

TV/THEATRICAL/STREAMING

Artificial Intelligence (A.I.) Principal Performer Basics

Who owns an employment-based digital replica?

The employer legally owns all materials created from your work on a motion picture. With the new terms in place, the employer cannot use or authorize use of those replicas without *your consent* and, in most cases, further payments.

Do the provisions on digital replicas apply to voice actors?

The definitions refer to both voice and likeness, so the same rules apply to digital replicas of your voice as they do for your image. Animation voice actors working under our Television Animation Agreements have certain additional rights.

Can you explain the difference between an *employment-based digital replica* and an *independently created digital replica*?

- It is an “employment-based digital replica” if the producer hires you to render the performance used to make the replica, such as through being scanned on set, in connection with a particular project.
- An “independently created digital replica” is one that is created independent of a particular project and that may be licensed to a producer for a project that you are not physically working on, e.g., if you have a digital replica made yourself and license it to the production.

I was scanned by a producer on a movie earlier this year. There was language in the fine print of my contract that gives them permission to use my “simulated likeness and voice.” How do these new provisions protect me?

- We have long taken the position that a producer’s use of your digital replica is a mandatory subject of bargaining and that language like that is void to the extent it conflicts with your rights under the applicable collective bargaining agreement. In other words, the language in the fine print is not applicable and the producer has not validly obtained your consent unless it did so in a manner that complies with the terms of our contract.
- The new provisions related to use of a digital replica will apply to any use going forward. This means if you were scanned on a previous project, the producers must get your informed consent to use your digital replica for any new use.

Does this new language mean that when we get cast in a principal role, the producer will automatically scan us and then has to give 48 hours’ notice if they want to use the digital replica they create?

No. It means they have to give you at least 48-hours notice *before* they scan you.

- The production crew can no longer surprise you on set and send you to get scanned. The producer has to give you notice and get your consent at least 48 hours in advance, or when you are hired, if that is less than 48 hours.
- The production also has to get your consent for the *use* of the digital replica, which includes a requirement that they provide a reasonably specific description of the intended use.
- Production will have to get your consent *every* time they want to use your digital replica in a *different* project or in a *different* way from what they described initially.

When can “synthetic performers” be used by companies in place of a performer?

Under the definition of “synthetic performer” also known as “synthetic fake,” it must be a wholly new creation and not based on an actual performer. When a company wants to use a synthetic performer, they will have to provide notice to the union and an opportunity to bargain.

They also must bargain with performers when they want to create an asset using a specific performer’s name and a “principal facial feature” (i.e., eyes, nose, ears and/or mouth).

- If the digitally created character is voiced by a live performer, it is not a synthetic performer. The voiceover work would have to be covered.
- If the digitally created character resembles an actual performer, it is a digital replica and the applicable digital replica terms would govern.

QUESTIONS?

If you have any questions about A.I., email AIQuestions@sagaftra.org.