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PRACTICE BRIEF · ENTERTAINMENT & TALENT

Entertainment Law: Recent Developments 2023-2024 -- Historic Strikes, AI Negotiations, and Industry Transformation

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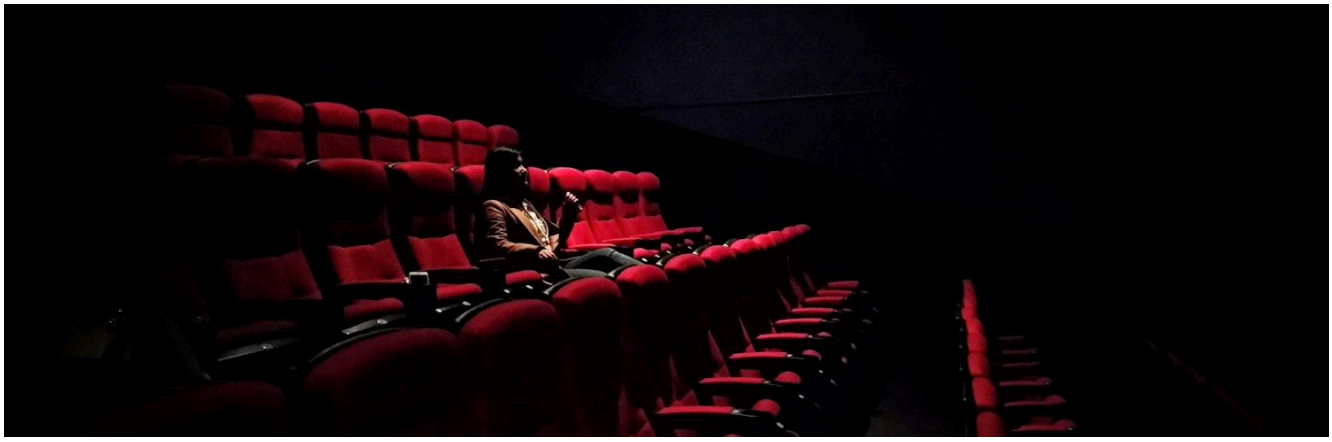

The 2023-2024 period was the most consequential in entertainment law since the transition to digital distribution. Two simultaneous guild strikes brought Hollywood production to a halt for months, artificial intelligence emerged as the central legal and contractual flashpoint across the industry, and longstanding regulatory frameworks were tested against business models that did not exist when those frameworks were enacted. This article surveys five major developments that will shape entertainment law practice for years to come.

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I. SAG-AFTRA and WGA Strikes: Labor Actions Reshape the Industry

On May 2, 2023, the Writers Guild of America went on strike after failing to reach a new Minimum Basic Agreement with the Alliance of Motion Picture and Television Producers. The strike lasted 148 days -- the longest WGA work stoppage since 1988. On July 14, 2023, SAG-

AFTRA joined with its own strike, marking the first time both guilds were simultaneously on strike since 1960. The SAG-AFTRA action lasted 118 days.

A. Legal Framework and Strike Authorization

Both strikes were conducted under the protections of Section 7 of the National Labor Relations Act, 29 U.S.C. section 157, which guarantees employees the right to engage in concerted activities for mutual aid and protection. The strike authorization votes were overwhelming: the WGA membership voted 97.85% in favor; SAG-AFTRA's authorization vote passed at 97.91%. These supermajority results reflected genuine membership consensus and insulated the unions from challenges to the legitimacy of the work stoppages.

The legal environment surrounding the strikes raised several important questions. Secondary boycott restrictions under Section 8(b)(4) of the NLRA, 29 U.S.C. section 158(b)(4), constrained the unions' ability to pressure companies that were not direct signatories to the expired agreements. When SAG-AFTRA members declined to promote completed projects during the strike, the studios argued this constituted secondary activity because the promotional obligations ran to distributors and platforms, not the producing entities. The union maintained that promotional appearances were part of the primary employment relationship, and this question was never formally adjudicated.

