WHAT'S IN A VOICE? THE LEGAL IMPLICATIONS OF VOICE CLONING

Bryn Wells-Edwards*

This Note focuses on the legal implications of artificial intelligence voice cloning, where algorithms are utilized to create convincing copies of voices. Such clones are easily manipulated and are often used to spread misinformation online. The number of video or audio clips posted online containing voice clones has increased drastically over the past five years, and this trend will likely continue. As more individuals—mainly celebrities—fall victim to voice-cloning attacks, legal avenues for recourse will become highly desirable.

Because this is such a novel technology, courts have not had the opportunity to address voice cloning within the privacy tort sphere. This Note aims to provide some guidance for future victims by examining existing causes of action and evaluating their applicability to instances of voice cloning. These causes of action include copyright infringement, (mis)appropriation of identity, defamation, and false light. Quickly determining that copyright and IP-related torts do not apply to instances of voice cloning, the Note then turns to an in-depth examination of two popular privacy torts: defamation and false light. Recognizing that both defamation and false light causes of action will apply to instances of voice cloning, this Note recommends that victims opt to pursue a false light cause of action, if at all possible. Because the false light privacy tort is not currently recognized in all states, this Note asks legislatures to reinstate the cause of action for instances of voice cloning.

TABLE OF CONTENTS

* J.D. Candidate, University of Arizona James E. Rogers College of Law, 2023

INTRODUCTION—I CAN'T BELIEVE MY EARS! AI AND VOICE CLONING

Artificial intelligence ("AI") is scary. The Internet's growing access to AI is even scarier. Technology formerly reserved for those with access to cutting-edge technology and advanced computing capabilities is now available to anyone with internet access.[1] A cursory Google search for "voice cloning" reveals hits like respeecher.com, which promises users the ability to create speech that is indistinguishable from the original speaker and heralds their technology as perfect for filmmakers, game developers, and other content creators.[2]

Typically, AI bots learn how to mimic individual speech patterns and cadence via exposure to recordings of human speech.[3] Users upload audio data from a chosen speaker, and the AI creates a template of the studied voice that can be fed scripts, manipulated, and uploaded to a number of different interfaces.[4] Though this voice clone can be utilized in marketing campaigns, advertisements, or smart

---

1. *See* Apple, APP STORE, https://apps.apple.com/us/app/celebrity-voice-changer-parody/id1111710488 [https://perma.cc/5N4S-YGYD] (last visited Sept. 23, 2022) (search "celebrity voice cloning" on App Store—multiple results populate and are available for download).

2. RESPEECHER, https://www.respeecher.com [https://perma.cc/YHT7-S7XA] (last visited Oct. 28, 2021).

3. *See* Kristin Houser, *Alarming AI Clones Both a Person's Voice and Their Speech Patterns*, BYTE (June 11, 2019), https://futurism.com/the-byte/ai-clones-voice-speech-patterns [https://perma.cc/2Y6D-C46U].

4. *See* George Seif, *You Can Now Speak Using Someone Else's Voice with Deep Learning*, TOWARDS DATA SCI. (July 2, 2019), https://towardsdatascience.com/you-can-now-speak-using-someone-elses-voice-with-deep-learning-8be24368fa2b [https://perma.cc/LRV6-DYPS] (explaining that Google researchers have designed a voice cloning system that requires two inputs: the text that the clone creator wants to be read and a sample of the voice which the creator wants to read the text).

speaker apps, it can also be integrated into a video or audio clip.[5] The ease with which computer programs can emulate voices from a single audio clip is fascinating but offers cause for great concern. Proponents of voice cloning tout the technology as revolutionary in the advertising and marketing sector.[6] They allege that a company can give its celebrity spokesperson broader reach by replicating their voice and transforming a single recording into infinite script performances, maximizing the partnership's value.[7] But if a voice is that easily manipulated, it would not be difficult for an ill-intentioned individual to clone a voice. Anybody with access to a computer or a smartphone could manipulate a celebrity's voice (or a falsified version of it) to make them say an infinite number of phrases, with potentially disastrous consequences.[8] Many celebrities have fallen victim to voice cloning and its use in "deepfake" videos, including former Presidents Barack Obama and Donald Trump, actor Tom Cruise, and rapper Jay-Z.[9] Perhaps one of the most salient and current examples of celebrity voice cloning is related to the late celebrity chef Anthony Bourdain and the use of his cloned voice in the documentary *Roadrunner*.[10] Much to the shock and horror of fans, the director of the film used synthetic audio in voice-

5. *Voice Cloning Software*, READSPEAKER.AI, https://www.readspeaker.ai/solutions/voice-cloning-software-readspeaker/ [https://perma.cc/LZ85-BEEE] (last visited Nov. 30, 2021).

6. *6 Challenges for Voicing Video Commercials and How to Fix Them With AI*, RESPEECHER (Nov. 3, 2021), https://respeecher.medium.com/6-challenges-for-voicing-video-commercials-and-how-to-fix-them-with-ai-847a434cf6f3 [https://perma.cc/7L4J-5SZQ]; *The Impact of Deepfake Technology on Digital Marketing and Advertising*, RESPEECHER (Mar. 30, 2021, 9:44 PM), https://www.respeecher.com/blog/impact-deepfake-technology-digital-marketing-advertising [https://perma.cc/BXW9-887K].

7. READSPEAKER.AI, *supra* note 5.

8. Jan Kietzmann et al., *Deepfakes: Trick or Treat?*, 63 BUS. HORIZONS 135, 136–37 (2020) (analyzing the fast-growing accessibility of deepfake technology, explaining that in 2018, the popular deepfake creation program FakeApp required large amounts of input data to generate deepfakes, whereas in 2019, similar applications like "Zao" were less demanding and more accessible). The decline in the volume of data needed to create convincing deepfakes, combined with increased internet access and technological understanding, makes it intuitive to predict that deepfake technology will become increasingly accessible in the coming years.

9. Jacob Gershman, *Imitation Game: The Legal Implications of Voice Cloning*, WALL ST. J. L. BLOG (Apr. 25, 2017), https://www.wsj.com/articles/BL-LB-55168 [https://perma.cc/J447-FE8E]; Scott Stump, *Tom Cruise Deepfake Videos on TikTok Leave People Baffled*, TODAY (Mar. 4, 2021, 6:36 AM), https://www.today.com/tmrw/tom-cruise-deepfake-videos-tiktok-leave-people-baffled-t210704 [https://perma.cc/C4QE-VSJU]; Nick Statt, *Jay Z Tries to Use Copyright Strikes to Remove Deepfaked Audio of Himself from YouTube*, VERGE (Apr. 28, 2020, 3:38 PM), https://www.theverge.com/2020/4/28/21240488/jay-z-deepfakes-roc-nation-youtube-removed-ai-copyright-impersonation [https://perma.cc/DRL9-DVM9].

10. Helen Rosner, *The Ethics of a Deepfake Anthony Bourdain Voice*, NEW YORKER (July 17, 2021), https://www.newyorker.com/culture/annals-of-gastronomy/the-ethics-of-a-deepfake-anthony-bourdain-voice [https://perma.cc/24UU-D6ZL].

overs to simulate Bourdain reading aloud emails, choosing not to disclose AI's presence in the documentary until after its release.[11]

Within the privacy tort sphere, as it currently exists, there are multiple legal avenues that the victim of voice cloning can take to hold a perpetrator accountable.[12] These include bringing privacy tort suits alleging defamation or false light.[13] This Note will work its way through these potential legal routes, evaluating the viability of each doctrine's application to voice-cloning cases. Part I of this Note is devoted to an analysis of common torts that may seem applicable but will likely be unavailable to voice-cloning victims. In Parts II and III, this Note will examine defamation and false light causes of action in depth, analyzing the applicability of each respective tort to instances of voice cloning. These sections provide a detailed analysis of how each cause of action would theoretically be evaluated in a voice-cloning case. Part IV includes a brief discussion of jurisdictional splits regarding the availability of false light causes of action. In conclusion, this Note will recommend that courts make the preexisting torts of defamation and false light available to voice-cloning victims. This Note ultimately finds that voice-cloning victims will have the greatest chance of success bringing false light claims, with defamation causes of action a close second.

I. COPYRIGHT OR COPYWRONG? OWNERSHIP OF A VOICE AND WHY IP CAUSES OF ACTION AREN'T PLAUSIBLE IN THE VOICE-CLONING CONTEXT

Though voices are inherently unique and individual, intellectual property ("IP") protections have not been extended to include proprietary ownership of one's voice.[14] This is true even when a voice is distinct, recognizable, and marketable enough to feasibly warrant a copyright, as was the case with Bette Midler's voice.[15] Midler's unique singing style was emulated by a "soundalike" in a Ford Motors commercial to great success—many people informed both Midler and the

---

11. Tom Simonite, *Are These the Hidden Deepfakes in the Anthony Bourdain Movie?*, WIRED (Aug. 23, 2021, 7:00 AM), https://www.wired.com/story/these-hidden-deepfakes-anthony-bourdain-movie/ [https://perma.cc/PJ6Z-TP3H] (explaining that the director of *Roadrunner* boasted in an interview that two clips generated with AI would be undetectable in the film: "If you watch the film . . . you probably don't know what . . . lines . . . were spoken by the AI, and you're not going to know.").

12. For an in-depth discussion of these legal avenues (defamation and false light), see *infra* Parts II and III, respectively.

13. *See generally* Ivy Attenborough, *Voices, Copyrighting and Deepfakes*, IP WATCHDOG (Oct. 14, 2020, 7:15 AM), https://www.ipwatchdog.com/2020/10/14/voices-copyrighting-deepfakes/id=126232/ [https://perma.cc/4AFV-SMSA] (summarizing and discussing potential legal avenues for protecting one's voice against misuse or appropriation).

