

SAG–AFTRA strike 2023

Summary of agreed terms

Issued: November 2023



Background

2023 Agreements

Background

- Successor agreement to:
 - 2020 Producer-SAG-AFTRA Codified Basic Agreement ('**Codified Basic Agreement**')
 - 2020 SAG-AFTRA Television Agreement ('**Television Agreement**')
 - (collectively 'the Agreements')
 - [Official SAG-AFTRA summary](#) and [AI resources](#)
- Covers the period 9th November 2023 to 30th June 2026
- Artificial intelligence terms:
 - digital replicas
 - digital alteration
 - synthetic performers
 - background actors

Non-AI terms covered

- Performance Capture
- Streaming Bonus For High Budget SVOD Programs & Streaming
- Payment Distribution Fund
- Residuals
- Casting
- Pension & Health
- Schedule F (and other Schedule breaks)
- Television & HB SVOD
- High Budget AVOD
- Stunt Coordinators
- Singers
- Dancers
- Holidays
- Equity & Inclusion
- Sexual Harassment Prevention
- Miscellaneous items

Executive Summary

2023 Agreements

Notable Provisions

- **Compensation** is required for all uses of an actor's likeness
- **Consent** is required to use an actor's likeness:
 - in whole, or in part in any replica
 - i.e. made from scratch, via alteration of a performance, or in an invented (synthetic) asset
- Consent must be explicit and separate from other contractual consents
- Consent requests must be accompanied by descriptions of the use case(s)
- Beyond the above, training data itself is not regulated by the contract

Impacts of Those Provisions

- “Likeness” protections go beyond US statutory minimums
- Deliberate / acknowledged grey areas allow for later interpretation:
 - What is a “reasonably specific description” of a intended use case?
 - What does “remains substantially as scripted, performed and/or recorded” mean? How much can be changed? Do all changes have equal weighting? Is it contextual?
 - What is the scope of the exceptions for post production and localisation? Where are the boundaries and the exceptions to the exceptions? Etc.
- Archives & libraries do not incur any additional restrictions as sources of training data, but of course the law on this remains generally unsettled/disputed globally

Executive Summary

- Introduces regulations for using **performer likeness** with AI tools, with key requirements and exceptions
- Introduces regulations for digitally generated **synthetic performers**
- Does not regulate use of performances generally as **training data** (i.e. to build AI tools) – this was deemed too broad to resolve in this context
- **NB:**
 - the application of these terms will be clarified and refined in negotiation and litigation
 - other laws and regulations also apply

Summary Detail

- Studios **can** use AI to replicate performers and alter their performances :
 - but only with their informed consent and appropriate compensation
 - that is requested at the time of use (not merely at the time of performance capture)
 - and can use such performances with AI on later projects only if separately bargained*
 - in each case studio must provide a reasonably specific description* of the intended use
- **Exceptions** to these requirements :
 - if the First Amendment applies e.g. criticism, scholarship, satire, documentary etc.*
 - if a performance remains substantially as scripted, performed and/or recorded*
 - if alterations are purely for post-production* e.g. adjustments in dialogue
 - if adjusting lip/face/body/voice for a foreign language/localisation*

** definition and scope to be clarified by later negotiation and, likely, litigation*

Summary Detail

- Schedule F performers (i.e. paid per series or film, not per day) :
 - must be asked for consent
 - do not need to be paid separately for AI (it's included in their compensation)
 - overall minimums have been increased
- Studios can use AI to create synthetic performers, but ...
 - where synthetic performers are used instead of* human performers studios must notify the union and bargain with the union*
- Continuing review & negotiation
 - between union and each Producer (subject to NDA)
 - related to uses* of generative AI* in film development and production
 - via semi-annual meetings

** definition and scope to be clarified by later negotiation and, likely, litigation*

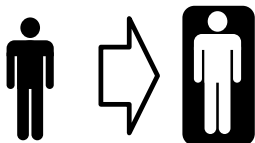
AI Concepts

2023 Agreements

AI Concepts

Defined Term

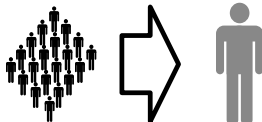
“Digital replica” =



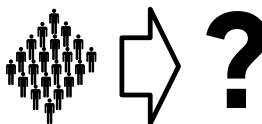
“Digital alteration” =



“Synthetic performer” =



“Training data”* =



What is it?

