

A.I. Digital Replicas

TV/THEATRICAL/STREAMING

Artificial Intelligence (A.I.) Digital Replicas

A “digital replica” is a replica of your voice and/or likeness that is created using digital technology, such as artificial intelligence, or A.I.

There are *two types* of principal performer digital replicas and one type of background actor digital replica in the Codified Basic Agreement (CBA) and Television Agreement (TVA).

1. “**Employment-based digital replica**” is a replica created in connection with your employment on a motion picture (i.e. a movie or TV and/or streaming show, etc.) You might be asked to participate in the creation of the replica, such as being scanned.
2. “**Independently created digital replica**” is a replica that is not created for a specific motion picture on which you were employed and that is used in a motion picture on which you are not otherwise working as a performer.
3. A “**Background actor digital replica,**” like the employment-based digital replica, is one created in connection with your employment on a motion picture.

It is important to understand that if the digital replica was initially created in connection with a specific motion picture, 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 is licensing to the producer.

Who owns an Employment-Based Digital Replica?

The employer legally owns all materials created when you work on a motion picture, including any replica created in connection with that work. That said, with these new terms in place, they cannot use your employment-based digital replica on any other project without your consent and, in most cases, further payments. The consent requirement is attached to the employer’s ability to exploit their rights. This concept is similar to the producer’s obligation to get your consent and pay you to reuse clips in which you appear or to pay you residuals when the film or show is released in a new market — these are bargained conditions upon which the employer may exercise their legal rights.

Do the provisions on digital replicas apply to voice actors?

The definitions refer to both voice and likeness, so the same rules would apply to digital voice replicas.

How does the 48-hour notice work?

It means the producer has to give you at least a 48-hour notice before they scan you to create a digital replica. The production cannot simply instruct you to get scanned when you are already on set and the producer cannot rely on consent buried in the fine print of your contract.

If the producer wants to scan you, they have to give you advance notice and get your consent at least 48 hours in advance (or, if less than 48 hours, when you are hired). It also has to be clear and conspicuous, such as in a rider or in contract language that is bold or in ALL CAPS.

What if a producer wants to use my digital replica?

If the producer wants to use your digital replica, they must get your consent before doing so. This must include a reasonably specific description and it must be clear and conspicuous.

The producer will have to get your consent again each time they want to use your digital replica in a different project or in a different way from what you consented to initially.

What happens if a company that has created my digital replica goes bankrupt/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 Codified Basic Agreement or TV 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 with the AMPTP does not include language relating to the storage of digital replicas (like that in the Replica Studios Agreement), there are a myriad of state laws that govern the safe storage and use of personally identifiable information. In many states, this would include your digital replica. This is an additional topic we will continue to discuss with the AMPTP, and we will take affirmative steps to encourage producers to put further protections in place.

What will prevent a studio from using a digital replica during a future 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. This is the same as when we asked members to withhold consent for reuse during the most recent strike.

If there is a future work stoppage/strike AND you gave consent BEFORE the work stoppage, the producer would be permitted to use the digital replica, but only to the specific extent consent was already granted. It would not impact our ability to effectuate a strong work stoppage.

Is the union pursuing any technology to be able to track the use of our digital replicas?

We have been having conversations with companies working in the A.I. space for many years, including ones offering tracking technologies or services. We continue to meet and talk with companies to ensure we remain at the forefront of this space.

QUESTIONS?

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