B. Force Majeure and Talent Deal Suspensions

The strikes triggered widespread invocation of force majeure clauses in talent agreements. Studios suspended overall deals, writing agreements, and first-look arrangements, arguing that guild-authorized strikes constituted events beyond their control that made performance impossible. Many of these clauses had been drafted with natural disasters and government shutdowns in mind; their application to labor actions that the studios' own bargaining positions had precipitated raised significant questions of contractual interpretation.

California courts have generally held that force majeure clauses should be read narrowly and that the invoking party bears the burden of demonstrating that performance was truly impossible, not merely more expensive or inconvenient. Whether a studio that could have averted a strike by agreeing to the guild's demands can claim the resulting work stoppage was "beyond its control" is a question that, in most cases, the parties settled rather than litigated -- but the argument was preserved in several pending arbitrations.

C. Economic Impact and Settlement Terms

The combined economic impact of the two strikes was estimated at over $6 billion in lost economic output for the state of California alone, according to the Milken Institute. Tens of thousands of below-the-line workers who were not guild members -- crew, caterers, drivers, equipment vendors -- lost income without the benefit of strike funds or the legal protections afforded to striking workers under the NLRA.

The WGA reached a tentative agreement on September 24, 2023, after 148 days. The SAG-AFTRA strike concluded on November 9, 2023, after 118 days. Both agreements included significant gains on residuals for streaming content, minimum staffing requirements for writers' rooms,

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and -- most consequentially -- the first contractual frameworks governing the use of artificial intelligence in content production.

II. AI in Entertainment: The Central Negotiation Issue

Although the 2023 strikes were driven by multiple issues -- streaming residuals, minimum staffing, and the erosion of the traditional television production model -- artificial intelligence emerged as the issue that defined the negotiations and that proved most difficult to resolve.

A. The WGA's Position on AI-Generated Material

The WGA entered negotiations with a clear position: AI-generated text cannot be considered "literary material" under the MBA, and therefore cannot be used to undermine a writer's credit, compensation, or separated rights. The guild's initial proposal sought an outright prohibition on the use of AI to write or rewrite literary material, and a prohibition on the use of covered writers' work to train AI models.

The AMPTP's initial counterproposal was to hold "annual meetings to discuss advancements in technology" -- a non-commitment that the WGA characterized as an attempt to defer meaningful regulation while studios accelerated AI adoption. The gulf between these positions was a central reason the strike lasted as long as it did.

The final WGA agreement established several important principles. AI-generated material is not "literary material" and therefore cannot be used as source material to reduce a writer's compensation or credit. Writers may choose to use AI tools in their work, but a studio cannot require them to do so. Studios must disclose to a writer if any material provided to them was AI-generated. The agreement also included a commitment by the companies not to assert that AI-generated material constitutes "source material" under the MBA's separation of rights provisions.

B. SAG-AFTRA's Digital Replica Protections

For performers, the AI question centered on digital replicas and synthetic performers. The AMPTP's initial proposal would have allowed studios to scan a background performer's likeness during a single day's work and then use that digital replica in perpetuity, in any project, with a single session fee as the only compensation. SAG-AFTRA described this as an existential threat -- a proposal that would have allowed studios to build a library of digital performers and reduce the need for human background actors to near zero.

The final SAG-AFTRA agreement prohibits the creation or use of a "digital replica" -- defined as a digitally created version of a performer's voice, likeness, or physical representation -- without the performer's informed consent and separate compensation. For background performers, the agreement establishes a minimum day rate for digital replica use and requires that consent be role-specific rather than blanket. The agreement also addresses "synthetic performers" -- entirely AI-generated characters not based on any real performer -- by establishing that such characters cannot be used to displace work that would otherwise be performed by a SAG-AFTRA member.

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C. The Gap Between Contract and Technology

The AI provisions in both agreements were significant achievements, but they contain structural limitations that the pace of technological development will continue to expose. The contracts bind only signatory companies -- not the technology firms developing the AI tools, not independent producers who are not AMPTP members, and not international productions outside U.S. jurisdiction. The WGA's prohibition on using writers' work to train AI models is enforceable against the studios but does not reach the technology companies that have already ingested vast quantities of copyrighted material into their training datasets.