A generated likeness
of a real human
performer

“AI” edits to a human
performance

An invented digital
performer

The reuse of any data
or IP relating to a
performer to build any
AI tool

How is it built?

Personalise a general model
with data* from a specific
human performer

adapt a general model using
data* from many human
performers

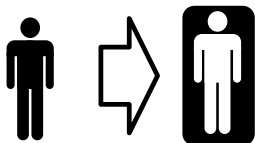
build a foundation, general, or
personalised model

* e.g. archive footage, dailies / rushes, performance capture, motion capture, digital scans

AI Concepts : Allowed by SAG-AFTRA?

Defined Term

“Digital replica” =



What is it?

A generated likeness of a real human performer

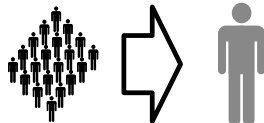
Is it allowed by the deal?

“Digital alteration” =



“AI” edits to a human performance

“Synthetic performer” =



An invented digital performer

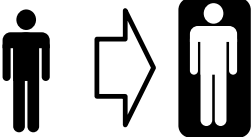
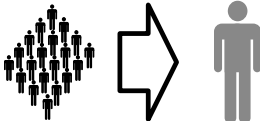
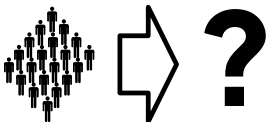
“Training data” =



The reuse of any data or IP relating to a performer to build any AI tool

yes

AI Concepts : Requirements

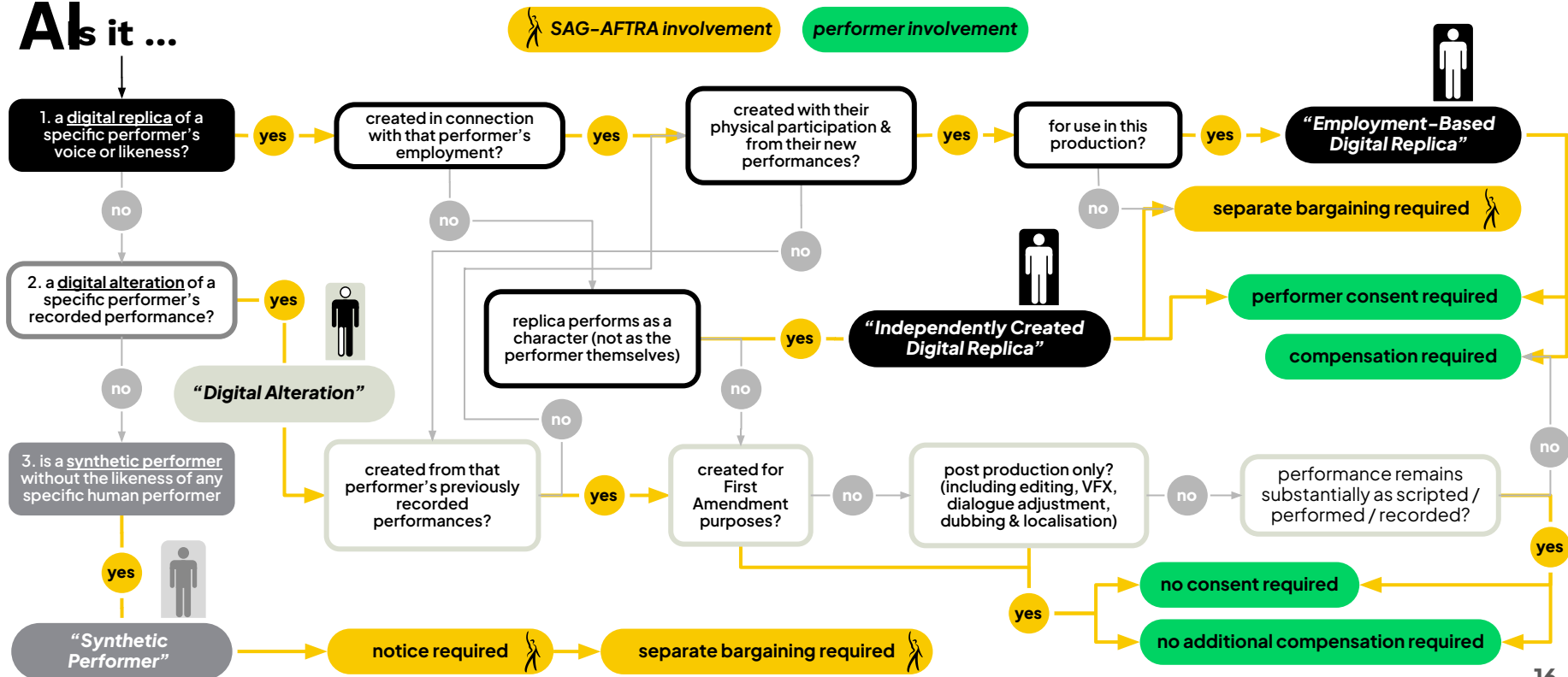
Defined Term		What it is	Advanced notice	Performer consent	Rate card agreed	Rate to be agreed
"Digital replica" =		A generated likeness of a real human performer				
"Digital alteration" =		"AI" edits to a human performance				
"Synthetic performer" =		An invented digital performer				
"Training data" =		The reuse of any data or IP relating to a performer to build any AI tool				

