



SUMMER 2022

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# SHINING BRIGHT

*(like a diamond!)*

SAG Award winner  
Ariana DeBose  
lights up our world.

# Entertainment in the Age of



**I**magine waking up to find you are the face of a new advertising campaign — and it's a product you don't want to be associated with. That was played for laughs on an episode of *Friends*, when Joey did some modeling and then, unbeknownst to him, ended up the face of an STD campaign.

As technology has evolved, artificial intelligence-powered software has made it possible to create realistic audiovisual, video and audio content known as “deepfakes.” It makes the above scenario not only possible, but a real threat to those who sign broadly written non-union contracts that allow for unfettered use of a performer's image or voice.

In 2018, *SAG-AFTRA* magazine reported on the growth of digital replicas' threats and opportunities. At that time, it was still a relatively niche technology, but in the last few years it has gone mainstream. Nonconsensual deepfakes remain a problem — one the union remains vigilant about — but the underlying technology has many legitimate uses that can provide exciting new opportunities for members.

## AI-Generated Content Is Growing

In recent years, there has been an explosion in the number of artificial intelligence, or “AI,” content technologies, and the quality of AI-generated content has improved exponentially.

AI tech has been used in large- and small-budget entertainment projects to virtually age and de-age characters in a way that is cleaner, cheaper and more believable than traditional visual effects, and without countless hours in the makeup chair. AI can simplify performance capture, potentially eliminating the need for capture suits and head rigs altogether. It can even be used to enhance the work performed by stunt performers, which can provide safety benefits.

In dubbing and ADR, AI technologies can help match an actor's mouth and facial movements to the dialogue they are speaking. It can also be used to dub the films themselves. In the context of projects originally produced under SAG-AFTRA agreements, it could open new revenue opportunities by providing members an opportunity to negotiate for their voices to be used in the foreign-language

release. On the other hand, distributors of foreign content who would otherwise hire SAG-AFTRA members to do dubbing work might find it preferable to use AI-generated audio of the original actors. Although this has not yet happened on a widespread scale, there are companies proposing these business models as the technology improves, so the union is monitoring this closely.

Outside entertainment, AI-generated audio can be used in digital assistant devices, customer service, speech assistance and countless other applications, opening new areas of work for professional voice performers.

AI technologies have brought historic figures back to “life” in education and museum settings, typically with the help of an actor who provides the performance capture that animates the digital person.

This field is full of exciting innovations, and a lot of performers are eager to work in these new areas and potentially generate new income through their AI voice or avatar, but it's important to understand both the technology and the pros and cons of working with it.

“Technological innovations have historically provided incredible new

opportunities for our members,” said SAG-AFTRA Executive Vice President Ben Whitehair. “But we must, as we always have, be deeply mindful of the associated risks, and ensure that our digital performances and likeness are protected.”

## Know What You Are Agreeing To

Anytime you grant rights to use your name, image, likeness and voice, you should have a clear contract in place governing the use. This is even more important in the digital context. But, even on traditional entertainment projects, performers are often asked to grant rights to use their voice, likeness, and performance well beyond what is necessary for the specific project.

You might have heard about a lawsuit filed by a Canadian voice actor against the company behind TikTok. The performer had done voice work for a Scotland-based company, but the voice files were allegedly used without her consent in the popular app. The case illustrates the risks for actors, particularly when working without the protection of the union behind you. Being branded as an app’s voice and being involuntarily associated with content that you cannot control can impact your image and ability to attract other voiceover work.

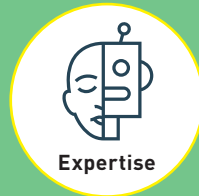
The nonunion AI contracts SAG-AFTRA has seen have very one-sided terms and are often with companies based in foreign countries. Many of these contracts give broad rights to use your likeness or voice irrevocably and in perpetuity — this means they have those rights forever and you cannot cancel the permission. There typically is no case-by-case approval over how your digital self is used, and no form of residuals or use-based payments no matter how long or widespread the use is.

“There are contract templates floating around that AI companies and industry players claim are performer-friendly, but a close look at the terms reveals a lack of crucial protections,” said Senior Assistant General Counsel, Compliance and Contracts Danielle Van Lier.

