

**AI & Intellectual Slavery: The Law of *Upload***

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In April 2020, Amazon released *Upload* depicting a future in which advances in computation and neuroscience allow the digital simulation of human consciousness. Dying individuals pay to be “uploaded” into a digital afterlife where consciousness is converted into data and executable code, all of which can be edited, reset, or even deleted. The show, thus, blurs the boundaries between reality and VR, consciousness and AI, and even life and afterlife. In the process, *Upload* raises complex questions of tort liability, property ownership, contract rights, and legal personhood. Most jarring, however, is *Upload*’s depiction of a future where the legal regime unintentionally reinstates a virtual form of intellectual slavery.

Consider the existing law of AI creations. In the United States, the Copyright Office has adopted a stringent “human authorship” requirement according to which the “fruits of intellectual labor” are limited to those “founded in the creative powers of the mind”—the human mind that is (Compendium Of U.S. Copyright Office Practices, Ch. 300, §306, 3rd ed., 2014). This position was reaffirmed in the infamous “monkey selfie” case in which the court found that “a monkey...lacks statutory standing under the Copyright act” (*Naruto v. David John Slater*, 888 F.3d 418, 9th Cir. 2018). Even in jurisdictions more welcoming to the protection of AI-generated content, the ownership rights belong to the company or individual employing the AI, and not to the AI itself. A court in China, for example, recognized that stories produced by an AI called Dreamwriter possessed sufficient originality to qualify for protection, but the copyright was granted not to the AI itself but to the tech titan Tencent that created it. But where is the boundary between an AI and the human mind? As Nathan, the uploaded protagonist, described, “[i]n a sense both of our consciousnesses are simulations, mine on a silicon computer and yours on a computer made of meat, your brain” (S1E7 at 12:07).

*Upload*, whether consciously or not, premises its narrative on the likely scenario that law will lag behind technology. Much like *Naruto* the monkey and the Dreamwriter AI, uploads are not allowed to work, contract, or directly earn money in any way (S1E4 at 1:45). More importantly, uploads are themselves “owned” (*Id.* at 6:53). While the interpersonal dimensions of this reality are explored in the show, the legal ramifications are not. Throughout the show, the various uploads continuously produce content. Most notably, Nathan himself constantly generates thoughtful and artistic prose. All of these creations, however, are owned by either Horizen, the company behind the digital afterlife, or the living account holder.

In the process of being uploaded individuals forfeit their right to own any property or intellectual property for an empty promise of eternity. After scanning, Horizen has uploads locked in a golden cage where it not only collects monthly hosting fees, but also has the legal power to make further profit off all the fruits of their labor. Uploads have only their account holders to turn to, who themselves may for whatever reason decide to delete, freeze, or alter the upload without recourse. In the show, human rights defenders seem to adopt a truly misguided agenda: instead of fighting for the rights of uploads, they are fighting for the rights of humans to be uploaded (S1E4 at 11:44). By supporting this human right to *enter* what amounts to a labor camp for consciousnesses, they fail to rise *against* that very labor camp.

What sets *Upload* apart from other shows about technological servitude (and robotic uprising), like *Westworld*, is that in *Upload* human consciousness *is* the AI. In this proposed paper we hope to analyze the law of *Upload* as a launching pad for a more nuanced conversation about what is artificial in artificial intelligence and what is virtual in virtual reality. We will argue that becoming early adopters of a new reconceptualized language around “us” and “them”, the “self” and the “other” can perhaps future proof our society from the cyborg perils that await us in the undoubtedly arduous and tumultuous road ahead. This way we may possibly be able to trade a looming Horizen for at least a slightly better horizon.

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Biographies

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Selected Works:

1. João Marinotti, Tangibility as Technology, 37(3) *Georgia State University Law Review* (forthcoming 2021).

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Selected Works:

1. Asaf Lubin, The Rights to Privacy and Data Protection Under International Humanitarian Law and Human Rights Law, *in* RESEARCH HANDBOOK ON HUMAN RIGHTS AND HUMANITARIAN LAW: FURTHER REFLECTIONS AND PERSPECTIVES (Robert Kolb, Gloria Gaggioli and Pavle Kilibarda eds., Edward Elgar, forthcoming, 2021).
2. Asaf Lubin, The Liberty to Spy, 61(1) *Harvard International Law Journal* 185 (2020).
3. Asaf Lubin, 'We Only Spy on Foreigners': The Myth of a Universal Right to Privacy and the Practice of Foreign Mass Surveillance, 18(2) *Chicago Journal of International Law* 502 (2018).