AI-related issues : detail

		notice required?	consent required?	compensation required?	bargaining required?
Digital replicas Generated likenesses of human performers trained on their actual performances	Digital replicas of a performer (including background actors) can be used in movies & TV shows that:				
	• employ that performer, created from their performances in that employment	✓	✓	✓	✗
	• do not employ that performer, using performances from their prior employment (e.g. to be used in sequels, series, brand universes, franchises, formats etc.)	✓	✓	✓	✗
	• do not employ that performer, using performances not from prior employment (e.g. trained on archive performances) to play a character as that performer	✓	✓	✓	✗
Digital alteration AI edits to human performances	Recorded performances can be altered using AI.	✓	✓	✓	✗
	Consent is not required if:				
	• the performance remains “substantially as scripted, performed and/or recorded”	✗	✗	✗	
Generative artificial intelligence Tools to generate digital assets, including synthetic performers and performances	• alterations are merely for post production editing, cosmetics/wardrobe, noise reduction/ADR, timing/speed, continuity, VFX, ratings, dubbing, dialogue etc.	✗	✗	✗	
	GenAI can be used to create synthetic performers , provided they:	✓	?	?	✓
	• do not resemble (or imply) a specific human performer				
	• are not performed by a human performer e.g. by Performance Capture , as a Digital Replica, or by voice				
	Performances captured to train machines generally (Motion Capture) are out of scope .	✗	✗	✗	✗

Creating A Digital Asset of a Performer With

As it ...



Detailed Provisions

2023 Agreements

Consent : Definitions, Requirements

- 48 hour advance notice before creation
- Must be clear and conspicuous
- May be a separately signed, initialed section in the performer's employment contract, or signed in writing separately
- Must include a reasonably specific description of the intended alteration
- continues after death unless explicitly limited otherwise
- If performer is deceased consent may be granted by their authorized representative or, if no representative can be found, by SAG-AFTRA

Consent : Exceptions

- EBDR & ICDR – if photography or sound track remains substantially as scripted, performed and/or recorded
- US First Amendment protected uses: comment, criticism, scholarship, satire, parody, docudrama, historical, or biographical work etc.
- Background actors:
 - Unless the photography or sound track remains substantially as scripted, performed and/or recorded
 - Does not apply to ‘tiling’ of background actors
 - Does not expand or contract any existing rights and obligations under the Codified Basic Agreement and Television Agreement
- Does not override Schedule X, Part I, Section 17(e) or Schedule X, Part II, Section 17.E. ,as applicable (regarding use of digital technology to double a background actor)

Compensation : Exceptions

- If, based on performer's form of engagement, compensation would have covered the work had it been performed by the performer
- If:
 - EBDR is used in a scene the performer performed in person
 - work occurs during the performer's guarantee
 - work occurs on a day that Producer is paying a minimum of 1 day's salary for other services, travel allowance, or consecutive employment
 - performer is under Schedule F [i.e. a project fee irrespective of the #days required]

