciences indicates that people tend to interact with

DOI: 10.5281/zenodo.17297427

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Sicurezza e scienze sociali XIII, 2/2025, ISSN 2283-8740, ISSN_e 2283-7523

technology as if it were human. This suggests that individuals may be more inclined to develop trust-based relationships with artificial intelligence designed to replicate human characteristics, making them more likely to share personal information in a way that is more widespread compared to other technologies that collect data through traditional means.

The main objective of this article is to analyze the impact of artificial intelligence (AI) on the digital information environment, particularly in the context of media communication, freedom of speech, privacy protection, and journalistic ethics. The study aims to assess how AI-driven technologies influence the creation, distribution, and perception of information, as well as the regulatory challenges associated with ensuring human rights and fundamental freedoms in the digital era.

The authors of the article have formulated the following research questions:

- How does AI influence the creation and dissemination of information in digital media?
- What are the primary risks and ethical concerns associated with AI-generated content, particularly in relation to privacy and journalistic integrity?
- How do AI-driven personalization algorithms affect public opinion, political discourse, and the spread of misinformation?
- What regulatory challenges exist in ensuring transparency and accountability for AI-generated content in media and communication?
- How should the legal system and media organizations adapt to address the risks posed by AI in information management and journalistic ethics?
- To what extent does AI contribute to the asymmetry between the rights of individual users and the interests of corporations or governmental institutions controlling AI-driven technologies?

This framework provides a structured approach to examining the implications of AI in the digital information ecosystem, emphasizing both its potential benefits and the emerging threats to democratic values, privacy, and media ethics. In turn, issues related to the need for new regulations in the field of AI functioning concern not only the issue of responsibility for AI actions. They also refer to questions about the limits of regulations related to human rights. The media and legal norms related to them are a simple reflection of the condition of a democratic state and its values, which include freedom of speech. Therefore, it is the example of the media that best illustrates the critical moment for freedoms previously considered unshakable. The article presents the issue of eternal

dilemmas affecting the limits of regulations related to human rights and freedoms.

1. Artificial intelligence and Privacy – definitional issues

In its simplest form, artificial intelligence (AI) is a subfield of computer science aimed at developing programs capable of performing tasks traditionally reserved for humans. These tasks can be considered intelligent, including visual and auditory perception, learning and adaptation, reasoning, pattern recognition, and decision-making.

The term “artificial intelligence” is used broadly to describe a collection of related techniques and technologies, including machine learning, predictive analytics, natural language processing, and robotics. While the philosophy of artificial intelligence has been debated since the early 18th century with Gottfried Wilhelm Leibniz, the modern concept of AI dates to the early 1940s and gained prominence with the development of the Turing Test, originally called the imitation game by Alan Turing in 1949 (Turing, 1950). AI has been intentionally programmed to be competent in a specific area, sometimes referred to as augmented intelligence, emphasizing its ability to enhance human intelligence. On the other hand, the concept of artificial general intelligence (AGI) refers to a level of intelligence that spans multiple domains. Based on the idea of AGI (Krishna, 2023), artificial superintelligence is generally considered AI that is both general and surpasses human intelligence.

Three key factors have contributed to the increasing presence of AI technologies in daily life:

1. Improved algorithms,
2. Enhanced computing power,
3. Greater capacity to capture and store vast amounts of data.

Numerous studies have examined the emergence of the “privacy paradox”, in which people express concern about their privacy yet continue to willingly share personal information through the systems and technologies they use. A key question arises regarding the use of personal attributes and the intrusion into private spheres in relation to freedom of speech, which includes both the right to communicate and the right to communicate with. One example of such dilemmas is the case of Polish Nobel laureate Wisława Szymborska. In a radio broadcast, an AI-generated journalist conducted an interview in which Szymborska’s voice was used to describe her emotions when receiving the Nobel Prize and to express opinions on events that occurred after her death. This case illustrates the

ethical and legal challenges posed by AI-driven content creation, particularly concerning the boundaries of privacy, consent, and posthumous digital identity.

2. Conditions for the dissemination of the image of public figures under the copyright and related rights act

The dissemination of an image requires the consent of the person depicted (Barta, 1997). The statutory requirement to obtain consent for the publication of an image is undisputed, as an individual's consent permits the publication of their image, while its absence equates to a prohibition on such publication (Daniluk, 2007). This means that, as a rule, the legislator requires consent for the dissemination of an image. However, exceptions to this rule are provided by law.

Consent is not required in the following cases:

1. When the person depicted has received an agreed payment for posing (for the recording of their image).
2. Under Article 81(2)(1) of the Copyright Act, when the image of a well-known person has been taken in connection with the performance of their public functions, particularly political, social, or professional roles, or when the person is merely a detail within a larger composition, such as a gathering, landscape, or public event.

The ratio Legis of Article 81(2) of the Copyright Act stems from the need to ensure creative freedom, allowing the media to fulfill their informational and documentary functions, granting them priority over individual personal rights.

This provision enables:

- Informational, documentary, and reporting activities,
- The presentation of public events,
- The collection of materials for documentation purposes,
- The freedom to photograph public events¹.

