



Equity written submission to Intellectual Property Office open consultation Artificial Intelligence and IP: copyright and patents

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About Equity

We represent over 47,000 performing arts practitioners. Our membership is made up of actors, choreographers, dancers, theatre directors, models, singers, stage management, stand ups, storytellers, stunt performers and coordinators, theatre designers, theatre fight directors, TV and radio presenters, variety, circus, cabaret and light entertainment artists, voice artists, walk-on and supporting artists.

We negotiate collective agreements with all the major audio-visual producers and broadcasters in the UK and campaign on a range of issues affecting the audio-visual sector including intellectual property rights for creative workers. In December 2021 a ground-breaking industry agreement was reached between Equity and leading voice studio OMUK. The first of its kind in the UK, the agreement sets out the minimum fees and conditions of engagement for voice artists working on video games.

Equity Distribution Services (EDS)¹ ensure that performers receive royalties and other secondary payments for those engaged on Equity contracts arising from the terms of our collective agreements. Funds collected and distributed by EDS are paid in addition to monies issued by broadcasters and television companies which are also due under the terms of the union's agreements. Payments cover:

- cinema film and certain television royalties;
- collective licence monies for Equity-contracted performers in programmes available on BBC, ITV, Channel Four and Sky online on-demand and catch-up services;
- collectively negotiated funds for Equity-contracted contributors to radio programmes aired on BBC Radio 4Extra;
- royalties for sales of cast album recordings.

Equity has now paid out over £56.8 million to tens of thousands of performers since our very first payment run at the tail end of 2017. These secondary payments are vital means of compensation for workers who do not enjoy permanent employment in what is a very precarious industry. The potential for secondary payments to keep performers in the industry is particularly vital for Equity members from working class and marginalised backgrounds.

Summary

We are pleased to be taking part in this consultation focusing on artificial intelligence (AI) and intellectual property. AI is increasingly prevalent across the entertainment industry. AI-made performance synthetisation -- defined by Dr Mathilde Pavis as the process of creating a synthetic performance often achieved by manipulating the likeness of a performance or a performer² - is advancing significantly. We believe that AI used ethically and responsibly has positive potential for society and our economy. For the performing arts, A.I. could allow performers to appear in multiple productions across a single period boosting income levels. From an equality perspective, the development of AI could increase accessibility to the labour market for our deaf and disabled members.

However, it is widely accepted that UK law has failed to keep pace with developments in AI technology and urgently needs reform. In the absence of effective regulation, we are beginning to see abuses emerge. Copyrighted material is appearing in deep fake technology, blurring the lines between reality and fiction. These technological developments are already replacing jobs for Equity members. Moreover, AI's increasing capacity to clone human voices presents a substantial risk that the voice owner will either be under-compensated or not paid at all.

The scope of this consultation is therefore extremely disappointing. The government's priority is to make it easier for copyright owners to license their works for use with AI.ⁱⁱⁱ While the IPO recognised that "AI is playing an increasing role in... artistic creativity", the question of performers' rights is notably absent. We believe the government should be strengthening performers' rights, as well as looking at how copyright-protected works can be integrated in AI applications and the consequences of the misuse of AI technology.

In terms of policy solutions, we are calling for reform of the Copyright, Designs and Patents Act 1988 to protect performers against AI-made performance synthetisation. Without the legal recognition of these rights, performers cannot form contracts to authorise the synthetisation of their performance or likeness and therefore cannot commercialise the synthetisation of their own performance effectively. We would also like to see the government implement the Beijing Treaty as a matter of urgency. The granting of moral rights in-line with the Beijing Treaty would allow performers, and Equity as their representative, to combat the misappropriation of their images, likenesses, and performances. Finally, we believe the government should take forward provisions within the EU Copyright Directive that enable individual creatives and their representative organisations to achieve fair returns for the use of creative content in new media services.

Failure to reform our copyright framework and keep pace with technological innovation has the potential to damage the UK creative industries, which remains one of the great powerhouses of our times. Before lockdown, the creative sector supported over 2 million jobs and was growing at five times the rate of the wider economy, contributing £111.7bn to the Exchequer.^{iv} Beyond purely economic benefits, the industry provides a social infrastructure that binds every nation and region together. We see significant benefits in relation to people's physical and mental health, as well as tourism, skills creation, employment, and local regeneration. The industry is also central to UK soft power and our position on the world stage.