Rights of publicity — the laws that protect your name, voice, image and likeness — can potentially help against unauthorized uses of your digital self. These laws and others do not provide a remedy when you sign a contract granting away the rights. Without a union contract

## SAG-AFTRA and AI

SAG-AFTRA has been working on issues relating to digital avatars and voices since long before AI was being used to create them.



Expertise

**THE UNION** has several staff members with considerable experience and expertise on name, image and likeness rights, as well as on AI technology and its applications, deepfakes and other related topics. They have presented to a global audience on these subjects, hosted panels and discussions with experts in the field, and have written and been interviewed for numerous articles related to AI. SAG-AFTRA also participates in a multi-union workgroup on AI with British Equity and ACTRA.

Anticipating the rise of digital replicas, SAG-AFTRA has added or negotiated language into many of its promulgated and collectively bargained agreements prohibiting the creation or use of digital replicas without both the union’s and the performer’s consent, including those covering audiobooks, video games, podcasts, commercials and corporate/educational content.



Advocacy

“**SAG-AFTRA HAS** been advocating for rights of publicity and name, image and likeness rights for decades. This includes supporting critical legislation as well as writing amicus briefs in cases that could impact how laws relating to these rights are interpreted,” said

SAG-AFTRA General Counsel Jeff Bennett.

SAG-AFTRA drafted and was instrumental in California’s and New York’s civil laws against unauthorized digital nudity, as well as the passage of New York’s new right of publicity law, which includes prohibitions on using digital avatars of deceased performers.



Protection

**FOR SEVERAL** years, SAG-AFTRA has been in conversation with AI technology companies about the ethical use of this technology and the fair compensation and protection of performers who allow their voice, image or performance to be used in the development and use of an AI voice or avatar.

“SAG-AFTRA is committed to ensuring that our members’ rights are safeguarded and that they are paid what they deserve whenever their work is exploited, regardless of the technology employed or the nature of the exhibition platform,” said Senior Director, Strategic Initiatives Sue-Anne Morrow.

All SAG-AFTRA contracts for work in the AI space include these critical terms:

- Safe storage of the performer’s voice, likeness and performance, and the products and content created from them.
- The right to consent — or not consent — to uses.
- Explicit limitation on use of the content.
- Appropriate payment for use of the content.
- Any exclusivity must be clearly noted and fairly compensated.
- The right for a performer to control or opt out of continued use and production.

covering your work, your only potential recourse is costly litigation.

The entertainment and media industry

SAG-AFTRA Senior Assistant General Counsel, Contracts and Compliance Danielle Van Lier provided guidance for lawyers who are representing performers in connection with AI-generated content in the May 2022 issue of *Los Angeles Lawyer* magazine.

**READ THE ARTICLE HERE.**

is always evolving, and as technology advances, it seems that the pace of change is ever-increasing. SAG-AFTRA members and staff are continually working with tech firms, attending conferences and staying up to date on all the latest information in this emerging field to ensure members are protected.

“Artificial intelligence is opening new frontiers in digital manipulation, and while it is new territory, it doesn’t have to be scary, as long as we stay informed about the potential hazards,” said SAG-AFTRA President Fran Drescher. “As we move into this bold new future together, your union will be standing by your side.” ●

## What You Can Do

SAG-AFTRA is actively engaging in discussions with companies creating AI content, and has crafted contracts that are relevant to this new work area, are easy to use and provide protections for both the performer and the employer. But your help is critical in establishing a strong foothold in these emerging spaces.

**Don’t work off the card:** Many AI companies have websites through which anyone can submit their voice or likeness and sign up to be an AI “spokesperson.” Working in this space without a SAG-AFTRA contract is not only a dangerous move for a professional performer, it also impedes the union’s efforts to set fair terms and protections.

**Let your union help:** If you are approached to do this kind of work, ask your employer to consider hiring you under a union contract. SAG-AFTRA staff is happy to talk to them and make the process of becoming a signatory simple and easy.

**Talk to your peers and students:** Let your peers know that their best protection, when working with AI technology, is a union contract. If you teach classes to or mentor actors who are early in their careers, warn them of the risks discussed in this article.

**Communicate with your representatives:** Ask your professional representatives if they are current on the technology and understand the risks associated with it, and let them know that you aren’t interested in venturing into this space without your union behind you.

*In Event of Moon Disaster* was produced under a SAG-AFTRA agreement and is part of an MIT Center for Advanced Virtuality project intended to educate the public on deepfakes.

