



# SAG-AFTRA Contract is a Landmark For AI and IP Interplay

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**In the realm of entertainment, where creativity meets technology, a recent agreement between the Screen Actors Guild-American Federation of TV and Radio Artists and producers is advancing the dialogue around intellectual property rights.**

**Beyond setting standards for pay, work hours and safety conditions, it addresses a pressing concern: the impact of artificial intelligence on personal image and voice rights.**

**This agreement marks a significant step in the evolution of AI in Hollywood, highlighting the growing need for legal frameworks that address the unique challenges posed by digital technology.**

### **The AI Dilemma**

As technology propels forward, AI has become an unstoppable force, transforming the way we create content.

While technology has long been used in filmmaking, the latest AI capabilities can now craft near-perfect digital replicas of human images and voices, sparking a critical debate about personal rights in this digital era.

Members of the SAG-AFTRA union recently negotiated with the Alliance of Motion Picture and Television Producers to begin addressing many of the concerns arising from AI in theatrical motion pictures and scripted content for various platforms.

The resulting agreement, ratified on Dec. 5, 2023, introduced a framework to safeguard performers' rights and set the stage for future discussions on how those rights interact with AI.

However, some actors within SAG-AFTRA were dissatisfied with the recently passed agreement, which ended a nearly four-month strike.

Many of the critics argue that loopholes in the contract could lead to potential pressure on actors to consent to AI usage and express concerns about the impact on film crew opportunities.

### **Decoding AI**

The agreement introduced novel terms like "employment-based digital replicas," "independently created digital replicas" and "synthetic performers." These new terms redefine how AI is being used in the industry.

For instance, "employment-based" refers to AI created with the performer's physical participation in connection with employment in a project, while "independently created" pertains to AI licensed to a production using an actor's voice and likeness.

However, the agreement specifically sets forth detailed requirements to protect performers, and in various instances, require their consent and compensate them for digital replicas of their voice or likeness.

As AI continues to revolutionize content creation, this agreement provides crucial insights into how the industry might adapt and evolve in response.

### **Challenges and Exceptions**

Navigating the delicate balance between an individual's rights and the broader freedoms allowed by the First Amendment, such as satire, parody, creative expression or education, is a complex aspect of the agreement.

For example, under the fair use doctrine of U.S. copyright law, it is permissible to use limited portions of a work, including quotes, for purposes such as commentary, criticism, news reporting and scholarly reports.



Therefore, the SAG-AFTRA agreement must be careful not to overstep the boundaries set forth by First Amendment rights and copyright law, while still trying to protect an individual's rights to their image and likeness.

## Industry Impacts

The SAG-AFTRA agreement is a landmark in acknowledging the complex interplay between AI advancements and personal rights in the digital era.

As AI continues to become an integral part of creative processes, companies and creators must tread carefully to navigate potential legal ramifications.

The SAG-AFTRA agreement not only sets a precedent for protecting performers, but also serves as a cautionary tale for the wider industry.

Companies utilizing generative AI or other AI systems for content creation, for example, face the risk of inadvertently infringing upon intellectual property and violating personal tort laws.

This emphasizes the importance of vetting images and videos to ensure compliance, prompting businesses to be vigilant about the sources and accuracy of the content generated by AI systems.

In addition to the SAG-AFTRA agreement, legislation has been introduced in response to the growing concerns surrounding the unauthorized use of AI in replicating likenesses.

For example, Sens. Chris Coons, D-Del., Marsha Blackburn, R-Tenn., Amy Klobuchar, D-Minn., and Thom Tillis, R-N.C., introduced a bill in October known as the Nurture Originals, Foster Art, and Keep Entertainment Safe Act, which aims to provide legal recourse for both celebrities and ordinary individuals affected by the unauthorized AI replication of their likeness.

Additionally, Reps. María Elvira Salazar, R-Fla., and Madeleine Dean, D-Pa., put forth the No Artificial Intelligence Fake Replicas And Unauthorized Duplications Act on Jan. 11, which establishes a

framework governing the use of image and likeness for the creation of AI-generated digital replicas, imposing penalties for unauthorized duplications.

These bills reflect a widespread recognition of the need to address intellectual property rights affected by the use of AI in the entertainment industry and beyond.

## Risk Management Principles

For businesses navigating this new terrain, it's crucial to stay informed about these evolving legal frameworks to ensure compliance.

Robust risk management involves employee training, continuous monitoring, and adaptability to evolving laws and technology to ensure a dynamic and resilient approach to AI's legal challenges in the creative realm.

Additionally, collaborative industry efforts to share best practices and commit to ethical deliberations can further contribute to shaping a responsible and legally compliant AI landscape.

## Looking Ahead: Anticipating Legal Shifts and Industry Norms

The SAG-AFTRA agreement resolves current challenges and paves the way for future legal and ethical considerations in the rapidly advancing realm of AI and entertainment.

Its influence extends beyond media governed by the SAG-AFTRA agreement, shaping rights negotiations and potentially affecting court decisions on AI, intellectual property and digital replicas.

More than a resolution to a labor dispute, the SAG-AFTRA agreement is a proactive step in determining the appropriate intersection of personal rights and rapidly advancing AI technologies.

It envisions a future for the industry where creativity flourishes without compromising the individuals contributing to its magic. This agreement serves as a roadmap for navigating the uncharted territories of AI in the world of entertainment, prompting us to contemplate what the future holds.

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