Landscape for AI within the entertainment industry

Rapid advances in technology have made AI systems more accessible than ever before. Commercial AI companies can be found across all areas of the entertainment industry sectors including voice, modelling, music, dance, journalism, and gaming. Performance synthetisation is a key area in this development. This includes a wide range of application:

- Text-to-voice or image-to-voice translation or generation
- Interactive digital humans or digital avatars capable of audio-visual interaction with users
- Manipulation of existing identities in audiovisual content such as Deepfakes

Equity's audio artists are particularly concerned by the development of digital voice technology for automated audiobook creation, which is fostered by the same technology for digital voice assistants like Siri and Alexa. Audiobook narration is a human storytelling enterprise and a great deal of skill goes into recording an audiobook. However, the perceived value for automated audiobooks is a combination of cutting cost and increasing convenience. According to Bradley Metrock, CEO of Project Voice and of Digital Book World, in 12–24 months high-end synthetic voices will have reached human levels.^v

Technical innovation has accelerated to such an extent that the image, voice or likeness of deceased performers are now being reanimated post-mortem and incorporated into films. We saw this technology used for the film *Rogue One: A Star Wars Story* (2016) with the deceased actor Peter Cushing and Equity worked with the estate of the deceased to ensure Lucas Films paid for the use of his voice and image. Not only does this raise ethical questions but also

challenges for performers Unions across the globe as this innovation would not be covered in historic collective bargaining agreements.

AI-made performance synthetisation has also created opportunities for abuse and exploitation. It is increasingly common for performers to have their image, voice or likeness used without their permission. For example, this year Canadian voice actor Bev Standing opened a lawsuit against TikTok's parent company ByteDance on the grounds of intellectual property theft. She claims that her voice, recorded as a translation job for the Chinese Institute of Acoustics three years ago, was used as a popular viral TikTok feature without her consent.^{vi} Another very common experience when undertaking AI work is that performers are asked to sign non-disclosure agreements (NDAs) without being provided with the full information about the job.

One type of AI-made synthetic performance known as 'Deepfakes' (or 'Deep Fakes') has received significant attention globally due to its malicious application. Deepfakes are defined by Equity's sister union in the U.S., SAG-AFTRA, as "realistic digital forgeries of videos or audio created with cutting-edge machine-learning techniques." An amalgamation of artificial intelligence, falsification and automation, Deepfakes use deep learning to replicate the likeness and actions of real people. SAG-AFTRA estimates that 96% of deepfakes are pornographic and depict women, and 99% of deepfake subjects are from the entertainment industry.

Equity survey

We recently conducted a survey to better understand the landscape amongst performing arts practitioners. The survey was open between 30 November and 04 January, and there were 430 responses.

- **36%** of respondents have **seen jobs listings** for work opportunities (e.g. via a casting site or agent) that involve any form of AI technology. This rose to 61% for audio artists.
- **18%** have **undertaken work** that involve AI technology. Of those who had undertaken AI work:
 - 24% had undertaken work involving voice synthesis / replica technology
 - 24% had undertaken work involving the creation of an AI avatar
 - 40% had undertaken work involving performance capture
 - 29% had undertaken work involving the text to speech technology
- Of those who had undertaken AI work, **21%** felt they had a **full understanding of your performers' rights** (as set out in the Copyright, Designs and Patents Act 1988) before signing the contract.

"I once made the mistake of participating in a recording which turned out to be a voice synthesis recording. I was not made aware of what it was going to be used for. It's only through conversations with other artists and audio professionals that I learnt how to avoid such recording. Novices and struggling colleagues keep being exploited in this way."

"I've recently been sent a contract in which I've been asked to sign away my IP rights, not for the first time."

"As a performer, there was virtually no information available, one is being made to sign NDAs without any knowledge of what the job entails."

"I was cast to be a foreign synthetic voice for 'one of the world's biggest computer/mobile phone companies'.... They wouldn't tell me who the end-client was until I signed the contract and I was expected to sign away all rights - they would've been able to do whatever they wanted with my work... Because of secrecy, there was no one to negotiate"

"I previously filmed on a production for a large/ high end production company where I was told that I had to 3D scan for the production for VFX purposes but (it) was not explained to what this really meant. Having already signed NDA's, I later found that the production would be able to reproduce/replicate my body scan for the film but for other purposes also across the production and related media."

