



Synthetic personas: Navigating the new legal frontier of global advertising

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As Generative AI (GenAI) transitions from a creative experiment to a core operational tool, multinational corporations are increasingly adopting "synthetic personas"—AI-generated human models—to power their marketing engines. For global brands, this shift offers unprecedented scalability and cost-efficiency. However, it also introduces a complex web of legal challenges across jurisdictions, thereby requiring a proactive and harmonized legal strategy.

The "Human Authorship" Paradox: A Global IP Challenge

The most immediate hurdle in utilizing AI-generated personas lies in Intellectual Property (IP) protection. The prevailing consensus among major jurisdictions, including the **US Copyright Office (USCO)** and various European authorities, remains firm: copyright protection requires "human authorship." Purely AI-generated outputs, devoid of sufficient human creative control, are generally ineligible for copyright protection.

For legal departments, this creates a "Proprietary Gap." While a brand may use these images, it may lack the legal standing to prevent competitors from using the same or substantially similar personas.

- **The Strategy:** Brands must focus on protecting the "composite work." By integrating synthetic personas with proprietary elements—such as authentic product photography, trademarks, and unique graphic design—companies may secure a "thin" copyright over the entire advertisement, even if the persona itself remains within the public domain.

Accidental Likeness and the Right of Publicity

A significant risk in GenAI is the "black-box" nature of training datasets. Even when a persona is intended to be purely fictional, the algorithm may generate a face that bears a striking resemblance to a real individual—whether a celebrity or a private citizen.

In jurisdictions with strong **Rights of Publicity** laws (such as the US) or stringent **Personality Rights** (as seen in Germany or Brazil), this "accidental likeness" could trigger substantial liability.

- **Risk Mitigation:** Implementing a "GenAI Compliance Protocol" is essential. This includes strictly prohibiting the use of names of real persons in prompts and conducting mandatory reverse-image searches (e.g., via Google Lens) before any high-profile campaign launch to ensure the persona does not inadvertently mimic a known public figure.

The Transparency Mandate: EU AI Act and Beyond

Global regulatory trends are moving toward mandatory disclosure. The **EU AI Act**, the world's first comprehensive AI regulatory framework, explicitly requires that AI-generated content be labeled as such. Similarly, self-regulatory bodies like the **ASA (UK)** and **CONAR (Brazil)** are emphasizing transparency to prevent consumer deception.

- **Standardizing Disclosures:** Rather than a case-by-case analysis, global brands should adopt a universal disclaimer standard. A clear, legible label—such as "*Persona generated by artificial intelligence*"—not only ensures regulatory compliance across borders but also reinforces brand ethics and consumer trust.

Technical Integrity and Algorithmic Bias

From a product liability and consumer protection perspective, the "synthetic" element must be confined to the background or the persona. The **product itself**—the appliance, the hardware, the technology—must remain a faithful, non-AI-altered representation. Any AI manipulation that misrepresents a product's features or performance could be categorized as "deceptive advertising" under **FTC (US)** or **GDPR-adjacent** consumer laws.

Furthermore, legal teams must oversee the ethical output of these tools. GenAI can inadvertently perpetuate racial or gender biases present in their training data. A robust legal review must include an "Inclusion Audit" to ensure that synthetic personas align with the company's Global Diversity, Equity, and Inclusion (DEI) commitments.

Conclusion: Legal as an Architect of Innovation

The role of the modern corporate counsel is not to stifle innovation with "no," but to architect the "how." By establishing clear guardrails—focused on transparency, IP integration, and rigorous verification—legal departments can empower creative teams to harness the power of GenAI. In the race to digital transformation, the most successful brands will be those that pair creative audacity with a sophisticated, global-ready legal framework.

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