The purpose of dissemination is not to make the image of a specific individual available but rather to depict a fragment of social life or the surrounding reality (Barta, Markiewicz, 2002: 17; Flisak, 2015: 1150). This restriction cannot be applied to a fictional or artificially generated situation, such as one created using artificial intelligence. The rules for disseminating the image of a public figure are intended to fulfill the fundamental role of the press and media, namely:

- Providing citizens with reliable information,

¹ Judgment of the Court of Appeal in Warsaw of January 13, 1999, case no. I ACa 1089/98, OSP 2000, vol. 9, item 142.

- Ensuring transparency in public life,
- Facilitating social oversight and criticism. (Barta, Markiewicz, 2005; Sieńczyło-Chlabicz, 2007)

However, these principles do not apply when the identity of a public figure is misrepresented, such as in the case of a fabricated interview with that person, which would constitute misleading the public.

The permissible dissemination of an image without the consent of the person depicted has been limited by the legislator to public figures. However, the legislator has not provided a normative definition of the term “public figure”. In legal doctrine and jurisprudence, it is emphasized that in determining whether a person is publicly known, key factors include:

- Holding political or social functions,
- Gaining popularity beyond their immediate environment due to professional, amateur, hobbyist, or sports-related activities.

The type of activity that made a person well known is irrelevant. In this context, a public figure may be an actor, politician, social activist, or even a notorious criminal, as well as a writer². This category includes not only politicians, singers, and actors but also individuals engaged in other activities, such as social or economic endeavors³. The analysis of the concept of a publicly known person also requires addressing the question of whether individuals holding public office fall within this category. This issue was considered in the Supreme Court ruling of September 12, 2001⁴. In this ruling, the Supreme Court addressed the definition of the term “public function.” It said that the category of publicly known people depends on factors such as:

- Holding political, social, or professional functions at various levels,
- Gaining popularity beyond their immediate professional environment.

The court emphasized that copyright law uses the term “publicly known person”, whereas press law refers to the criterion of public activity. However, in both cases, the key factor is the public nature of the person’s activities. According to the Supreme Court’s position, the status of public function holder is not limited to those holding the highest state offices. Depending on the circumstances of a particular case, it may also apply to individuals who are socially or professionally active on a local scale (Kowalski, 2002). The criterion of “connection with the performance of public functions” should be interpreted broadly. The lawful dissemination of an image includes not only portraying a public figure while

² Judgment of the Supreme Court of September 12, 2001, case no. V CKN 440/00, OSNC 2002, No. 5, item 68.

³ Case No. I CSK 134/07, Lex 485999.

⁴ Case No. V CKN 440/2000, OSP 2002, No. 12, item 160.

performing their duties but also using archival photographs, provided that the form of the image does not alter its nature.

3. Criterion of the purpose of image dissemination

The purpose of image dissemination is not explicitly stated in Article 81(2) of the Copyright Act. However, based on this criterion, it is impermissible to use an image for purposes other than informing about the public functions performed by the depicted person, particularly for advertising purposes. Regarding the third criterion, the purpose of image dissemination violation may occur if the image is used for purposes unrelated to reporting on the person's public functions. While this condition is not explicitly stated in the law, it follows from the first criterion, which requires that the dissemination of an image must be connected to presenting the performance of public functions (Sieńczyło-Chlabicz, 2001: 98). In the literature on the subject, it is consistently emphasized that the dissemination of the image of a publicly known person cannot be carried out for purely commercial purposes (Matlak, 2004: 335). An example of a violation is the dissemination of the image of a publicly known person without their consent for advertising purposes⁵. The wording of the discussed provision does not authorize the use of public figures' images for advertising purposes. Such use requires the consent of the rights holder. The question arises as to whether consent is also required for research experiments related to AI.

Noteworthy is the perspective of A. Matlak, who argues that the dissemination of the image of a publicly known person may occur not only to inform the public about their functions but also in cases justified by teaching, explanation, or critical analysis. The author allows for the use of an image in:

- School textbooks (e.g., the image of Lech Wałęsa),
- Scientific dissertations (Matlak, 2004: 336).

An example of a court ruling in which the publication of an image did not meet the purpose criterion is the Supreme Court judgment of January 27, 2006⁶. A journalist published an image of a city mayor alongside Charlie Chaplin, highlighting similarities in appearance, facial expressions, and gestures, suggesting that such expressions could help avoid criticism in times of failure.

The Supreme Court ruled that the published photomontage was not related to the mayor's public functions and was intended solely to ridicule the criticized

⁵ See the judgment of the Court of Appeal in Warsaw of February 24, 2005, case no. VI ACa 721/2004, LexPolonica no. 378700.