- **65%** of respondents thought the development of A.I. technology poses a **threat to employment opportunities** in the performing arts sector. This figure rose to 93% for audio artists.

“It opens doors for companies to use cheaper “labour” from AI, leaving trained actors out of those opportunities.”

“Voice over work could be wiped out”

“Our talent will be used, but without effective agreements in place we are likely to be exploited and underpaid.”

“I think in the audio industry it will polarise the talent and bottom out the middle tier of audio artists who are great working artists but without a 'profile'. I think in theatre there is a chance to create wonderful pieces of work in collaboration with AI.”

- **93%** think the government should introduce **new legal protections for performers** so that a performance cannot be reproduced by A.I. technology without their consent.

“My voice was dubbed without my consent. This means my performance looked terrible.”

“A client didn't want to appear in a TV show... that he had previously been in. They used CGI to fake his involvement in an episode without paying him for using his image.”

“My voice has in the last 6 months been used by global car companies & home products in huge marketing campaigns, including National TV commercials & digital campaigns for which I don't receive a penny, even though I believe my contract does not include 3rd party advertising.”

“I have seen AI recorded audio books advertised & the jobs listed claim to be in-house research only but the contract wants to own your voice forever & use it for development of AI.”

“I had an AI company request 30 minutes of audio material for an audition (including a variety of narration styles). This just sent alarm bells off & I thought - there's no way you need that much material from someone unless you're planning on using it (without paying people.”

- **94%** think the government should introduce **new laws to regulate “deepfake” technology** and make it illegal for an individuals' image to be manipulated using A.I. without their consent.

“Deepfake tech does offer amazing creative opportunity to film and TV makers. But the capacity for its abuse is so great that the risks truly outweigh the reward.”

“I've already seen famous friends of mine grafted onto hardcore porn images immensely damaging to reputations and utterly vile.”

Reforming performers' rights

Performers' rights include two sets of rights under the Copyright, Designs and Patents Act 1988: the right to consent to the making of a recording of a performance; and the right to control the subsequent use of such recordings, such as the right to make copies of recordings.

AI-made performance synthetisation challenges our intellectual property framework because it reproduces performances without generating a 'recording' or a 'copy'. Therefore, the legal framework for synthetisation of live performances using AI systems is uncertain. This distinction is important because the Act does not grant protection against unauthorized reproductions of a performance, via imitation, re-performance or synthetisation. Put simply, AI-

made synthetisation generates digital sound and look-alike, and falls outside the scope of protection conferred to performances by the Act.

Without the legal recognition of these rights, performers are also unable to form contracts to authorise the synthetisation of their performance or likeness. As a result, performers are unable to protect and compensate for the use of the artists performance AI assisted works. Economic rights and the ability for performers to make commercial gain from their works is particularly important due to the precarious nature of the profession and for helping the UK retain creative skills.

We believe the IPO should review and augment performers' rights in light of the recent application of AI systems to performance synthetisation. Dr Mathilde Pavis from the University of Exeter argued in her written evidence to the IPO's previous consultation^{vii} that performers' rights should be augmented to include protection against the reproduction of performances.

- Section 182(1) should be revised to include the synthetisation of live performances as an act of 'recording';
- Section 182A of the Act should be revised to include the synthetisation of recordings as an act of making 'a copy';
- Alternatively, Part 2 of the Act should be revised to introduce a separate right to control the reproduction of performances.

We agree with Dr Pavis' recommendations and arguments. Improved legal protections will enable these stakeholders to control the unauthorized synthetisation of protected performances and form secure contracts to monetize their synthetisation. Augmented performers' rights ensure that UK performers and this sector of the UK creative economy stay competitive in facing the challenges brought by AI systems to their industry. This is the opportunity to place the UK as a global leader in the protection of performers via performers' rights.

Reforming moral rights

Beyond economic value, works can be very special to the creator emotionally and/or intellectually. Moral rights, which protect those non-economic interests, are available for literary, dramatic, musical and artistic works and film, as well as some performances. Moral rights in the UK are weak for our member's audio-visual performances because these rights only relate to the 'aural' or sound element of a performance. Equity has sought to rebut the presumption of transfer of moral rights by encouraging the agent community to insert the following clause into the contracts. Such an action cannot be undertaken by Equity it is down to the performers to assert the right.

