

AI Voice Tech Legal Issues To Consider In The Film Industry

By **Karen Robson** (June 9, 2023)

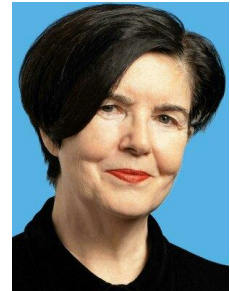
Studios and producers can now create believable and identifiable artificial voice performances by training artificial intelligence using prior recordings of well-known performers as source material.

As this technology moves further into mainstream use, there will be several legal issues that rights-holders will need to consider and navigate.

Much of the discussion around the legal issues raised by use of AI in entertainment has been about the creation of "original" works using AI and the applicability of the copyright laws to prevent copyright-protected work from being used to assist in the creation of simulated voice performances.

However, there are other legal issues regarding the use of generative AI voice technology, including:

- The rights of a performer in the use of their name, voice and likeness — their so-called rights of publicity. Publicity rights are now descendible to the estates of deceased actors and other celebrities in numerous U.S. states including New York.
- The law relating to consumers' rights, such as the tort of "passing off" and similar actions relating to false and misleading advertising and the like.
- The relevant guild and union agreements applying to such performances and the contractual language of performers' agreements.



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New Voice Performances From Retired or Deceased Performers

A high-profile instance of an AI voice creation that has navigated key legal issues is the use of James Earl Jones' voice in future "Star Wars" films and TV shows. With Jones' agreement, Ukraine-based company Respeecher is manufacturing voice performances for The Walt Disney Co.'s future use for the character of Darth Vader.

A third-party actor performs the role for the new shows, it is recorded, and then the actor's performance is converted to simulate the sound of Jones' characterization and voice in the role he debuted in 1977. Jones at 91 is retired from acting, but he — and later his estate — can still be remunerated for his unique contributions to the role.

Performers and their lawyers should now pay attention to publicity rights in the context of estate planning, including specifically the right to permit others to simulate their voice and performances, as well as use of their name and likeness.

A performer should consider not only to whom they want to leave the financial benefit relating to these rights, but also to whom they wish to give the approval rights on such use — perhaps a trusted talent agent or other representative different from the financial beneficiaries.

This approach could be valuable not only in films and television, podcasts, audiobooks, documentaries and radio, but also in video games where certain actors' voices have become identified with particular characters in important game franchises.

Creating Voice Performances That Performers' Schedules Would Not Otherwise Permit

Respeecher is also involved in having a star create an advertising endorsement campaign for a chain of stores, in which the producer or advertising agency wanted voice-overs from the star personalized for each individual store in the chain.

They used generative AI for the individualized advertising messages, allowing the star to record one ad but also appear in — and be paid for — numerous individualized ads for each store in the chain.

For busy performers and celebrities, the possibilities for this use are significant, such as in social media, personalized messages for fans and other uses that might otherwise require time-consuming dubbing sessions.

Entirely Synthetic Voice Performances

Not all AI voice creation is based on simulating identifiable actors' voices such as James Earl Jones as Darth Vader.

For example, Sonantic is a firm that specializes in entirely synthetic voices that are no longer robotic sounding but rather are emotive — e.g., they can shout, scream and whisper — and they do not need a live actor to perform the lines.

Sonantic works with video game makers to supply entirely synthetic voice-overs in development and preproduction stages of video game creation. Most video game production studios then switch to real voice actors for final production, but some have started using the Sonantic voices even for final production, certainly for characters with fewer lines and to correct live actors' work.

Human actors have not disappeared entirely yet in video game production.

Use of AI Voice Tech To Dub Performances in Languages an Actor Does Not Speak

To date, territorial distributors have used actors fluent in applicable local languages to dub the original language performances of actors in such films and TV shows.

Certain dubbing actors' voices have become identified in their home countries as the voice of known stars — e.g., Robert Chevalier, the official Italian voice of Tom Cruise and Tom Hanks.

In many countries, the public is used to such famous actors sounding like the voices of their designated and approved dubbing actors, and problems arise if those identifiable dubbing actors retire or die.

Now, with AI technology, an Italian actor can perform the lines in Italian, and it can be simulated to sound like Tom Cruise speaking Italian; alternatively, studios can simulate the sound of the voice of the "Italian Tom Cruise" speaking the lines, even after the dubbing actor passes away. Increasingly, with this remarkable new technology we expect audiences will prefer a soundalike of the original actor speaking the local language to a dubbing actor.

At the Cannes Film Festival this year, AI firm Flawless announced a partnership with XYZ Films and a U.K. producer to acquire rights to foreign-language films, which they will convert to English for distribution using Flawless' TrueSync technology to create lip-synced versions.

