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INSIGHT · ENTERTAINMENT & TALENT

Q3 2023 Legal Review: The Historic Hollywood Strikes — AI Likeness Rights, Streaming Economics, and Labor Reform

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The 2023 dual WGA and SAG-AFTRA Hollywood strikes established landmark collective bargaining precedents governing generative AI and digital replica consent.

The third quarter of 2023 witnessed the first dual Hollywood labor strike in over sixty years, as the Writers Guild of America (WGA) and the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) concurrently picketed major studios represented by the AMPTP. The dispute established collective bargaining terms governing generative artificial intelligence, digital replica consents, and streaming transparency.

I. The Battle Over Generative AI in the Writers Room

For the WGA, the core labor dispute centered on preventing studios from utilizing generative AI as a tool to displace human writers or reduce compensation. The resulting Minimum Basic Agreement (MBA) established groundbreaking contractual protections:

- AI cannot write or rewrite literary material, and AI-generated material cannot be considered source material under the MBA.
- Studios cannot force a writer to use AI software when writing literary material.
- Studios must disclose if any materials provided to the writer have been generated by or incorporate AI.

- The WGA reserved the explicit right to assert that the use of writers' material to train AI is prohibited by copyright and common law.

II. SAG-AFTRA & Digital Replica Protections

For performers, generative AI threatened the direct expropriation of human likeness and voice through 'digital replicas.' SAG-AFTRA's negotiations established rigorous consent and compensation requirements for both 'Employment-Based Digital Replicas' (created during employment on a specific project) and 'Independently Created Digital Replicas' (synthesized from existing performance data).

The contract established that studios must obtain clear, conspicuous, and specific consent from performers, accompanied by reasonable descriptions of the intended replica use, and pay performers full compensation equivalent to what they would have received had they performed the scene in person.

III. Entertainment Industry Contractual Practice

The resolution of the 2023 Hollywood strikes established standards across California entertainment transactions:

- **Right of Publicity Expansion:** The negotiations provided momentum for California's subsequent statutory enactments (AB 2602 and AB 1836), expanding California Civil Code § 3344 protections to digital replicas.
- **Streaming Data Transparency:** Streaming platforms agreed to provide viewership metrics to guilds, opening new avenues for auditing residual calculations and profit-participation accounting.
- **Talent Management Safeguards:** Talent agents and entertainment attorneys must ensure that standard personal service contracts contain explicit carve-outs preventing the unauthorized synthetic exploitation of voice and likeness.

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