"The Artist hereby asserts his/her moral right to be identified as a performer, conferred by section 205D of the Copyright, Designs and Patents Act 1988 as amended by the Performances (Moral Rights etc) Regulations 2006"

However, improving the moral rights framework under the Copyright, Designs and Patents Act 1988 is crucial. This would enable performers, and Equity as their representative, to defend against AI-generated or AI-assisted deepfake content. The WIPO (World Intellectual Property Organization) Beijing Treaty on Audiovisual Performances grants both economic rights and moral rights to audiovisual performances. The Treaty is the result of more than 20 years of persistent advocacy work by Equity, the International Federation of Actors and other performer organisations across the world. Equity was proud to attend the 2012 Diplomatic Conference in Beijing which finalised the Treaty and we look forward to working with the IPO on a successful implementation of the Treaty in the UK.

Implementing the EU Copyright Directive

The EU Directive on Copyright in the Digital Single Market was adopted and came into force on 07 June 2019, having been supported by the UK Government. The purpose of the Directive is to bring copyright law up to date at European level and specifically to meet the challenges of the growing digital economy. The most significant elements of the Directive for performers, writers and other creative workers are contained in Chapter III of the Directive. The Directive requires all Member States to put in place:

- transparency obligations, requiring parties to whom authors and performers have licensed or transferred their rights to provide information on the use of their works including revenues generated;
- a contract adjustment mechanism to allow authors and performers to claim additional remuneration when the revenues received are disproportionately low;
- a right of revocation where there is a lack of exploitation of the work.

The Directive is important for writers, performers and other creative workers because it would bolster the ability of individual creatives and their representative organisations to achieve fair returns for the use of creative content in new media services. This would make a significant difference to the rights of often precarious workers in the entertainment industry.

The UK was one of 19 EU countries that supported the Copyright Directive in the final European Council vote. In July 2019 the then Creative Industries Minister Margot James MP “applauded the decision to pass the EU Copyright Directive” and met with bodies from the creative industries to discuss how best to implement it. On 16 January 2020 Nigel Adams MP, the new Creative Industries Minister agreed that the Directive “contains many protections for our creative sector” but indicated that the decision would be taken over the coming year whether to adopt it. Equity, other performers’ unions, authors and partners across the creative industries were therefore extremely disappointed when former BEIS Minister Chris Skidmore MP clarified the government’s position on 21 January 2021, stating that the government has no plans to implement the EU Copyright Directive following the UK’s departure from the European Union.

The government should not lose sight of the fact that it played a key role in developing and agreeing to the many necessary provisions within the Directive. Given the opinion that Brexit presents an opportunity for the UK to write its own laws, the government should outline how it intends to take forward the Directive’s proposals.

Copyright for AI-generated content

It is our view that copyright should always be tied to the actions of a human and therefore limited to human-authored or human-assisted AI works. No intellectual property should vest in purely AI creations. Vesting copyright in AI-generated content presents many challenges, concerns that have been raised by academics, lawyers and producers across the UK and globally. For example, the concept of authorship is not readily applicable to AI-generated works because the existing copyright regime assumes an author to be a natural person. This ties the term of copyright protection to a certain period beyond the author’s lifetime.

ⁱ <https://www.equity.org.uk/at-work/equity-distribution-services>

ⁱⁱ https://ore.exeter.ac.uk/repository/bitstream/handle/10871/123963/PAVIS_AIandPerformersRights_UKIPO_2020.pdf?sequence=1&isAllowed=y

ⁱⁱⁱ <https://www.gov.uk/government/consultations/artificial-intelligence-and-intellectual-property-call-for-views/government-response-to-call-for-views-on-artificial-intelligence-and-intellectual-property#copyright-and-related-rights>

^{iv} <https://www.gov.uk/government/news/uks-creative-industries-contributes-almost-13-million-to-the-uk-economy-every-hour>

^v <https://www.publishersweekly.com/pw/by-topic/industry-news/publisher-news/article/87762-ai-comes-to-audiobooks.html>

^{vi} <https://www.dazeddigital.com/science-tech/article/53271/1/how-the-voice-of-tiktok-sued-the-app-for-stealing-her-speech>

^{vii} https://ore.exeter.ac.uk/repository/bitstream/handle/10871/123963/PAVIS_AI%20and%20Performers%20Rights_UKIPO_2020.pdf?sequence=1&isAllowed=y

<https://www.gov.uk/government/consultations/artificial-intelligence-and-intellectual-property-call-for-views/government-response-to-call-for-views-on-artificial-intelligence-and-intellectual-property>