Compensation : Definitions, Requirements

- Employment Based Digital Replica (**EBDR**)
 - based on the greater of the performer's pro rata daily rate or the minimum rate
 - Producer determines number of production days, in good faith using objective criteria, the performer would have been required for in-person performance of those scenes
 - treated as wages
 - residuals required if EBDR is used in manner that would have generated residuals
 - compensation is calculated using the combination of time worked in-person and for the use of digital replicas
- Independently Created Digital Replica (**ICDR**)
 - bargaining required before use
 - P&H contributions required
- Background Actors
 - one day pay if not otherwise working

“Employment Based Digital Replica”

Definition

A replica of the voice or likeness of the performer that is created:

- in connection with employment on a motion picture under this Agreement;
- using digital technology;
- with the performer's physical participation; and
- is for the purpose of portraying the performer in photography or sound track in which the performer did not actually perform.

Terms

- 48-hour advance notice prior to services creation
- consent required:
 - clear and conspicuous
 - separately signed or initialed in employment contract or separate signed writing
- time creating replica:
 - on same day as other work = work time
 - on others days = various payments

Exclusions

- consecutive employment
- Schedule F
- work during performer's guarantee
- work during 1 day minimum for other services, travel or consecutive employment

“Employment Based Digital Replica”

Use in this production

- Consent required unless the photography or soundtrack remains substantially as scripted
- Must include a reasonably specific description of the intended use
- Consent granted during a performer's lifetime continues after death unless explicitly limited
- If performer is deceased and consent is required, it may be granted by an authorized representative of the deceased performer or, if representative cannot be found, by the union
- Producer must make a good faith estimate of the time the performer would otherwise have been used and pay the day rate accordingly
- No compensation if:
 - contract would already have covered this work
 - the DR is used in a scene in which the performer performed in person
 - the performer is Schedule F
- Compensation is calculated using the combination of time worked in-person and for the use of digital replicas
- Rateable distribution formula — based on the performer's form of engagement, unless only the digital replica remains. If so, performer is treated as a day performer and assigned one (1) unit.

“Employment Based Digital Replica”

Use in any other production

- Consent required at time of use
- or: at time of original employment if:
 - a reasonably specific description of the intended use is provided for each identified project
 - (b) performer is also employed in the other identified project(s) or is deceased at the time the other identified project(s) commences production
- Consent continues after death unless specified
- Must include a reasonably specific description of the intended use
- No compensation if the performer is Schedule F
- If project is covered by another SAG agreement then compensated under that agreement (bargained or according to minimums)

“Independently Created Digital Replica”

Definition

A replica that is:

- intended to create, and does create, the clear impression that the asset is a natural performer whose voice and/or likeness is recognizable as the voice and/or likeness of an identifiable natural performer;
- performing in the role of a character (and not as the natural performer himself/herself); and
- no employment arrangement for the motion picture in which the Independently Created Digital Replica will be used exists with the natural performer in the role being portrayed by the asset.

Terms

- 48-hour advance notice prior to services creation
- Consent required:
 - clear and conspicuous
 - separately signed or initialed in employment contract or separate signed writing
- Time creating replica:
 - on same day as other work = work time
 - on others days = various payments

Exclusions

- First Amendment uses e.g.
 - comment
 - criticism
 - scholarship
 - satire or parody
 - use in a docudrama, or historical or biographical work

“Digital Alteration”

Definition

- Consent required to digitally alter a performer’s performance photography or soundtrack previously recorded by the performer
- Exception when the photography or sound track of the performer remains substantially as scripted, performed and/or recorded

Exceptions to Consent

- Post-production alterations, editing, arranging, rearranging, revising or manipulating of photography and/or sound track for purposes of cosmetics, wardrobe, noise reduction, timing or speed, continuity, pitch or tone, clarity, addition of visual/sound effects or filters, standards and practices, ratings, an adjustment in dialogue or narration or other similar purposes
- Under any circumstance when dubbing or use of a double is permitted under the Codified Basic Agreement or Television Agreement

Exclusions

- Adjusting lip and / or other facial or body movement and / or the voice of the performer foreign language, or for purposes of changes to dialogue or photography necessary for license or sale to a particular market
- Does not expand or contract existing rights under CBA or TV Agreement
- No impact on Section 43 of the General Provisions (nudity)