The White House Executive Order on Artificial Intelligence, issued on October 30, 2023, addressed AI safety and standards but did not directly regulate AI use in entertainment production. The gap between contractual protections that bind a specific set of employers and the broader technological environment that those employers operate within remains the central unresolved challenge in entertainment AI regulation.

III. Voice Likeness Disputes and Right of Publicity

The rapid development of AI voice cloning technology brought renewed attention to right-of-publicity law and its adequacy in protecting performers' vocal identities. In 2023 and 2024, several high-profile disputes arose when AI companies released voice synthesis products that closely replicated the distinctive vocal qualities of prominent performers without obtaining consent.

A. The Legal Framework for Voice Protection

California's statutory right of publicity, codified in Civil Code section 3344, prohibits the knowing use of another person's "name, voice, signature, photograph, or likeness" for commercial purposes without consent. The statute provides for both actual damages and statutory damages of not less than $750, along with attorney's fees and punitive damages in cases of knowing violation.

The common law right of publicity -- recognized in California as the tort of misappropriation of name or likeness -- extends protections beyond the statutory framework. Critically, the Ninth Circuit's decision in *Midler v. Ford Motor Co.*, 849 F.2d 460 (9th Cir. 1988), established that the deliberate imitation of a distinctive voice for commercial purposes, even without using the person's name or actual recordings, constitutes actionable misappropriation. The court held that "when a distinctive voice of a professional singer is widely known and is deliberately imitated in order to sell a product, the sellers have appropriated what is not theirs."

The *Midler* principle was extended in *Waits v. Frito-Lay, Inc.*, 978 F.2d 1093 (9th Cir. 1992), where the court affirmed a jury verdict finding misappropriation of a singer's distinctive vocal style. Together, these cases establish that a voice need not be literally copied -- it is sufficient that a recognizable vocal identity is deliberately evoked for commercial gain.

B. AI Voice Cloning and the Adequacy of Existing Law

AI voice synthesis presents challenges that the *Midler/Waits* framework was not designed to address. In 2023, a prominent performer publicly objected when an AI company released a voice assistant whose vocal qualities bore a striking resemblance to the performer's distinctive speaking

voice. The company denied that it had used the performer's recordings to train its model, asserting that the voice was based on a different individual. The dispute was resolved privately, but it exposed a fundamental evidentiary problem: demonstrating that an AI system was trained on a specific individual's voice, rather than merely producing output that sounds similar, requires access to the training data and model architecture that companies typically treat as proprietary trade secrets.

The right-of-publicity framework also suffers from geographic fragmentation. While California provides relatively robust protections, there is no federal right-of-publicity statute. State laws vary dramatically: some states protect only the commercial use of a person's name and photograph but not voice; some recognize only a statutory right with no common law supplement; some provide no right of publicity at all. For performers whose voices are replicated by AI companies based outside California, the jurisdictional and choice-of-law questions can be as significant as the substantive merits.

C. Legislative Responses

The inadequacy of the existing patchwork prompted legislative activity at both the state and federal levels. In California, several bills were introduced in the 2023-2024 legislative session to specifically address AI-generated replicas of individuals' voices and likenesses. At the federal level, the proposed NO FAKES Act (Nurture Originals, Foster Art, and Keep Entertainment Safe Act) would establish a federal right of publicity specifically addressing digital replicas, including AI-generated voice clones. As of mid-2024, no federal legislation had been enacted, and the enforceability of performers' vocal identity rights against AI companies continues to depend primarily on state common law and the fact-intensive application of statutes drafted before the technology existed.

IV. Live Event Antitrust: Ticketing Monopoly Scrutiny

The 2023-2024 period saw unprecedented antitrust scrutiny of the live entertainment ticketing market, driven by a series of high-profile ticketing failures that generated widespread consumer outrage and, ultimately, federal enforcement action.

A. Background: The 2010 Merger and Its Conditions

In 2010, the Department of Justice approved the merger of the nation's dominant ticketing platform with its largest concert promoter, subject to a consent decree designed to prevent anticompetitive conduct. The decree, which was extended in 2020, prohibited the combined entity from retaliating against venues that chose to use competing ticketing services and required the company to license its ticketing technology to a competitor. Critics argued from the outset that these behavioral remedies were inadequate to prevent the merged entity from leveraging its dual position as both the dominant ticketing platform and the dominant concert promoter to foreclose competition.