14. Midler v. Ford Motor Co., 849 F.2d 460, 462 (9th Cir. 1988) (holding that a voice is not copyrightable because copyright only protects original works of authorship fixed in any tangible medium of expression—the sounds of a voice are not adequately "fixed" and can therefore not be copyrighted or owned by any one individual).

15. *Id.* at 461 (explaining that Midler had been described as "outrageously original" and that Midler had a voice distinctive enough that it could be emulated by one of her former backup singers).

soundalike that the commercial clip sounded exactly like Midler's singing voice.[16] Though the Ninth Circuit ultimately found in favor of Midler in her suit against Ford, it did not reach its conclusion based on copyright violation.[17] The court explained that copyright protects original works of authorship fixed in any tangible medium of expression, further asserting that a voice is inherently uncopyrightable because the sounds are not "fixed," as required by statute.[18] Additionally, the court asserted that "mere imitation of a recorded performance would not constitute a copyright infringement even where one performer deliberately sets out to simulate another's performance as exactly as possible."[19] Though the court held that a human voice is "as distinctive as a face" and is "one of the most palpable ways identity is manifested," a vital component of that holding was the conclusion that a voice simply cannot be copyrighted.[20] The inability of an individual to copyright their own distinct voice will pose a large obstacle for victims of voice cloning.

It may seem intuitive that the easiest legal avenue for a victim would be a lawsuit alleging copyright infringement. After all, AI technology is attempting to imitate the individual's voice to the point of near duplication.[21] However, per the Ninth Circuit's decision in *Midler*, this is not a viable theory.[22] It is unlikely that a court will distinguish between an impersonator's deliberate simulation of another's performance and a simulation created by an AI program. The subject of both simulations, a distinctive voice, is not copyrightable under the Copyright Act.[23] Because of this reality, it should not and likely will not matter for legal purposes whether a vocal emulation is produced by an AI program or another human. To bring a successful copyright infringement action against the creator or distributor of a voice-cloned audio, the subject of the clone must be copyrighted.[24] Unfortunately for victims, because a voice cannot be, it will be impossible for a cloning victim to prevail in a lawsuit on a theory of copyright infringement. Such a legal avenue would only become available if the Copyright Act is altered to allow for copyright of an

16. *See id.* at 461–62.

17. *Id.* at 463–64 (holding that Midler made a sufficient showing of defendants' appropriation of her identity for profit here).

18. *Id.* at 462.

19. *Id.* (quoting Notes of Committee on the Judiciary, 17 U.S.C.A. § 114(b)).

20. *Id.* at 462–63.

21. READSPEAKER.AI, *supra* note 5 ("ReadSpeaker's proprietary voice cloning software produces text-to-speech . . . voices that are indistinguishable from the source").

22. *See generally Midler*, 849 F.2d 460; Sinatra v. Goodyear Tire & Rubber Co., 435 F.2d 711, 717–18 (9th Cir. 1970) (holding that commercial use of Nancy Sinatra's well-known song *These Boots Are Made for Walking* in conjunction with the advertisement's female singers imitating Sinatra's voice and dressing to emulate her style was not sufficient to establish unfair competition and that awarding Sinatra damages for the company's use of the song would clash with federal copyright law).

23. *See Midler*, 849 F.2d at 462 (quoting 17 U.S.C. 102(a)) ("Copyright protects 'original works of authorship fixed in any tangible medium of expression.' A voice is not copyrightable. The sounds are not 'fixed.' What is put forward as protectable here [Midler's distinct voice and singing style] is more personal than any work of authorship.").

24. *See* 17 U.S.C. § 501(b) ("The legal or beneficial owner of an exclusive right under a copyright is entitled . . . to institute an action for any infringement of that particular right committed while he or she is the owner of it.").

individual's voice, and it is hard to imagine that such a revolutionary change will come to fruition anytime soon.[25]

Another cause of action rooted in IP protection comes in the form of appropriation of identity. Appropriation of identity, centered around the right of publicity, imposes liability on one who appropriates to their own use or benefits the name or likeness of another.[26] The Ninth Circuit's holding in *Midler* exemplifies this notion of appropriation.[27] In *Midler*, the court held that when the distinctive voice of a professional singer is widely known and deliberately imitated *in order to sell a product*, the sellers have committed a tort offense by appropriating what is not theirs.[28] Implicit in this tort is the requirement that the victim has an identity worth appropriating[29]—for this reason, this tort is typically utilized by celebrities and public figures. Though it seems that appropriation of identity claims are viable options for celebrity victims of voice cloning, it is not likely that these cases will make it far in practice. Right of publicity torts are driven by the state's interest in protecting the proprietary interest of an individual in a unique act (or voice) in part to encourage entertainment.[30] This state interest is analogous to the goals of patent and copyright law, which focus on the right of the individual to reap the reward of their endeavors—it has little to do with protecting one's feelings or reputation.[31] This distinction between protecting one's right to enjoy the spoils of a carefully curated reputation and ensuring that said reputation is not unduly damaged by the dissemination of false information is vital in the voice-cloning context. Because most voice clones will be utilized for nefarious purposes such as circulation of falsified information or reputational damage,[32] appropriation of identity causes of action will be of little use to celebrity victims. An essential component of an

---

25. It is my opinion that such a change is unlikely because of the practicalities of political gridlock, combined with the fact that such an alteration would upend well-established case law on imitation and impersonation. Additionally, in the nearly five decades since the enactment of the Copyright Act (and the two decades since the new millennium), the majority of amendments to the Act have been clarifications of terms or extensions of copyright protections to novel technology, such as semiconductor chips and distance education. It is difficult to foresee alterations made to include human voices under the Act's protection, as the unique quality of voices was known to Congress long before the enactment of the original Act in 1976. However, nothing is impossible! As technology advances, there are always surprises and situations that prompt legislatures to expand protections. *See Preface: Copyright Law of the United States*, U.S. COPYRIGHT OFF. (2020), https://www.copyright.gov/title17/preface.pdf [https://perma.cc/C6EB-VW5W].

26. RESTATEMENT (SECOND) OF TORTS § 652C (AM. L. INST. 1977).

27. *See Midler*, 849 F.2d at 463–64.

28. *Id.* (emphasis added).

29. Typically, noncelebrities are barred from bringing appropriation of identity claims. If a private figure wishes to bring such a suit, they must show that their persona to be protected has some commercial value. Celebrities who are widely recognizable and who have worked to cultivate a reputation and persona do not need to work as hard to clear this hurdle. *See* Vassiliades v. Garfinckel's, Brooks Bros., 492 A.2d 580, 592 (D.C. App. 1985) (requiring plaintiff to show there was a public interest or other value in her likeness).

30. Zacchini v. Scripps-Howard Broad. Co., 433 U.S. 562, 573 (1977).

31. *Id.*

32. *See infra* note 73 and accompanying text.

appropriation of identity claim is that said appropriation benefits the perpetrator.[33] If a celebrity cannot show a direct benefit to the individual cloning their voice, this cause of action will not be available to them, and they will have to choose an alternative legal avenue.[34] For this reason, other causes of action, such as defamation and false light, will likely be more applicable in cases of voice cloning.

II. PUBLIC FIGURE DESIGNATIONS AND DEFAMATION: THE INTERCONNECTED NATURE OF CELEBRITY STATUS AND A VIABLE CLAIM OF DEFAMATORY CONDUCT

Before engaging in an in-depth examination of legal avenues that are potentially available to victims of voice cloning, an important distinction must be drawn and discussed regarding the impact of one's fame on a potential suit. Celebrities and noncelebrities are treated differently in the privacy tort field, and a celebrity or public figure designation for a voice-cloning victim will greatly impact their ability to bring certain claims.[35] For some privacy torts, a victim must be a celebrity or public figure to bring a claim.[36] In other cases, a public figure designation can defeat or complicate a victim's claim.[37] Proving—or disproving—one's status as a public figure is an integral component of most privacy torts, and the criterion for what makes someone a public figure warrants discussion.

A. Gertz *and the Public Figure Framework as it Exists Today*

The Supreme Court has defined public figures as those who have assumed roles of special prominence in the affairs of society.[38] Such public figures "thrust

---

33. RESTATEMENT (SECOND) OF TORTS § 652C (AM. L. INST. 1977); *Vassiliades*, 492 A.2d at 592 (citing Moglen v. Varsity Pajamas, Inc., 13 A.D.2d 114, 115 (N.Y. 1961)) ("Incidental use of name or likeness or publication for a purpose other than taking advantage of a person's reputation or the value associated with his name will not result in actionable appropriation.").

34. Though it could be argued that widespread falsity or reputational damage to the celebrity is in fact a benefit to the individual cloning a voice, the benefit in question must typically be more concrete—most often in the form of monetary gain after the commercial appropriation of a celebrity's identity. Additionally, reputational damages and falsity are much better addressed by defamation and false light causes of action. *See infra* Parts II and III, respectively.

35. Claire E. Gorman, *Publicity and Privacy Rights: Evening Out the Playing Field for Celebrities and Private Citizens in the Modern Game of Mass Media*, 53 DEPAUL L. REV. 1247, 1248–50 (2004) (summarizing obstacles faced by noncelebrities in effecting recovery under the right of privacy, including countervailing free speech interests and the requirement of a showing of economic harm and economic value in an identity).

36. *Zacchini,* 433 U.S. at 571–76 (upholding the constitutionality of appropriation claims for individuals with celebrity status, implying that a public figure designation is required for appropriation claims involving broadcasts that pose a substantial threat to the economic value of a public figure's performance—a performance will have little economic value if nobody knows of or wishes to pay to see the performer).

37. *See* discussion *infra* Section II.B. A public figure designation in a defamation cause of action triggers an additional hurdle for a victim—the actual malice requirement.