Background Actors

Definition

- Applies to creation, use, or alteration of background actor's digital replica
- A 'Background Actor Digital Replica' of a background actor is a replica of the voice or likeness of the background actor which is created using digital technology with the background actor's physical participation and is for the purpose of depicting the background actor in a scene in which the background actor did not actually appear

Exclusions

- Does not apply to 'tiling' of background actors
- Does not expand or contract any existing rights and obligations under the Codified Basic Agreement and Television Agreement
- Does not override Schedule X, Part I, Section 17(e) or Schedule X, Part II, Section 17.E., as applicable (regarding use of digital technology to double a background actor)

Creation of Background Actor Digital Replicas

- 48-hour advance notice prior to services for creation
- Consent required [same consent provisions]

“Synthetic Performer”

Definition

A ‘Synthetic Performer’ is a digitally-created asset that:

- is intended to create, and does create, the clear impression that the asset is a natural performer who is not recognizable as any identifiable natural performer;
- is not voiced by a natural person;
- is not a Digital Replica; and
- no employment arrangement for the motion picture exists with a natural performer in the role being portrayed by the asset.

Exceptions

- Notice to Union and an opportunity to bargain in good faith over appropriate consideration, if any, if a Synthetic Performer is used in place of a performer who would have been engaged under this Agreement in a human role.
- Producer will bargain with and obtain Performer consent for use of GAI system to create a Synthetic Performer with a principal facial feature (i.e., eyes, nose, ears and/or mouth) that is recognizable as that of a specific natural performer through the use of such identified natural performer’s name and facial feature in the prompt to a GAI system.

Exclusions

- Does not apply to non-human characters
- Claims are arbitrable and limited to monetary damages
- Agreement to meet regularly to discuss remuneration, if any, for use of work produced under CBA to train GAI system for creation of Synthetic Performers
- Semi-annual meetings between union and each Producer (subject to NDA) related to use and intended use of GAI in motion picture development and production, which may include discussion of efforts to ensure that use(s) of GAI mitigate against biases.

Performance Capture : Definitions

- Performance Capture Actor
 - A performer employed to provide facial emotional expressions and body movements as part of a dramatic performance directed by a director (incl. second unit directors) for digitally created character(s) appearing in the motion picture.
- Performance Capture
 - The technological process used to track and capture, by means of computer-integrated equipment, the performance of a Performance Capture Actor.
- Motion Capture - not covered by this agreement
 - Technological process used to track and capture an individual's facial and/or body movements (directed or not) to create an altered or enhanced image of human or non-human forms, for reference or composite purposes or to record model data.
- Reference Capture or Reference Modeling are not 'Performance Capture' services and are not covered by this Agreement.

Performance Capture : Terms

- Live action theatrical & TV motion pictures
- Animated theatrical motion pictures
- Performance Capture Actors are covered by Schedules A, B, C, F, G, H, or J, except that:
 - a) Consecutive Employment does not apply.
 - b) Producer may use an unlimited number of drop/pickups.
 - c) If the Performance Capture Actor renders services under more than one of the Schedules in the same day, the highest rate shall apply.
 - d) Performance Capture Actors may render services for more than one character on a day without additional compensation.
 - e) Preference of Employment provisions do not apply.
 - f) Use of Double provisions do not apply.
 - g) The new Digital Replication and Digital Alteration of performers provisions do not apply.

Casting (Self Tape, Virtual Interview, Audition)

- Self Tape: No compensation for “self-tape” as defined in (A. 1. f)
- Self Tape, Virtual Interviews, & Auditions:
 - Performer may not be asked to record at a resolution higher than 720p nor use any virtual meeting site or uploading/delivery site that is not free nor asked to use any editing software or specific equipment. (A. 1. f) & B. 2.b)
 - If recorded, the recording must be stored in a secure facility/system only accessible by persons with a legitimate business purpose. (A. 1. l) & B. 2.h)
 - If recorded, Producer may not make the recording available without the consent of the performer at the time of use. (A. 1. m) & B. 2.i)
- General Casting Calls:
 - Performers may not be charged a fee to access a casting notice (or casting call information) or to upload a self-tape or otherwise submit themselves for the role. Producers may not give preferential treatment to a performer on the basis of whether they have paid a fee to a casting service. (B.)