B. The Antitrust Theories

The DOJ's scrutiny, intensified in 2023 following a widely publicized ticketing debacle involving a major concert tour, focused on several overlapping legal theories. Under Section 2 of the Sherman Act, 15 U.S.C. section 2, the question was whether the company had monopoly power in a relevant market and had engaged in exclusionary conduct to maintain that power. The relevant market definition -- primary ticketing services for major live entertainment venues -- was itself contested, as the company argued that the market should be defined more broadly to include secondary resale platforms and direct-to-consumer sales by artists.

Under Section 7 of the Clayton Act, 15 U.S.C. section 18, the question was whether the original 2010 merger had substantially lessened competition in the ticketing market, and whether the behavioral remedies imposed by the consent decree had proven insufficient to prevent the anticompetitive effects that merger opponents had predicted. The DOJ also examined whether the company's long-term exclusive dealing arrangements with major venues constituted unreasonable restraints of trade under Section 1 of the Sherman Act.

C. State Legislative Responses

State legislatures responded with a variety of legislative proposals targeting ticketing practices. California's SB 785 sought to increase transparency in ticket pricing by requiring all-in pricing disclosures -- meaning that the total price including all fees must be displayed from the first point of listing. The bill also addressed the use of "dynamic pricing" algorithms that adjust ticket prices in real time based on demand, requiring disclosure to consumers when dynamic pricing is in effect.

Other states introduced legislation addressing specific practices: restrictions on the enforceability of non-transferable ticket terms, requirements that venues offer a minimum percentage of tickets through non-exclusive channels, and enhanced consumer protection remedies for ticketing failures. The collective effect of this legislative activity was to create a patchwork of state-level obligations for ticketing companies, adding compliance complexity to an industry that had operated under relatively uniform national practices.

> *"The ticketing antitrust question is ultimately a merger remedies question: whether behavioral conditions imposed on a consummated merger can effectively substitute for the structural competition that the merger eliminated. The evidence from 2023-2024 suggests they cannot."*

V. California Talent Agencies Act: Enforcement and Modern Application

The California Talent Agencies Act, codified at Labor Code sections 1700 through 1700.47, requires any person or entity that "procures, offers, promises, or attempts to procure employment or engagements" for artists to be licensed by the California Labor Commissioner. Enacted in its current form in 1978, the TAA was designed to protect performers from unscrupulous agents. In 2023-2024, enforcement actions and private disputes tested whether the Act's framework can accommodate the modern entertainment ecosystem.

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A. The Procurement Standard and the Blasi Doctrine

The TAA's central prohibition -- unlicensed procurement of employment -- has been the subject of extensive litigation. The California Supreme Court's decision in *Marathon Entertainment, Inc. v. Blasi*, 42 Cal.4th 974 (2008), established that the Labor Commissioner has the discretion to excuse incidental procurement activities by unlicensed managers under a severability and disgorgement analysis, rather than voiding the entire management contract. The *Blasi* doctrine introduced a proportionality test: if the unlicensed procurement activity was only incidental to the manager's overall services, the appropriate remedy may be fee disgorgement limited to the procurement activities rather than voiding the entire contract and requiring return of all commissions.

The *Blasi* doctrine was a pragmatic response to the reality that the line between management (advising, counseling, directing career strategy) and agency (procuring employment) is often blurred in practice. Managers routinely participate in deal negotiations, introduce clients to casting directors, and facilitate the relationships that lead to employment -- activities that, if characterized as procurement, would require a license they typically do not hold.

B. Modern Intermediaries and the Procurement Question

The 2023-2024 enforcement landscape tested whether the TAA's procurement framework applies to intermediaries that did not exist when the Act was drafted. Three categories of modern entertainment intermediary raised particular questions:

Social media managers and digital talent managers who secure brand sponsorship deals for content creators. The Labor Commissioner has taken the position that securing a brand deal constitutes procurement of employment, even if the "employment" is a single sponsored post on a social media platform rather than a traditional acting role. Several petitions before the Commissioner in 2023 challenged this position, arguing that influencer brand deals are commercial endorsement arrangements rather than the "employment or engagements" contemplated by the TAA.