38. Gertz v. Robert Welch, Inc., 418 U.S. 323, 345 (1974) (further explaining that some individuals may occupy positions of such power and influence that they are deemed public figures for all purposes).

themselves to the forefront of particular public controversies to influence the resolution of issues involved."[39] Public figures invite attention, comment, and a heightened sense of public scrutiny.[40] Typically, public figures deliberately place themselves or their views into public controversy to influence others,[41] though on rare occasions someone may become a public figure involuntarily through no purposeful action of their own.[42] Though a public figure designation is situation specific, the Court has outlined certain activities that are not sufficient to establish such a classification.[43] These include applications for federal grants, publication in professional journals, publication of books and articles on legal issues, and engagement in local community affairs.[44] Seeking governmental office, however, is sufficient to warrant a public figure designation.[45] An individual who decides to seek public office must understand that there are certain consequences of such involvement in public affairs, namely closer public scrutiny than would otherwise be the case.[46] The public's interest extends to personal attributes that could impact an official's fitness for office, including dishonesty, malfeasance, or improper motivation.[47] Even if these attributes also affect the official's private character or reputation, the public interest justifies closer-than-normal scrutiny into the private sphere.[48]

Additionally, the Court has held that regular and continuing access to the media is reason to classify an individual as a public figure.[49] The distinction between public figures and private individuals is a vital one when considering the viability of legal remedies for voice-cloning victims, especially in light of the rise of social media.[50] As this Note will discuss in Section II.C, a public figure classification has

---

39. *Id.*

40. Hutchinson v. Proxmire, 443 U.S. 111, 134 (1979) (quoting *Gertz*, 418 U.S. at 345).

41. *See id.* at 135.

42. *Gertz,* 418 U.S. at 345 (emphasizing unlikeliness of a truly involuntary public figure designation).

43. *See Hutchinson*, 443 U.S. at 135–36.

44. *See id.* (citing *Gertz*, 418 U.S. 323).

45. *See Gertz*, 418 U.S. at 344.

46. *Id.*

47. *Id.* at 344–45 (quoting Garrison v. Louisiana, 379 U.S. 64, 77 (1964)).

48. *Id.* at 345.

49. *Hutchinson*, 443 U.S. at 136 (explaining that regular and continuing media access is "one of the accouterments of having become a public figure"). It is worth noting that this media access criterion was established in 1979, long before the advent of social media, which has significantly increased average people's access to the media. Now anybody could feasibly have regular and continuing media connection. It remains to be seen if this criterion is still vital for a public figure designation or if it is largely overlooked in acknowledgment of widespread media access and availability.

50. Though a thorough examination of this topic exceeds the scope of this Note, I would suggest that courts utilize a sliding scale model when tasked with determining whether a plaintiff is a public figure. Given the realities of the current social media landscape, it is becoming increasingly difficult to determine when and how one can be definitively considered a public figure. Some Instagram celebrities have hundreds of thousands of followers but keep their accounts locked and private. On the other hand, there are social media

the potential to defeat a defamation claim, while the same designation is required for other allegations, such as appropriation of identity.[51]

Building on the Supreme Court's analysis in *Gertz*, lower courts typically recognize two kinds of public figure plaintiffs: limited-purpose and general-purpose.[52] Limited-purpose public figures are those who are in the public eye concerning a limited range of issues[53]—one typically achieves this status by voluntarily injecting themselves into a particular public controversy.[54] General-purpose public figures, on the other hand, are individuals who have attained such pervasive fame or notoriety that they become public figures for all purposes and contexts.[55] Though these designations may seem straightforward, it is often difficult in practice to categorize individuals, especially those held out to be limited-purpose public figures.[56] In determining whether a plaintiff is a limited-purpose public figure, federal courts utilize a two-step approach.[57] The court must ask whether a public controversy exists[58] and, if so, whether the plaintiff has become so involved in the controversy as to constitute a public figure designation.[59] When reviewing embroilment in a public controversy, courts consider the three "*Clark* factors": (1) the voluntariness of the plaintiff's involvement; (2) the extent to which the plaintiff had access to channels of communication to counteract false statements; and (3) the prominence of the plaintiff's role.[60]

B. Public Figure Designations and the Rise of Social Media

It is not difficult to imagine a situation where the line between public figure and private individual may be blurred—in recent years, a crop of defamation and

---

accounts for small businesses with handfuls of followers that are set as professional accounts. Instagram users can opt into a business account, an increasingly popular feature because of increased access to engagement metrics. Users who choose this account form can select to label themselves as a "public figure," regardless of how many followers they have. All of these moving parts and changing labels in the social media sphere make it incredibly difficult to keep the public figure test as an "on-off toggle" type inquiry. A sliding scale approach would serve the purposes of courts much better. For an in-depth discussion of social media's impact on the public figure doctrine, see Matthew Lafferman, Comment, *Do Facebook and Twitter Make You a Public Figure?: How to Apply the Gertz Public Figure Doctrine to Social Media*, 29 SANTA CLARA COMPUT. & HIGH TECH. L. J. 199 (2012).

51. *Infra* Section II.C.

52. Thomas M. Cooley L. Sch. v. Kurzon Strauss, LLP, 759 F.3d 522, 527 (6th Cir. 2014).

53. *Id.* (quoting *Gertz*, 418 U.S. at 351).

54. *Id.*

55. *Id.* Examples of general-purpose public figures include Clint Eastwood, Johnny Carson, and Carroll Burnett. For a discussion of general-purpose public figures, see Lafferman, *supra* note 50, at 229.

56. *See generally* Lafferman, *supra* note 50, at 231.

57. Santoni v. Mueller, No. 20-CV-00975, 2022 U.S. Dist. LEXIS 4336, *25 (M.D. Tenn. Jan. 10, 2022) (citing Clark v. ABC, Inc., 684 F.2d 1208, 1218 (6th Cir. 1982)).

58. *Id.*; Hibdon v. Grabowski, 195 S.W.3d 48, 59 (Tenn. Ct. App. 2005) (defining a public controversy as "a real dispute, the outcome of which affects the general public or some identifiable segment of the public in an appreciable way").

59. *Santoni,* 2022 U.S. Dist. LEXIS 4336, at *26 (citing *Clark*, 684 F.2d at 1218).

60. *Clark*, 684 F.2d at 1218.

false light cases involving social media users and statements made online has presented a unique set of challenges for courts.[61] The definition of a public controversy as an issue likely to engender public interest[62] or as a real dispute whose outcome affects some identifiable segment of the public in an appreciable way[63] could feasibly encompass most social media users. Any social media post expressing an opinion (even about a seemingly trivial matter)[64] could engender public interest, creating a public controversy that would render the original poster or subsequent commenter a limited-purpose public figure. With no clear set of standards for social media users, courts have been left to apply the *Clark* factors as they see fit, resulting in a wide range of outcomes.[65] Though the Supreme Court has yet to speak directly on the issue, numerous Justices have called for reconsideration or reversal of the standard set forth in *New York Times v. Sullivan*.[66] These Justices have expressed concern that the malleability of the public-figure doctrine renders it too high a bar for individuals to meet, especially those who are not public figures by their own efforts.[67] Most recently, Justice Gorsuch expressed concern over public-figure categorization in the modern age, citing social media's impact on the proliferation

---

61. *See generally Santoni*, 2022 U.S. Dist. LEXIS 4336 (concerning plaintiff who amassed a social media following as a result of his political, religious, and historical postings and debates); Berisha v. Lawson, 141 S. Ct. 2424 (2021) (Gorsuch, J., dissenting in denial of cert.).

62. *Santoni*, 2022 U.S. Dist. LEXIS 4336, at *27 (citing Armstrong v. Shirvell, 596 F. App'x 433, 445 (6th Cir. 2015)); *Hibdon*, 195 S.W.3d at 59 (defining a public controversy as "a real dispute, the outcome of which affects the general public or some identifiable segment of the public in an appreciable way").

63. *Hibdon*, 195 S.W.3d at 59.

64. Any Twitter user likely understands just how many people feel comfortable sharing their opinions online, even if they are neither constructive nor interesting. For examples of Twitter users opining about inconsequential matters and receiving attention for their efforts, see Lowenna Waters, *People Are Sharing the Pettiest Arguments They'd Die Over and the Responses Are Hilarious*, INDY100 (Oct. 18, 2018), https://www.indy100.com/news/petty-arguments-stupid-pointless-row-twitter-funny-viral-thread-8590451 [https://perma.cc/KKR7-8SQZ] (tweet about "Tangled" being a superior movie to *Frozen* garnering over 200 "likes"; tweet about *Romeo and Juliet* being a terrible love story receiving around 150 "likes"—are either of these opinion-based tweets sufficient to engender public interest? The subsection of the population that thoroughly enjoys *Frozen* may be affected by this debate in an appreciable way.).

65. *See, e.g.*, *Hibdon*, 195 S.W.3d 48 (holding that an individual was a limited-purpose public figure because he entered into the jet ski business and voluntarily advertised on an internet site); *Berisha*, 973 F.3d at 1311 (holding that an individual was a limited-purpose public figure because he defended himself against a defamatory statement); *see also Armstrong*, 596 F. App'x at 437–45 (holding that plaintiff was not a limited-purpose public figure because defendant's defamatory remarks painting plaintiff as a racist did not relate to any public controversy–there was no evidence of public discourse over plaintiff's treatment of or views on others based on race).

66. *See infra* note 83.

