

INTERACTIVE

Digital Replicas and Generative Artificial Intelligence for the Tiered Independent Interactive Media Agreement (Tiered I-IMA)

Our contracts distinguish two types of artificial intelligence, “digital replicas” and “generative artificial intelligence.”

1. **“Digital replicas”** are digital versions of an off-camera or on-camera performer’s performance that can be used to independently generate new material not previously recorded by the performer.
2. **“Generative Artificial Intelligence”** generally refers to a subset of artificial intelligence that learns patterns from data and produces content based on those patterns (e.g., ChatGPT4, MidJourney, Dall-E2). It does not include ‘traditional A.I.’ technologies programmed to perform specific functions, such as character animation in game production.

It is important to understand that if the digital replica was initially created in connection with a specific interactive project, it is and remains an employment-based digital replica. On the other hand, an independently created digital replica might be one that a performer owns and licenses to the producer.

Who owns a Digital Replica?

The employer legally owns all materials created when you work on an interactive project, including any replica created in connection with that work. That said, with these new terms in place, they cannot use your digital replica on any other project without your consent and, in most cases, further payments.

Do the provisions for Digital Replicas include on-camera?

Yes, this provision includes both off-camera (voiceover) and on-camera work.

When does the employer need to inform the performer if they intend to create a Digital Replica?

At the time of the audition or the job offer, whichever comes first.

What if the employer wants to use my digital replica?

The employer must get your consent before doing so. This must include a reasonably specific description, and it must be clear and conspicuous.

The employer will have to get your consent again each time they want to use your digital replica in a different project or in a different medium from what you consented to initially. Consent for future use may not be obtained at the time of initial employment.

What if the employer wants to use my name and/or my character for Generative A.I.?

The employer must obtain the performer’s consent and bargain for the use of the GAI-generated material at no less than scale minimum. For clarity, this provision applies to each performer if more than one performer’s name and/or character name is used.

Is the union able to track the use of our digital replicas?

The current state of technology does not include the ability of third parties to track digital replica use automatically.

However, once publicly released, the employer must provide the performer with a full description of the use of the character(s) and materials created using the digital replica, and an updated statement describing the final use of the digital replica in the Interactive Program. The union can use this information to demand information from employers about how they have used a digital replica as the employer is obligated to cooperate with the union in determining usage.

What happens if a company that has created my digital replica goes bankrupt or shuts down, and their assets get sold to another company?

The assets cannot be separated from the obligations that attach to them. Consent for digital replicas created under the Tiered Independent Interactive Media Agreement is granted on a per-project basis at the time of use. The new company would have to obtain your consent for any future use of your digital replica. SAG-AFTRA would pursue grievances against any party that attempted to use your replica without your consent. Additionally, right of publicity laws would help to protect against misuse of your digital replica by a third party. We are actively pursuing legislation that would provide further protections.

What safeguards are in place to ensure the secure storage of replicas?

While the agreement does not include language relating to the storage of digital replicas (like that in the Replica Studios Agreement), there are many state laws that govern the safe storage and use of personally identifiable information. In many states, this would include your digital replica.

What will prevent an employer from using a digital replica during a work stoppage/strike?

During work stoppages/strikes, the services of members are being withheld (aka struck). The producer would need to obtain your consent to use your digital replica, and this would be one of the services being struck. If there is a future work stoppage/strike AND you gave consent BEFORE the work stoppage, any informed consent granted under this provision will be deemed suspended for the duration of any strike conducted in compliance with the Interactive Media Agreement.

QUESTIONS?

If you have any questions, email interactive@sagaftra.org