Podcast networks that sign talent to exclusive agreements and then secure advertising revenue and distribution deals on the talent's behalf. The question is whether the network's activities -- which may include negotiating appearance fees for the talent at live events, securing cross-promotion arrangements with other shows, and packaging the talent's content for sale to platforms -- constitute procurement of employment requiring TAA licensure.

YouTube multi-channel networks (MCNs) that aggregate content creators and negotiate platform terms, advertising rates, and sponsorship arrangements on their behalf. MCNs typically take a percentage of their creators' revenue in exchange for services that include both management functions (analytics, production support, audience development) and functions that resemble procurement (securing sponsorship deals, negotiating platform guarantees, booking appearances).

C. **Enforcement Trends**

The Labor Commissioner's approach in 2023-2024 reflected an expansive reading of the TAA's scope. In several proceedings, the Commissioner asserted jurisdiction over disputes between digital content creators and their managers, treating the securing of brand deals and sponsorship arrangements as procurement of employment. This expansive reading creates significant compliance exposure for the growing ecosystem of intermediaries serving the digital content economy -- most of whom operate without TAA licenses and many of whom are unaware that the Act could apply to their activities.

The counterargument -- advanced by several respondents in Commissioner proceedings and in state court challenges -- is that the TAA was designed to regulate a specific industry practice (theatrical and talent agency representation) and that extending it to every commercial relationship where one party helps another obtain paid work would bring vast categories of legitimate business activity within the Act's licensing requirements. Real estate brokers, literary agents, commercial brokers, and business consultants all "procure employment or engagements" in some sense; the question is whether the TAA's scope is defined by its text or by its historical context.

PRACTICAL TAKEAWAYS FOR 2024 AND BEYOND

- **Review force majeure clauses** in all talent and production agreements. The 2023 strikes demonstrated that generic force majeure language may be invoked in ways the parties did not contemplate. Negotiate specific provisions addressing labor disputes, including whether the invoking party's own bargaining positions are relevant to the "beyond control" determination.
- **AI contract provisions require specificity.** The guild agreements established baseline protections, but they apply only to signatory productions. Talent working on non-union projects, in international productions, or in digital content should negotiate individual contractual protections addressing digital replicas, voice cloning, and AI-generated content.
- **Voice and likeness protections vary by jurisdiction.** California's right-of-publicity statute and the *Midler*/*Waits* common law framework provide relatively strong protections, but performers whose work circulates nationally or internationally cannot rely on California law alone. Monitor federal legislative developments, including the NO FAKES Act, and consider registering copyrights in distinctive performances to supplement right-of-publicity claims.
- **Ticketing agreements warrant antitrust review.** Venues, promoters, and artists entering into exclusive ticketing arrangements should evaluate whether those arrangements create antitrust exposure in light of heightened DOJ scrutiny. All-in pricing requirements and dynamic pricing disclosure obligations vary by state and are evolving rapidly.
- **Digital intermediaries should assess TAA compliance.** Social media managers, podcast networks, MCNs, and other entities that secure paid opportunities for talent should evaluate whether their activities constitute procurement of employment under the TAA. The *Blasi* severability doctrine provides some protection against total contract voiding, but it does not eliminate the obligation to obtain a license if procurement is more than incidental to the relationship.

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The developments of 2023-2024 represent a fundamental inflection point for the entertainment industry. The legal frameworks governing labor relations, intellectual property, antitrust, and talent representation are all being tested by technological and structural changes that move faster than either collective bargaining or legislation. The practitioners and clients who navigate this period most effectively will be those who treat these developments not as isolated events but as interconnected symptoms of an industry in transformation -- and who build legal strategies with that transformation in mind.

Practice	Entertainment & Talent
Topics	Labor Law · Artificial Intelligence · AI Replicas · Right of Publicity · Talent Agencies Act
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