67. John Bruce Lewis & Bruce L. Ottley, New York Times v. Sullivan *at 50: Despite Criticism, the Actual Malice Standard Still Provides "Breathing Space" for Communications in the Public Interest*, 64 DEPAUL L. REV. 1, 35 (2014) (noting that Justices Warren and Burger called for *Sullivan*'s reconsideration, while Justice Scalia advocated for its reversal).

of "public figures" as an issue to be addressed by the Court at a later date.[68] These reservations, combined with the Court's "preference to avoid encompassing too large a class of people within the public figure status,"[69] indicate a trend towards recognizing social media personalities or figures as "public figures" only if they have gained the level of notoriety sufficient to render them a general-purpose public figure.[70] Otherwise, it seems that recognizing individuals with meager followings who make minimal efforts to thrust themselves into the public eye on social media as limited-purpose public figures would run counter to the intended effect of *Sullivan* and *Gertz* and is ill-advised moving forwards.[71]

Celebrities and public figures are more likely to fall victim to voice-cloning attacks than private individuals are.[72] This is largely because such public figures have recognizable voices. Additionally, cloned audio of a celebrity will feasibly exert greater influence over unsuspecting fans or members of the public than audio of a private individual. Further, the widespread availability of celebrity recordings and videos makes it easier for individuals to access and feed audio snippets into an AI tool to recreate a voice.[73] Though it is possible to clone the voice of a private figure, such a dupe would have little commercial or public use for a potential cloner. It seems unlikely that someone would go to the trouble of cloning a voice without

---

68. Berisha v. Lawson, 141 S. Ct. 2424, 2429–30 (2021) (Gorsuch, J., dissenting from denial of cert.) ("[T]he very categories and tests this Court invented and instructed lower courts to use in this area—'pervasively famous,' 'limited purpose public figure'—seem increasingly malleable and even archaic when almost anyone can attract some degree of public notoriety in some media segment.").

69. Lafferman, *supra* note 50, at 232.

70. Take, for example, YouTubers "PewDiePie" or "MrBeast" who have over 111 and 104 million subscribers respectively. With such a large following, it is likely that such social media personalities would be classed as general-purpose public figures. *List of Most-Subscribed YouTube Channels*, WIKIPEDIA (Sept. 21, 2022, 7:06 PM), https://en.wikipedia.org/wiki/List_of_most-subscribed_YouTube_channels [https://perma.cc/2F2T-NAQP]. The threshold number of followers or subscribers needed to render a content creator a general-purpose public figure is certainly up for debate. However, such a debate far exceeds the subject matter of this Note and will not be addressed. For a general discussion of the intersection of social media and the public figure doctrine, see Lafferman, *supra* note 50.

71. Though somewhat beyond the scope of this Note, it is worth acknowledging that social media's complication of public figure categorization could feasibly warrant a new public figure framework entirely. It would likely fall on state legislatures to drive this change—it will be an interesting arena to watch, especially after *Berisha*'s denial of certiorari.

72. Though the technology certainly exists to create voice dupes of private individuals, it is more likely that celebrities will be the primary victims of voice-cloning attacks. A high volume of sound clips of the victim's voice is needed to train the AI bot, and it is much easier for perpetrators to find celebrity voice clips online. Additionally, if tricksters are seeking online notoriety or a large and disruptive impact, a falsified video of a celebrity would garner much more attention than a video of a relatively unknown individual. Additionally, apps and websites already exist for widespread use. *See* APP STORE, *supra* note 1.

73. Kim Martin, *What is Voice Cloning?*, ID R&D, https://www.idrnd.ai/what-is-voice-cloning/ [https://perma.cc/73UK-HBK5] (last visited Sept. 12, 2022) (explaining that "with as little as a few minutes of recorded speech, developers can build an audio dataset and use it to train an AI voice model that can read any text in the target voice").

plans to utilize it for monetary gain or to sway public opinion. As a result, one may anticipate that a majority of litigation surrounding voice-cloning technology and its negative impacts will be brought by public figures. For that reason, this Note will primarily center around a thorough exploration of legal options for celebrity voice-cloning victims. A deeper examination of the avenues available to the most likely victims will be more useful than a cursory glance at options for both public and private figures.

C. Defamation

A victim of voice cloning could potentially find success in a defamation claim against the individual who generated the clone. Generally, defamation is a tort that encompasses acts of communication that tend to damage another's reputation to the extent of lowering their regard in the community or deterring others from associating with them.[74] Defamation may take the form of slander, which is a spoken false statement, or libel, which is a written false statement. "Written" does not necessarily mean physically printed—it also encompasses content published on the Internet.[75] Because voice clones are commonly used to spread misinformation or blackmail individuals via videos posted online, libel law will likely apply—posting of such a video or audio clip will constitute publication on the Internet, which is subject to a libel cause of action.[76] However, there is also a possibility that a video that utilizes a cloned voice (taken without the original speaker's permission) could be subject to a slander cause of action as well.[77] A court could feasibly find that a video or audio file constitutes spoken defamation.[78] This would be a difficult cause of action to pursue, however, because the voice actually doing the speaking in a hypothetical video is that of the victim, not the individual engaging in the cloning or uploading of the video. It is much more likely that publication of a video would constitute a written false statement. The creating and uploading of a video recording transforms the defamatory conduct into a tangible medium that can be reproduced

---

74. *Glossary*, WESTLAW, https://content.next.westlaw.com/Glossary/PracticalLaw/I0f9fea3bef0811e28578f7ccc38dcbee?transitionType=Default&contextData=(sc.Default)&firstPage=true [https://perma.cc/T483-ZASE] (citing RESTATEMENT (SECOND) OF TORTS § 599 (AM. L. INST. 1977)) (last visited Sept. 23, 2022).

75. *Id.*

76. Martin, *supra* note 73 (outlining negative uses of voice cloning technology, which include manipulating videos that are published to sway public opinion during elections, drum up fake campaign donations, and defame public figures, as well as blackmailing individuals by threatening to post falsified videos or audio clips of them doing or saying things they didn't say or do if victims refuse to pay a fee).

77. Aaron Minc, *How to Report & Remove Defamation on YouTube*, MINC L. (last updated July 6, 2022), https://www.minclaw.com/remove-defamatory-videos-content-youtube/[https://perma.cc/A4GM-SBKF].

78. *Defamation*, YOUTUBE HELP CTR., https://support.google.com/youtube/answer/6154230?hl=en&co=GENIE.CountryCode%3DUnited+States [https://perma.cc/G5CF-ARV2] (explaining that Google is prepared to remove YouTube videos if a court adjudicates them defamatory) (last visited Sept. 23, 2022).

and played repeatedly, reaching more than one person, and rendering the conduct libel.[79]

1. General Statutory Guidelines for Defamation Causes of Action

State law governs defamation causes of action and differs slightly based on jurisdiction.[80] That being said, most states adhere to the criteria outlined in the Restatement (Second) of Torts,[81] which defines the elements of a defamation claim: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the publisher's part (with respect to the act of publication) and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.[82] An additional requirement is imposed on public figures attempting to recover damages for a defamatory falsehood: the statement must be made with actual malice.[83] For the actual malice standard imposed by the Supreme Court in *Sullivan* to be met, the alleged victim must demonstrate that the defamatory statement was made with knowledge that it was false or was made with reckless disregard for whether it was false or not.[84] If content is published by someone who believes the information contained therein to be truthful and the publication is undertaken in good faith, actual malice will not be found, and the public-figure claimant's suit will fail.[85]

2. A Reckless Disregard: Actual Malice as Viewed in the Context of Voice Cloning

Though the actual malice standard was initially applied solely to statements made about government officials acting in their official capacity,[86] the Supreme Court was confronted with two similar cases three years after handing down the *Sullivan* decision. These similar cases prompted an inquiry into the actual malice requirement when the defamatory statements in question concerned public figures who were not government officials.[87] Finding that the two victims in the consolidated cases were both public figures under ordinary tort rules, the Court held that a public figure who is not a public official may recover damages for a defamatory falsehood only on a showing of actual malice on the part of the

---

79. *Libel*, BLACK'S LAW DICTIONARY (2d ed. 1910) (defining libel as a defamatory statement published through any manner or media). The requirement of publication implies that a statement must be affixed into a tangible medium to qualify as libel.

80. *See State Law: Defamation*, DIGIT. MEDIA L. PROJECT (last updated Sept. 10, 2022), https://www.dmlp.org/legal-guide/state-law-defamation [https://perma.cc/J26S-XGLA] (listing various states and providing state-specific information of defamation law); Steven J. Ellison, *Libel, Slander, and Defamation Law: The Basics*, FINDLAW (last updated July 14, 2022), https://www.findlaw.com/injury/torts-and-personal-injuries/defamation-law-the-basics.html (explaining that defamation laws vary by state, though accepted standards make laws similar across states).

81. *See* DIGIT. MEDIA L. PROJECT, *supra* note 80.

82. RESTATEMENT (SECOND) OF TORTS § 558 (AM. L. INST. 1977).

83. N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964).

84. *Id.* at 280.

85. *See id.* at 280–81 (citing Coleman v. MacLennan, 98 P. 281 (Kan. 1908)).

86. *See generally id.* at 254.

87. *See* Curtis Publ'g. Co. v. Butts, 388 U.S. 130 (1967).

publisher.[88] The Court reasoned that public figures must meet this heightened standard because those with celebrity status enjoy sufficient access to an effective means of counterargument.[89] Such access renders public figures able to expose the falsehood and fallacies of the defamatory statements in question.[90] The actual malice standard is not satisfied by simply showing ill will or malice in the ordinary sense of the term,[91] nor can actual malice be proven by the fact that the defendant published the defamatory material to increase their profits.[92] The Supreme Court has made clear that the publisher of allegedly defamatory material "must have made the false publication with a 'high degree of awareness of probable falsity' . . . or must have "entertained serious doubts as to the truth of [the] publication."[93]

The actual malice standard can easily be met when a public figure's voice is cloned. Inherent in the act of cloning a voice is the knowledge that one is creating a falsehood. The sole purpose of voice cloning is to synthesize audio in the style of another's voice.[94] There is no argument that the creator of a voice clone, who spent time procuring audio clips to feed to the AI bot with the intent of copying another's speech patterns and cadence, believed the voice created by the program to be the true voice of the victim. This duped voice (that the cloner knows has been manipulated) is clearly not expressing the true thoughts of the victim. Without the potential defense of mistake or simple recklessness,[95] a voice cloner will likely be found to have published an audio dupe with actual malice.

