

TV/THEATRICAL/STREAMING

Artificial Intelligence and Consent

What happens if we don't give consent to the creation of a digital replica? Can the producer refuse to hire me?

The short answer is yes. Producers have *always* been able to refuse to hire any person for any reason (except for reasons prohibited under applicable law). Even before this contract, producers could and did make being scanned a condition of employment, they just were less open about it. Now, you will have notice ahead of time and be able to make an informed decision on whether you want the job if it will require scanning. No more surprises on set or last-minute demands to be scanned. It also has to be *clear and conspicuous* — no more burying your consent to be scanned in the fine print.

The producer will also have to provide detailed information about how they will use the digital replica *and* get your consent prior to such use.

Not only do you have the opportunity to consent to the creation of the replica, you must be given a *reasonably specific description* of the intended use each time it will be used. This consent cannot be hidden in the fine print of your contract — it has to be clear and conspicuous and it has to be separately signed or initialed by you.

What does “clear and conspicuous” mean?

Generally, the legal definition of this term means “reasonably understandable and designed to call attention to the nature and significance of the information presented.” So, this could mean it is in a separate rider or it could be in your contract as long as it clearly stands out, such as in a larger font, ALL CAPS or bold or underlined. But “clear and conspicuous” is not the only requirement; you have to be given an opportunity to separately sign the consent. A bolded paragraph granting consent, alone, is not sufficient.

There is a body of law relating to this term that we would turn to in any grievance over whether language in your contract is “clear and conspicuous.”

Is new consent required for each use of our digital replica or can the employer get it for all future uses?

Consent is required for *each use* of a digital replica with some very limited exceptions. *You* will be able to control when and how your digital replica is used.

The wording around consent says the description of use has to be “reasonably specific.” Doesn't the word “reasonably” give the producers an out where they can just give us vague descriptions?

Not at all. We are confident that there is sufficient legal precedent regarding the term “reasonably” in this context that an arbitrator would interpret this to mean a “specific description.” If you are asked to sign a contract with a description you feel is inadequate, please contact the union for assistance.

If I am in a TV series, can the studio get permission to use my digital replica in the entire series when the replica is created?

Not really. While there is a multi-project exception to the requirement for consent to use employment-based digital replicas, the producer has to identify each episode (or picture) in which it will be used and provide you with a reasonably specific description of how it will be used in each episode. If there are any changes to how your replica will be used, the producer will have to seek your consent for the changes; they cannot exceed the scope of what you agreed to.

Why was dubbing excluded from the requirement for “informed consent?”

Dubbing is already permitted in the Codified Basic Agreement and the Television Agreement. The exception incorporates those existing provisions and references current standard practices.

How will the provisions relating to consent after death work if the producer claims they cannot locate my “authorized representative” and seeks the union's consent?

This concept is already in the Codified Basic Agreement and the TV Agreement relating to reuse of clips, so the same principle will generally apply here. Before the union takes any action, we will make sure the producer has exhausted all reasonable avenues to locate your authorized representative.

If you reside in a state that has a postmortem right of publicity registry, such as California, your authorized representative, which will usually be your estate, should submit their information to the applicable registry as that is a likely place for a producer to search for their information. We also anticipate establishing a system where you can provide us with instructions regarding what you want us to do should we be approached about consent to use your digital replica.

Why does the union have this right? Shouldn't my consent expire after death?

It is not intended to give the union new rights, rather, it's a new way for the union to help you protect your post-mortem rights. Without this language and required consent, there would be little to stop producers from exploiting your image or likeness when they cannot find the contact details for your estate or confirmation of your final wishes.

QUESTIONS?

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