⁶ Case No. III CSK 89/2005, Lex No. 209293.

individual. A literal interpretation of Article 24 of the Civil Code and Article 81(2) of the Copyright Act might suggest that creating an image is always permissible, while only its dissemination is subject to specific rules. However, this interpretation appears too broad. For example, photographing a person without their knowledge or against their will could be considered unlawful conduct that threatens a legally protected interest. The subject prohibiting such behavior is exercising their legal rights. Photographing publicly known individuals against their will may be seen as a violation of their personal rights, as this threat could later manifest in the use, dissemination, or manipulation of the image (such as photomontage). Therefore, individuals being photographed should be granted protection even before the dissemination of their image, without having to wait until their personal rights are violated. Anyone who acts against the will of the rights holder acts unlawfully (Wojnicka, 1990). This issue is widely discussed within the common law system. An example of restricting journalists' rights in favor of protecting personal rights can be found in U.S. legislation, specifically in the California Privacy Act of 1998 (Sieńczyło-Chlabicz, 2006: 289). The California Privacy Act of 1998 established the right to protect one's image in cases where photographs related to personal, or family life are taken using specialized equipment. This law not only regulates the dissemination of images but also defines the boundaries of permissible methods for journalists to obtain photographs. The cumulative fulfillment of three conditions triggers journalistic liability for infringement:

1. The photographs must concern purely private activities. Personal activities occurring in public spaces are considered accessible to others and are not protected.
2. The journalist must use specialized equipment that allows access to the private sphere of the individual without their knowledge or consent.
3. The act refers to the concept of an "individual's private space", defining it as an area inaccessible to cameras and journalists' lenses.

In legal doctrine, this private space is defined as: «An area not visible to third parties without the use of specialized devices» (Sieńczyło-Chlabicz, 2006: 289). This regulation, which conditions the protection of a person's image on the fulfillment of several strict requirements, sets a proper legislative direction, aiming to limit the rights of the press, which often intrudes into an individual's private sphere.

Conclusions

Artificial intelligence (AI) has existed for quite some time and presents challenges to intellectual property rights as well as laws protecting personal rights and privacy. Some of these issues are particularly relevant to AI applications, such as deepfakes. Deepfakes are not entirely new, in the sense that technology enabling deception has long existed. However, what is new is how easily anyone can now use AI to create realistic-looking videos or audio recordings. The evolution of technology means that some previous legal principles may need to be reconsidered. Even if AI does not replace public figures or journalists, the ability to generate digital personalities may reshape how we think about protecting rights such as the right to one's voice or image. Furthermore, shaping public opinion based on AI-generated content raises not only legal but primarily ethical concerns, potentially violating fundamental journalistic and media integrity standards. Another unresolved issue is the right of journalists to refuse to follow an editorial directive when asked to publish content that violates principles of accuracy, objectivity, and professional diligence. A journalist has the right to object to publishing press material if modifications have been introduced that distort the meaning and intent of the original version. But do these rights also apply to AI-generated journalists?

Answering the research questions posed in the article, it can be stated that AI significantly influences the processes of information creation and dissemination in digital media by automating content production, personalizing messages, and analyzing data. While it can support journalists, it can also generate content independently, raising serious concerns about the credibility of information and media manipulation. One of the biggest risks associated with AI in the media is its impact on privacy and journalistic ethics. AI enables large-scale user profiling, tracking online activity, and utilizing personal data, often without full awareness. Moreover, the advancement of deep-fake technology allows for the creation of highly realistic yet fake content, contributing to disinformation and undermining trust in the media.

A key issue is the role of personalization algorithms in shaping public opinion and political discourse. By selecting content based on user preferences, these systems can create so-called information bubbles, reinforcing societal polarization and making it easier to manipulate public opinion. Recommendation algorithms used in social media often facilitate the spread of false information, as sensational and controversial content generates higher user engagement. In terms of legal regulation, there are significant challenges in ensuring transparency and accountability for AI-generated content. Current legal frameworks struggle to keep pace with rapidly evolving technologies, making it difficult to

enforce responsibility for disinformation or privacy violations. There are also difficulties in determining liability for AI-generated content, necessitating the development of new regulations tailored to AI's unique characteristics. To mitigate these risks, both legal systems and media organizations must adapt to the new challenges posed by AI. Detailed legal frameworks should be developed to address liability for AI-generated content, including deepfakes, data manipulation, and the spread of disinformation. Media organizations should implement verification mechanisms for AI-generated content and promote ethical standards in AI use. The application of AI in media also contributes to the growing asymmetry between the rights of individual users and the interests of corporations and government institutions controlling these technologies. AI owners have access to vast amounts of data and the ability to influence society through algorithms, significantly increasing their advantage over individuals in controlling information. This creates a risk of limiting freedom of information and AI taking on the role of an intermediary in knowledge access.

In conclusion, AI is revolutionizing the information ecosystem, offering both immense benefits and serious threats. To maintain a balance between freedom of speech and protecting users from manipulation and privacy violations, appropriate legal regulations and efforts to increase algorithmic transparency are essential. Ethical considerations in AI use must also be prioritized to prevent violations of fundamental rights and democratic values. The article emphasizes that AI can deepen the asymmetry between citizens' rights and the interests of entities controlling these technologies, posing a threat to fundamental democratic values, including press freedom. At the same time, it becomes necessary to develop new legal regulations that will adapt existing laws to the digital reality and provide more effective protection against abuses. The key challenge remains finding a balance between freedom of expression and the need to protect users from manipulation and violations of personal rights.

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