3. Additional Elements

The other elements of a defamation case are likely to be proven in the case of a public figure's voice cloning so long as a video or audio clip utilizing the clone

---

88. *Id.* at 155, 160 (explaining that the victims were to be considered public figures because they commanded a substantial amount of independent public interest at the time of publication of the allegedly defamatory statements. One victim was said to have attained the status of public figure by thrusting his personality into the vortex of an important public controversy).

89. *Id.* at 155 (citing Whitney v. California, 274 U.S. 357, 377 (1927) (Brandeis, J., dissenting)).

90. *Id.*

91. Harte-Hanks Commc'ns., Inc. v. Connaughton, 491 U.S. 657, 666–67 (1989) (citing Beckley Newspapers Corp. v. Hanks, 389 U.S. 81 (1967) (*per curiam*); Henry v. Collins, 380 U.S. 356 (1965) (*per curiam*)).

92. *Harte-Hanks*, 491 U.S. at 667.

93. *Id.* (quoting Garrison v. Louisiana, 379 U.S. 64, 74 (1964); St. Amant v. Thompson, 390 U.S. 727, 731 (1968)).

94. Jennifer Kite-Powell, *The Rise of Voice Cloning and Deepfakes in the Disinformation Wars*, FORBES (Sept. 21, 2021, 3:14 PM), https://www.forbes.com/sites/jenniferhicks/2021/09/21/the-rise-of-voice-cloning-and-deep-fakes-in-the-disinformation-wars/?sh=445819b338e1 [https://perma.cc/TGJ7-JPA8] ("Voice cloning takes snippets of a recorded text from a person and applies . . . (AI) to dissect the speech patterns from the voice samples. This gives the user the ability to create audio recordings or streams that weren't spoken by the voice owner.").

95. Air Wis. Airlines Corp. v. Hoeper, 571 U.S. 237, 247 (2014) ("We held in *New York Times* that a public official might be allowed the civil remedy only if he establishes that the utterance was false" (quoting *Garrison*, 379 U.S. at 74)) (holding that actual malice does not cover true statements made recklessly but instead entails falsity).

is posted or circulated online.[96] Content uploaded to internet sites can serve as a sufficient basis for a libel claim, and such a posting will likely prove the unprivileged publication element required to bring a defamation claim.[97]

The more difficult element to prove in a voice-cloning defamation case is the existence of a false or defamatory statement. Because the entire point of creating a clone is to have the voice of the victim say the false statement, a creator could feasibly make the argument that they themselves did not make the statement and therefore are not liable for defamation. However, it is unlikely that this argument would find traction in a court. The primary purpose of defamation laws is to provide victims with a means of obtaining compensation for the injury resulting from a damaged reputation.[98] Courts will be motivated to provide adequate remedies for victims of voice cloning (particularly celebrities) as AI technology becomes widely accessible and vocal dupes become more commonplace. For this reason, it is plausible that courts will allow a voice dupe to serve as a valid defamatory "statement" for purposes of bringing a cause of action. The clone would theoretically have been fabricated and circulated by the online publisher to promote a falsity, which seems fundamentally similar to the act of fabricating a fact and publishing it or speaking it aloud. Further, a video or audio clip of a public figure making statements they did not make or expressing opinions they do not hold is just as damaging to a reputation as a written falsity published in a newspaper. Some may even argue that a voice clone can inflict more reputational damage than a statement that can be read online or in a publication—when one hears a convincing voice clone, they are inclined to believe it is truly that person making that statement. On the other hand, when one reads a newspaper or magazine article, the defamatory statement is slightly less believable. There is always a possibility that news reporting or a tabloid headline could have been falsified for sales, and readers know this (for the most part). A published statement is not as aggressive as a voice clone, nor is it as personal or invasive.

III. FALSE LIGHT

Another viable cause of action for a victim of a voice cloning attack lies in the privacy tort of false light. False light, while similar to defamation, differs with regard to the harm alleged and the reach of the published false statement.[99] Under a false light cause of action, a plaintiff can recover damages to compensate for the emotional harm suffered as a result of the spread of the falsehood,[100] as opposed to the reputational damage rectified through a defamation cause of action.[101] Though

96. Jonathan Bailey, *What Does 'Tangible' Mean in Copyright?*, PLAGIARISM TODAY (Oct. 3, 2017), https://www.plagiarismtoday.com/2017/10/03/with-copyright-what-does-tangible-mean/ [https://perma.cc/S2JL-PSFA] (explaining that if a work is stored in some permanent or semi-permanent medium that allows for copying, transmission, or accessing of the work by others, such work is considered to be fixed into a tangible medium and that a publication on the Internet meets these tangibility standards).

97. *See* BLACK'S LAW DICTIONARY, *supra* note 79 and accompanying text.

98. *See* Gertz v. Robert Welch, 418 U.S. 323, 350 (1974).

99. *False Light*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/false_light [https://perma.cc/4WQ2-427E] (last visited Dec. 1, 2021).

100. *Id.*

101. *Id.*

only recognized in a handful of states,[102] those states that do recognize false light as a cause of action have relatively similar statutes and case law, all based on the Restatement (Second) of Torts.[103] Per the Restatement, an individual who publicly portrays another unflatteringly in words or pictures as someone or something they are not is liable under a false light claim if two criteria are met: (1) the false impression would be highly offensive to a reasonable person; and (2) the publisher knew the impression was false or acted with a reckless disregard as to the falsity of the publicized matter and the false light in which the victim would be placed.[104] Elaborating on the basic false light framework provided by the Restatement, most states that recognize the tort have statutorily required a plaintiff to prove the following to prevail on a false light claim: (1) the defendant published the information widely—as opposed to relaying the falsity to a single person, as is the case in defamation; (2) the publication in question identifies the plaintiff; (3) the publication places the plaintiff in a false light that would be highly offensive to a reasonable person; and (4) the defendant was at fault in publishing the information.[105]

A keen observer will note that the second criterion outlined in the Restatement encompasses the actual malice standard also required for a defamation cause of action, as established in *Sullivan*.[106] The presence of the actual malice requirement in some states' false light laws further demonstrates the overlap between the privacy torts of defamation and false light.[107] In addition to this standard's codification in some statutes and state case law, the Supreme Court has spoken on the applicability of the actual malice standard in false light cases.[108] Evaluating the constitutionality of a New York false light statute, the Court held that

---

102. *See False Light*, DIGIT. MEDIA L. PROJECT (Sept. 10, 2022), https://www.dmlp.org/legal-guide/false-light [https://perma.cc/RM4U-29S6] (listing seventeen states as recognizing false light as an invasion of privacy cause of action).

103. *Invasion of Privacy: False Light*, FINDLAW (Dec. 5, 2018), https://www.findlaw.com/injury/torts-and-personal-injuries/invasion-of-privacy—false-light.html [https://perma.cc/7EYR-TGFF].

104. RESTATEMENT (SECOND) OF TORTS § 652E (AM. L. INST. 1977).

105. DIGIT. MEDIA L. PROJECT, *supra* note 102.

106. RESTATEMENT (SECOND) OF TORTS § 652E (AM. L. INST. 1977); N.Y. Times Co. v. Sullivan, 376 U.S. 254, 280 (1964).

107. *See, e.g.*, Godbehere v. Phx. Newspapers, Inc., 783 P.2d 781, 786 (Ariz. 1989) (establishing a false light cause of action in Arizona and imposing actual malice requirement) ("For example, the plaintiff in a false light case must prove that the defendant published with knowledge of the falsity or reckless disregard for the truth."); Santillo v. Reedel, 634 A.2d 264, 266–67 (Pa. Super. Ct. 1993) (citing Neish v. Beaver Newspapers, Inc., 581 A.2d 619, 624 (Pa. Super. Ct. 1990)) (affirming actual malice requirement for false light claims brought in Pennsylvania) ("In order for [a false light] claim to be successful, appellant must show that a highly offensive false statement was publicized by appellees with knowledge or in reckless disregard of the falsity."); Welling v. Weinfeld, 866 N.E.2d 1051, 1058 (Ohio 2007) (quoting RESTATEMENT (SECOND) OF TORTS § 652E(b) (AM. L. INST. 1977)) (imposing actual malice standard in false light cases) ("We choose to follow the Restatement standard, requiring that the defendant 'had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed,' in cases of both private and public figures.").

108. *See generally* Time, Inc. v. Hill, 385 U.S. 374 (1967).

First Amendment protections for speech and press required proof of actual malice for a plaintiff to bring a false light claim.[109] The Court explained that the stringent actual malice standard is appropriate in false light cases as a protection for the media and free speech.[110] Though constitutional protections for the press must be weighed against reputational damages to the victim suffered as a result of a published falsehood, the Court held that some publications are definitively barred from receiving such constitutional protections—namely false statements made with actual malice.[111] Essential to the actual malice standard in false light cases is the distinction between a calculated falsehood and an honest, albeit inaccurate, utterance or publication.[112] The Court outlined the aforementioned distinction, explaining that an "honest utterance, even if inaccurate, may further the [] exercise of the right of free speech," whereas a lie that was knowingly and deliberately published should not and will not enjoy a like immunity.[113] This distinction is an important one, as a knowingly false statement or a false statement made with reckless disregard for the truth does not enjoy constitutional protection.[114]

A. Typical Legal Standard for a False Light Claim

To prevail on a false light claim, a victim of AI voice cloning will first have to choose a venue that recognizes the tort.[115] If this hurdle is cleared, a plaintiff will then likely have to prove some variation of the four elements discussed above.[116] For example, Arizona case law encompasses the four criteria discussed above, albeit in a slightly different form.[117] The applicable case law states that a false light tort occurs when one gives publicity to a matter concerning another that places the other before the public in a false light.[118] Further, liability will only be imposed if the false light in which the victim was placed would be highly offensive to a reasonable person, and the publisher had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the victim would be placed.[119] The four core components of a false light tort are still present in Arizona

---

109. *Id.* at 387–88 ("We hold that the constitutional protections for speech and press preclude the application of the New York statute to redress false reports of matters of public interest in the absence of proof that the defendant published the report with knowledge of its falsity or in reckless disregard of the truth.").