Flawless confirmed that they will be using original voice artists for these "visual translations," and not synthetic AI voice tech, and that they are working with the Screen Actors Guild-American Federation of Television and Radio Artists proactively, although presumably they are using some AI voice tech to speed the production of these new versions.

SAG-AFTRA national executive director and chief negotiator Duncan Crabtree-Ireland adds that Flawless' "more authentic translation product" uses video AI technology to alter the actors' mouth movements to be newly generated to synch with the English language dubs.

Another use of the Flawless AI tech is to create versions that paper seamlessly over instances of profanity, impacting a film's rating to create a more commercial product, with a less restrictive rating.

This technology also can be used for reshoots in connection with the editing of a film or TV program.

Instead of a producer needing to bring actors physically back to set to do reshoots simply to add new lines to improve or clarify a scene in some way — or instead of having to cut away from an actor to add a new line without showing the actor's face — new lines can be done with AI only, using voice tech and video tech to change the actor's mouth movements.

Legal Issues

In response to this new AI voice technology, we expect to see revisions in clauses in performers' contracts relating to the producer's right to dub both in the original language and in foreign languages to expressly allow AI voice dubbing and simulations for the original production and for ancillary uses, e.g., advertising and merchandising, and the right to use it for voice simulations in future productions based on the original production.

This includes digital manipulation of mouth movements to sync with the new language in the original and dubbed languages.

Star performers already regularly negotiate limited "one picture" use language for their performance in a production and insist on the first right to dub in their native language and other languages in which they are fluent, and they often restrict merchandising use of their voice — and name and likeness — and in any other ancillary uses like soundtrack albums.

Artist representatives will need to give such language even greater scrutiny in the AI-enabled future for all actors for both creative control issues and financial compensation reasons. We also expect unions and guilds to seek more approvals, restrictions, protections

and additional minimum payments for AI use.

Foreign unions will probably seek to protect their dubbing actors' jobs. While using many current forms of voice AI, an actor is needed to do the initial performances in the foreign language, the prominence of that role is reduced and the number of actors needed may also be reduced.

An interesting object lesson in this arena is provided by the voice actor Susan Bennett, who has reported that she was engaged and paid on an hourly basis for extensive voice recording sessions of many different sound combinations in American English by ScanSoft Inc. — now Nuance Communications Inc. — in 2005.

Apparently, those recordings were later purchased or licensed by Apple Inc. to create the first iteration of the voice of American Siri, which appeared in 2011. If you ask Siri whether voice recordings of Susan Bennett were used to create her voice, Siri will not confirm or deny, but rather will direct you to third-party press articles to that effect.

Bennett claims she did not receive any additional compensation from Apple — not that Apple was contractually or otherwise obliged to do so — for the continued use of her vocal likeness by Apple through AI generative simulation. The process of utilizing the sounds recorded by Bennett to create sentences spoken by Siri is called "concatenation."

The result is not Bennett's voice but rather a digital voice that nevertheless was apparently recognizable to a colleague of Bennett's as Bennett's voice. Bennett says that when called to inform her, she had no idea it had been used for this purpose.

There were also Australian and English voice actors whose recordings were used for other English language iterations of Siri's voice. All the original Siri voices have since been replaced and updated by Apple.

If you create and release a recording that misleads a consumer into thinking it is the real voice of a performer or celebrity, in addition to possibly violating a performer's rights of publicity — or a deceased performer's right of publicity in those states that permit descendible rights of publicity — it may constitute passing off and/or infringement of false or misleading advertising laws.

In the early 1990s, there were a series of cases relating to use of soundalike performers focusing on advertising, notably the case brought by Bette Midler and filed in 1988 — *Midler v. Ford Motor Co.* — regarding use of a soundalike recording of her performance of the song "Do You Wanna Dance?" — a song many had recorded but that she had great success with, singing it in a distinctive style on her best-selling album "The Divine Miss M."

In that case, the U.S. Supreme Court held that advertisers may not deliberately imitate the distinctive style of a well-known singer to sell their products and if they do so, such performers can sue advertisers under California law for committing a type of fraud or theft, confirming the decision of a California federal court.

In 1989, the U.S. Court of Appeals for the Ninth Circuit awarded singer Tom Waits \$2.4 million in damages from Frito-Lay and its advertising agency for employing an impersonator to copy his voice in a corn-chip radio ad.

The time is ripe for these cases to be revisited in an AI context.

Any lawyers consulted about using soundalike generated by AI should: (1) ensure they have the appropriate informed consents of all necessary parties; (2) comply with applicable union or guild requirements — additional agreements and consents may be expressly required under such union agreements and/or additional payments may be mandated thereunder for further uses of an actor's prior performance; and (3) determine whether you need to identify or distinguish to the public that the recording is not an authentic or original recording of the identifiable performer.

This is a future that is still being written and contains many unknowns.

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