110. *Id.* at 388–89 ("We create a grave risk of serious impairment of the indispensable service of a free press in a free society if we saddle the press with the impossible burden of verifying to a certainty the facts associated in news articles with a person's name, picture or portrait . . . . In this context, sanctions against either innocent or negligent misstatement would present a grave hazard of discouraging the press from exercising the [First Amendment] constitutional guarantees.").

111. *Id.* at 389–91.

112. *Id.* at 390.

113. *Id.* (quoting Garrison v. Louisiana, 379 U.S. 64, 75 (1964)).

114. *Id.*

115. It is relatively self-explanatory that a tort must be recognized for a cause of action to proceed.

116. *Supra* Part III.

117. *See* Hart v. Seven Resorts, 947 P.2d 846, 854 (Ariz. Ct. App. 1997).

118. *Id.* (quoting Godbehere v. Phx. Newspapers, Inc., 783 P.2d 781, 784 (Ariz. 1989)).

119. *Id.*

case law: public disclosure, offensiveness, falsehood, and fault (which encompasses the actual malice standard discussed above).[120] Inherent in the tort itself is the notion that the falsehood pertains to the individual bringing the cause of action, thus encompassing the "identity" criterion.[121]

1. Public Disclosure

To prove the first criterion—that the defendant widely publish the information that portrays plaintiff in a false light—a victim must show that the matter is made public via a communication to the public at large, or to so many persons that the matter is substantially certain to become public knowledge.[122] So long as the communication reaches (or is sure to reach) the public, it does not matter what form said communication takes.[123] Oral and written communications may both constitute public disclosure for a false light cause of action.[124] However, a simple allegation that the information has been communicated publicly will not suffice—substantiated evidence must be put forward.[125] Affidavits from persons in the community who have heard the rumors, affidavits by the plaintiff denying the starting of the rumor themselves, or any direct allegation of actual publication by the defendant are all permissible means of proving the requisite public disclosure.[126]

A widely circulated and shared video that contains voice cloning is inherently public. If a creator is going through the trouble of training an AI algorithm and utilizing it to fabricate a voice clone, their end goal is likely widespread dissemination of the finished product. As fun as it would be for someone to have their own personal voice clone of their favorite celebrity (wouldn't you like to have Beyoncé read you a book aloud or remind you of your grocery list?), most voice clones are created with the intent to dupe large groups of internet users or to gain

---

120. *See supra* Subsection II.C.2.

121. I will not devote much space to a discussion of the general criterion requiring that the publication in question identify the plaintiff. Few state statutes explicitly name this as a requirement of a false light cause of action, likely because the fact that a plaintiff is bringing a lawsuit and is able to point to a specific publication that places them in a false light indicates that the publication clearly identifies the plaintiff. If not, the plaintiff would likely not be aware of the publication, nor would they feel the need to bring a lawsuit alleging emotional or reputational damage. Further, the principle of standing requires that the individual bringing the suit has sufficient connection to the allegation and suffered harm.

122. *Hart*, 947 P.2d at 854 (quoting RESTATEMENT (SECOND) OF TORTS § 652D (AM. L. INST. 1977)).

123. *See id.*

124. *Id.* ("The difference is not one of the means of communication which may be oral, written, or by any other means.").

125. *Id.* ("It is not an invasion of the right of privacy . . . to communicate a fact concerning the plaintiff's private life to a single person or even to a small group of persons. On the other hand, any publication in a newspaper or magazine, even of small circulation, . . . or statement made in an address to a large audience, is sufficient.").

126. *Id.* at 855 n.18 (elaborating that the listed items of evidence, while helpful to prove publication, would not necessarily have been dispositive in the instant or any other case).

notoriety for the original poster.[127] To achieve this goal, the voice clone must be posted on the Internet, which then renders the matter public.[128] When a video containing a cloned voice is posted online, the communication reaches the public. This will satisfy the public disclosure requirement.

2. Offensiveness

The next requirement—that the statement made about the victim or the false light cast upon them be highly offensive to a reasonable person—embodies an objective standard.[129] The plaintiff's subjective threshold of sensibility is not considered.[130] The term "highly offensive" has been construed to mean that disclosure would cause emotional distress or embarrassment to a reasonable person.[131] Such a determination is a question of fact to be decided by courts and depends on the circumstances of a particular case.[132] In Arizona, courts have noted that the standard to be applied in privacy invasion actions is whether the action, statement, or invasion would cause extreme mental anguish to a person of ordinary sensibilities.[133]

Though the decision of whether the false light cast upon the victim is highly offensive to a reasonable person is ultimately left to a judge or jury, it is not difficult to imagine that courts would agree that voice cloning falls within this category. It is

---

127. *See* Grace Shao, *What 'Deepfakes' Are and How They May be Dangerous*, CNBC (last updated Jan. 17, 2020, 2:47 AM), https://www.cnbc.com/2019/10/14/what-is-deepfake-and-how-it-might-be-dangerous.html [https://perma.cc/EEL9-3XQW] (summarizing a MIT technology report that warned deepfakes can be "a perfect weapon for purveyors of fake news who want to influence everything from stock prices to elections," or to put words into the mouths of politicians).

128. *See Defamation and Social Media: What You Need to Know*, FINDLAW (Dec. 29, 2021), https://www.findlaw.com/injury/torts-and-personal-injuries/defamation-and-social-media—what-you-need-to-know.html [https://perma.cc/PRM9-69HP] (explaining that an online posting, even on an obscure website, will likely be seen by a few people, thus satisfying the publication requirement present in both defamation and false light causes of action).

129. *What is Considered a "Reasonable Person" When it Comes to Negligence?*, SULLIVAN, PAPAIN, BLOCK, MCGRATH, COFFINAS & CANNAVO P.C., https://www.triallaw1.com/what-is-considered-a-reasonable-person-when-it-comes-to-negligence/ [https://perma.cc/BYB2-JZ72] (last visited Dec. 3, 2021) (explaining that the reasonable person standard is a legal construction created to provide courts and juries with an objective test).

130. *See* Godbehere v. Phx. Newspapers, Inc., 783 P.2d 781, 786 (Ariz. 1989) (implying that an objective standard reduces the volume of trivial disputes or minor indignities that will invite litigation).

131. Brown v. Am. Broad. Co., Inc., 704 F.2d 1296, 1302 (4th Cir. 1983).

132. *Compare* Urbaniak v. Newton, 277 Cal. Rptr. 354, 360 (Ct. App. 1991) (finding that disclosure of HIV-positive status was highly offensive to a reasonable person), *with* Virgil v. Sports Illustrated, 424 F.Supp. 1286, 1289 (S.D. Cal. 1976) (finding that disclosure of a person's unflattering habits and idiosyncrasies was not highly offensive to a reasonable person).

133. *See* Fernandez v. United Acceptance Corp., 125 Ariz. 459, 461 (App. 1980) (quoting Rugg v. McCarty, 476 P.2d 753 (Colo. 1970)); Med. Lab. Mgmt. Consultants v. Am. Broad. Cos., 306 F.3d 806, 819 (9th Cir. 2002) (holding that clandestine videotaping of medical lab was not sufficiently offensive to state a claim for invasion of privacy)).

feasible that having one's voice copied, manipulated, and utilized to make others believe that you were saying things you would never say would cause embarrassment to a reasonable person. One's voice is a personal possession and a marker of one's identity—to have it stolen and then used against you is deeply unsettling, distressing, and painful. It is plausible that a judge or jury could find that a reasonable person would be upset if they knew their voice had been duplicated by an AI program. Having a falsified recording of one's voice uploaded to an internet platform with the intent to gain notoriety certainly rises to the requisite level of offensiveness, and it is likely that victims will not have a problem proving this element of a false light claim.

3. Fault

Additionally, a plaintiff must prove fault on the part of the defendant when the defendant caused the false implication.[134] In a handful of states,[135] a plaintiff must prove that the defendant acted with knowledge of the falsity or with reckless disregard for the truth in making the false implication.[136] Again, this standard, which echoes the actual malice standard imposed in public-figure defamation cases,[137] applies to Arizona false light claims made by public figures.[138] Similarities between this standard for fault and the actual malice standard for defamation allegations allow courts to analyze both claims utilizing similar frameworks.[139]

4. Falsehood

The final requirement—that the statement made be false—demands that the publication in question involve a major misrepresentation of the plaintiff's character, history, activities, or beliefs.[140] A minor or unimportant inaccuracy about the plaintiff will not qualify.[141] However, Arizona courts have permitted a broad interpretation of the falsehood requirement, holding that a publication of true information that creates a false implication about the victim can also give rise to a

---

134. DIGIT. MEDIA L. PROJECT, *supra* note 102.

135. *See, e.g.*, Reader's Digest Ass'n. v. Superior Court, 690 P.2d 610, 624–25 (Cal. 1984) (imposing actual malice standard for false light cases in California); Lovgren v. Citizens First Nat'l Bank, 534 N.E.2d 987, 991 (Ill. 1989) (adopting actual malice standard for false light claims in Illinois).

136. Godbehere v. Phx. Newspapers, Inc., 783 P.2d 781, 787 (Ariz. 1989) (quoting RESTATEMENT (SECOND) OF TORTS § 652E (AM. L. INST. 1977)).

137. *See* N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964) (establishing actual malice standard).

138. *Godbehere*, 783 P.2d at 789 ("[I]f the publication presents [a] public official's private life in a false light, he or she can sue under the false light tort, although actual malice must be shown."). Arizona courts have not spoken on the viability of a false light claim brought by a nonpublic figure for negligent publication. *See id*. at 789 n.6.

139. *See supra* Subsection II.C.b. Because the actual malice discussion from Subsection II.C.b applies here, it is unnecessary to walk through the entire explanation and application of such a standard again. Similarities between the two standards mean that both criteria will be evaluated in the same manner when it comes to a voice cloning case.

140. *Godbehere*, 783 P.2d at 787 (quoting RESTATEMENT (SECOND) OF TORTS § 652E cmt. c (AM. L. INST. 1977)).

141. *Id.*

false light cause of action.[142] In such an action, the false innuendo created by the highly offensive presentation of a true fact constitutes the injury.[143] This innuendo-based cause of action is exemplified by *Douglass v. Hustler Magazine, Inc.* The plaintiff in *Douglass* brought a successful false light suit when photographs for which she had posed nude and consented to publication in *Playboy* were published in *Hustler*.[144] The fact that *Hustler* was a publication of much lower standing in the journalistic community gave rise to the plaintiff's cause of action—the jury found that the plaintiff's photographs being published in *Hustler*, as if she had posed for that publication, falsely placed plaintiff in a different light than a *Playboy* publication would have.[145] The falsity component of a false light claim is malleable, which is important for instances of voice cloning—though the poster themselves is not saying anything false, a flexible definition of falsehood will allow courts to determine that posting a knowingly falsified video satisfies the falsehood requirement.

Federal courts have elaborated further on the intersection and overlap of the falsity and actual malice requirements for false light claims. These courts have reasoned that actual malice exists when the publisher of the falsity intended, or recklessly failed to anticipate, that their audience would construe the falsity as conveying actual facts or events concerning the victim.[146] The test for reasonable believability is whether the charged portions of the falsity in context could be reasonably understood as describing actual facts about the plaintiff or actual events in which they participated.[147] It does not matter whether the publication is characterized as fiction or humor.[148] So long as a reader could have reasonably believed that the publication contained actual facts about the victim, the plaintiff is eligible to recover damages.[149] Even if one component of the published story is clearly fiction—for example, a 97-year-old newspaper deliverywoman falling pregnant as a result of a tryst with one of her clients—if other aspects of the charged story, like the implication of sexual impropriety and suggestion that the deliverywoman was quitting her lifelong profession, are subject to reasonable belief, the plaintiff is considered to have met their burden.[150] Further, the charged portions of the piece are reviewed, taking into account the circumstances of the publication, including the medium by which the statement is disseminated and the audience to

142. *Id.*
143. *Id.*
144. *Id.* at 787 n.2 (outlining Douglass v. Hustler Mag., Inc., 769 F.2d 1128 (7th Cir. 1985)).
145. *Id.*
146. People's Bank & Tr. Co. v. Globe Int'l Publ'g., Inc., 978 F.2d 1065, 1068 (8th Cir. 1992).
147. *Id.* at 1068–69 (quoting Pring v. Penthouse Int'l, Ltd., 695 F.2d 438, 442 (10th Cir. 1982)).
148. *Id.* (citing *Pring*, 695 F.2d at 442) (holding that a published story implying that a nonagenarian fell pregnant due to promiscuity could be reasonably believed by readers, though such a medical anomaly is unlikely).
149. *Id.*
150. *Id.* at 1069.

whom it is published.[151] So long as the medium or publication is not an obvious work of fiction[152] but is instead held out as factual and true, the work will not be considered fiction and will satisfy this criterion.[153] These kinds of falsities—those purposely designed to appear true or believable—are precisely the kinds of *calculated* falsehoods against which sanctions are proper.[154]

Such an analysis of calculated falsehoods can easily be extended to encompass instances of voice cloning. Inherent in the time-consuming and strenuous act of cloning and manipulating another's voice is the knowledge that the end product is a falsehood, and the amount of planning necessary to successfully dupe another's voice indicates a calculated effort to produce such a falsity.[155] Additionally, the differentiation between pieces that are "pure fantasy" and those that are reasonably believable will have a large impact on the availability of false light causes of action brought by victims of voice cloning.[156] Though there are certainly instances where a story or publication is clearly written in jest or is designed to be irrational to the point of humor,[157] it is likely that an instance of voice cloning will not fall within this permissible category. Like the story about the newspaper deliverywoman in *People's Bank*,[158] voice clones will concern real individuals, not fictional characters. Further, a video of an individual *saying something out loud* is certainly reasonably believable to those who view it. Even if it may be implausible that the individual in question would say the cloned phrase or word, it is still feasible that a viewer would believe the statement to be a true utterance from the mouth of the cloning victim. Additionally, a cloned video posted on the Internet is certainly held out to be factual and true. Unless the clip comes with a disclaimer (and the creator can ensure that such a disclaimer appears every time the video is shared or reposted), the video is claiming to be a factual recording of an individual speaking.

---

151. *Id.* at 1068 (citing Harte-Hanks Commc'ns, Inc. v. Connaughton, 491 U.S. 657, 688; Info. Control Corp. v. Genesis One Comput. Corp., 611 F.2d 781, 784 (9th Cir. 1980)).

152. *See Pring*, 695 F.2d at 443 (holding that a magazine story about beauty queen defendant engaging in various sexual acts during a national beauty pageant was nothing but "pure fantasy," as "the charged portions of the story described something physically impossible in an impossible setting." The court reasoned that there was no conceivable way for a reader to believe, as was alleged in the story, that the plaintiff was able to levitate by performing a sexual act before a national television audience or anywhere else.).

153. *People's Bank & Tr. Co.*, 978 F.2d at 1069–70 (holding that the publication's format and style suggest that it is a factual newspaper and does not lead readers to consider that the stories contained therein are false or exaggerated).

154. *Id.*

155. *See supra* Introduction (discussing the intricacies of the voice cloning process).

156. *See Pring*, 695 F.2d at 443.

157. *See id.* (holding that the story in question was so implausible that it was a clear parody).

158. *See People's Bank & Tr. Co.*, 978 F.2d at 1067.

5. False Light Defenses

There are defenses available for those accused of false light invasion of privacy.[159] To qualify for protection, the published statements must fall into one of two categories.[160] Statements that are made about a public official and relate to their performance of their public life or duties are privileged,[161] as are those made in connection with a matter of public interest.[162] If a published statement falls into either of these two protected classes, the publisher will be insulated from liability absent a showing of actual malice.[163]

Though "public interest" is largely undefined in false light statutes, courts have laid out a few guiding principles.[164] Public interest is not synonymous with mere curiosity and should be something of concern to a "substantial number of people"—thus, "a matter of concern to the speaker and a relatively small [or] specific audience is not a matter of public interest."[165] Additionally, for a published statement to fall under the public interest privilege, there must be some degree of closeness between the challenged statements and the asserted public interest,[166] and the focus of the speaker's conduct must be the general public interest rather than an effort to "gather ammunition for another round of private controversy."[167] It is also not possible for a defendant to turn otherwise private information into a matter of public interest simply by communicating it with a large number of people.[168] Courts have held that to fall under the public interest exception to false light and defamation, the conduct must (at a minimum) occur in the context of an ongoing controversy, dispute, or discussion, such that it warrants protection by public policy to encourage participation in matters of public significance.[169] Public interest

---

159. *Invasion of Privacy: False Light*, FINDLAW (Dec. 5, 2018), https://www.findlaw.com/injury/torts-and-personal-injuries/invasion-of-privacy—false-light.html [https://perma.cc/S4BS-Z7GW].

160. Crump v. Beckley Newspapers, 173 W. Va. 699, 712 (1983).

161. *Id.* (citing Campbell v. Seabury Press, 614 F.2d 395, 397 (5th Cir. 1980)).

162. Hustler Mag. v. Falwell, 485 U.S. 46, 50–52 (1988) (first citing Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485, 503–04 (1984); then citing Gertz v. Robert Welch, Inc., 418 U.S. 323, 339 (1974); and then citing Curtis Publ'g Co. v. Butts, 388 U.S. 130, 164 (1967)).

163. *Crump*, 173 W. Va. at 716–17 (first citing Time Inc. v. Hill, 385 U.S. 374, 387–88 (1967); then citing Curtis Publ'g. Co. v. Butts, 388 U.S. 130 (1967); then citing *Gertz*, 418 U.S. 323, 348 (1974); and then citing Havalunch, Inc. v. Mazza 294 S.E.2d 70 (W. Va. 1981)).

164. Price v. Operating Eng'rs Local Union No. 3, 125 Cal. Rptr. 3d 220, 226 (Ct. App. 2011).

165. *Id.* (quoting Weinburg v. Feisel, 2 Cal. Rptr. 3d 385, 392–93 (Ct. App. 2003))

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.* at 227 (quoting Du Charme v. Int'l Brotherhood of Elec. Workers, 1 Cal. Rptr. 3d 501 (Ct. App. 2003)) (holding that statements regarding plaintiff's termination were unconnected to any public discussion or debate, as the termination had already taken place and union members were not urged to take any action on the matter). *See also* Rivero v. Am. Fed'n of State, Cnty. and Mun. Emps., AFL-CIO, 130 Cal. Rptr. 2d 81 (Ct. App. 2003)

includes "both the dissemination of current events and any 'informational material of legitimate public interest.'"[170]

In an instance of voice cloning, it is difficult to imagine an AI voice dupe utilized to spread misinformation could be considered a matter of public interest. Though a voice clone may be used in an attempt to derail or misguide individuals engaged in a public controversy,[171] knowingly posting a falsehood with the intent to mislead others cannot be said to encourage participation in matters of public significance in a way that warrants constitutional protection.[172] These defenses and protections exist to safeguard the First Amendment and ensure that free speech is not unduly censored[173]—not to grant a license to lie and spread misinformation.[174]

The idea that statements made about a public official and related to their public life or their performance of their duties also enjoy protection from liability warrants a much shorter discussion.[175] Even if the subject of the voice clone is a public figure or public official, it is not conceivable that a purposely duped and manipulated recording of their voice is a statement of opinion related to their public life or duties. By making the effort to fabricate a statement by said public figure, the defendant has transformed the idea or sentiment from opinion to falsehood, barring the use of this defense.

IV. JURISDICTIONAL SPLIT

Because false light invasion of privacy is a tort controlled by state-specific statutes and case law, a victim's ability to bring a case will be impacted by the state they suffered the alleged harm in.[176] Some states have expressly rejected the tort of false light invasion of privacy,[177] while others recognize the tort but prevent

---

(holding that plaintiff's supervision of eight employees was not a matter of public interest where neither plaintiff nor his work had received any public attention or media coverage and the only individuals involved in and affected were the plaintiff and the eight custodians he supervised).

170. Crump v. Beckley Newspapers, 173 W. Va. 699, 712 (1983) (quoting Buzinski v. Do-All Co., 175 N.E.2d 577, 579 (Ill. Ct. App. 1961).

171. *See* Shao, *supra* note 127.

172. *Price*, 125 Cal. Rptr. 3d at 227 (citing *Du Charme*, 1 Cal. Rptr. 3d at 510).

173. *See generally* N.Y. Times Co. v. Sullivan, 376 U.S. 254 (1964); Time, Inc. v. Hill, 385 U.S. 374 (1967); Curtis Publ'g. Co. v. Butts, 388 U.S. 130 (1967).

174. People's Bank & Tr. Co. v. Globe Int'l Publ'g., Inc., 978 F.2d 1065, 1070 (8th Cir. 1992) (citing *Time, Inc.*, 385 U.S. at 389) ("It is th[is] kind of *calculated* falsehood against which the First Amendment can tolerate sanctions without significant impairment of its function.").

175. *See generally Crump*, 173 W. Va. at 712 (citing Campbell v. Seabury Press, 614 F.2d 395, 397 (5th Cir. 1980)).

176. Nathan E. Ray, Note, *Let There Be False Light: Resisting the Growing Trend Against an Important Tort*, 84 MINN. L. REV. 713, 723 (2000) (explaining that Minnesota's rejection of false light invasion of privacy is part of a trend in state court decisions disapproving the tort).

177. *See, e.g.*, Renwick v. News & Observer Publ'g. Co., 312 S.E.2d 405, 412 (N.C. 1984) (holding that an action for false light is not recognized in North Carolina); Cain v. Hearst Corp., 878 S.W.2d 577, 579–80 (Tex. 1994) (holding that false light is not a viable

plaintiffs from "double dipping" by barring overlapping false light and defamation claims.[178] Most of the states that have rejected the tort have similar reasons for doing so: purported similarity and overlap between false light and defamation and false light's potential for First Amendment infringement.[179] Though the two torts are similar and may possess common elements, a false light claim generally focuses on damage to a victim's emotional well-being or feelings, whereas a defamation claim is centered around damage to the victim's reputation.[180] Because of this minor yet crucial distinction, a false light cause of action should be made available to victims of voice cloning. This would require state legislatures to codify false light as a cause of action—such statutory alteration should be seriously considered now before voice-cloning cases become more common.

CONCLUSION

Looking forward, it is likely that voice-cloning cases will become more commonplace as the technology needed to create convincing dupes becomes more widely available.[181] Though it is usually true that the judicial system experiences

---

cause of action in Texas); Denver Publ'g. Co. v. Bueno, 54 P.3d 893, 894 (Colo. 2002) (expressly rejecting the viability of false light actions in Colorado).

178. Kapellas v. Kofman, 459 P.2d 912, 921 n.16 (Cal. 1969) ("[W]e find the [false light] action is in substance equivalent to [plaintiff]'s libel claim . . . . Since the complaint contains a specific cause of action for libel, the [false light] count . . . is superfluous and should be dismissed.").

179. *See, e.g.*, *Renwick*, 312 S.E.2d at 412 ("Two basic concerns argue against the recognition of a separate tort of false light invasion of privacy. First, any right to recover for [such an invasion] will often either duplicate an existing right of recovery for libel or slander or involve a good deal of overlapping with such rights. Second, the recognition of a separate tort of false light . . . would tend to add to the tension already existing between the First Amendment and the law of torts in cases of this nature."); *Cain*, 878 S.W2d at 579–80 ("We reject the false light invasion of privacy tort for two reasons: 1) it largely duplicates other rights of recovery, particularly defamation; and 2) it lacks many . . . procedural limitations that accompany actions for defamation, thus unacceptably increasing the tension that already exists between free speech constitutional guarantees and tort law."); *Denver Publ'g. Co.*, 54 P.3d at 894 ("[W]e now decline to recognize the [false light] tort, concluding that it is highly duplicative of defamation both in interests protected and conduct averted. Further, we find the subjective component of the false light tort raises the spectre of a chilling effect on First Amendment freedoms.").

180. FINDLAW, *supra* note 103 (summarizing RESTATEMENT (SECOND) OF TORTS § 652E (AM. L. INST. 1977)) ("The Restatement offers the following illustration [of the aforementioned difference]: The plaintiff is a war hero about whom the defendant makes a movie. The defendant adds in a detailed narrative of a fictitious private life of the plaintiff, including a romance. Although the plaintiff is not defamed by the representation (his reputation is not damaged by the portrayal), he can still bring a false light invasion of privacy claim.").

181. *See supra* Introduction (discussing the prevalence and accessibility of AI programs and voice cloning software); FORBES, *supra* note 94 (noting that Deeptrace, a cybersecurity company, reported that the number of online deepfake videos nearly doubled in 2019—almost 15,000 deepfake videos were circulated online that year).

delay when determining how to deal with and rule on novel technologies,[182] courts have a unique opportunity here—widespread use of AI is looming on the horizon.[183] By acting preemptively to better understand the technology as a whole and its implications in the tort sphere, courts can properly situate themselves to get ahead of the causes of action that are sure to arise in the coming years and decades.[184] The vast majority of plaintiffs bringing claims based on voice cloning will be celebrities or other public figures, and two causes of action will likely be made available to them.[185]

The first available cause of action for such a victim is defamation.[186] This cause of action is likely to prevail if the voice clone or circulated footage containing the clone damages the reputation of the public figure in question.[187] Though actual malice is a vital component of such a claim, the intent needed to make such an allegation can easily be proven in cases of voice cloning.[188]

The second plausible cause of action for a voice-cloning victim to pursue is a false light claim.[189] False light claims are likely to be slightly more applicable to voice-cloning cases than defamation claims are, simply because a false light allegation does not require the victim to prove reputational damages.[190] The lower standard for a false light claim renders this cause of action more accessible for celebrities—the main burden in a hypothetical false light voice-cloning claim is proving that the false impression given by the voice dupe would be highly offensive to a reasonable person.[191] Though the actual malice standard is also applicable in false light cases, it can easily be met in instances of voice cloning—the requisite reckless disregard for the truth is inherent in the creation and publication of a falsified voice.[192]

---

182. *See generally* J. A. OSBORNE, DELAY IN THE ADMINISTRATION OF CRIMINAL JUSTICE: COMMONWEALTH DEVELOPMENTS AND EXPERIENCE (1980) (noting that delays may occur because of the complexity of cases involving novel technology).

183. *Embrace AI to Survive*, KEARNEY (Dec. 13, 2017), https://www.kearney.com/operations-performance-transformation/article/?/a/will-you-embrace-ai-fast-enough [https://perma.cc/6NAP-DCV8] ("Capabilities once concentrated in a few large organizations will become widely accessible").

184. Kite-Powell, *supra* note 94 (quoting David Britton, vice president of industry solutions, global ID, and fraud at Experian) ("Consumers need to be vigilant to understand that these emerging threats exist, and while they aren't yet widely used today, we believe they will be increasingly popular among fraudsters.").

185. *See supra* Parts II, III.

186. *See supra* Part II.

187. *See supra* Part II.

188. Though this Note is limited to a discussion of public figures and the legal avenues available to them should they fall victim to a voice cloning attack, it is possible that private individuals will fall victim to voice dupes as well. State legislatures enjoy the authority to lower the burden of proof or standard for private individuals bringing defamation claims. I would encourage legislatures to look into this, should voice cloning begin to impact individuals not in the public eye.

189. *See supra* Part III.

190. *See supra* Section III.A.

191. *See supra* Subsection III.A.3.

192. *See supra* Subsection II.C.2.

As individuals with nefarious motives armed with AI technology begin to wage attacks on public figures,[193] courts will be forced to confront the intricacies of voice falsification and First Amendment freedoms. When presented with this difficult task, courts should look to preexisting torts to guide their inquiries and expand them to cover these novel causes of action. Allowing celebrities or public figures to bring defamation or false light causes of action against those who choose to dupe voices for nefarious purposes will protect the figures' reputations and privacy rights, while effectively punishing those attempting to spread misinformation via voice clone—internet trolls beware!

193. Kitti Palmai, *Voice Cloning of Growing Interest to Actors and Cybercriminals*, BBC NEWS (July 12, 2021), https://www.bbc.com/news/business-57761873 [https://perma.cc/6UH5-85FL] (noting that there is a "huge security risk" that comes with synthetic voices).