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PRACTICE BRIEF · ENTERTAINMENT & TALENT

SAG-AFTRA's AI Provisions: What the 2023 Contract Actually Requires and Where Studios Are Falling Short

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The 2023 SAG-AFTRA Basic Agreement — ratified after a historic 118-day strike — included what the union described as "the most comprehensive provisions covering AI" in any entertainment industry contract. The central commitments: studios cannot create or use a **digital replica** of a performer's likeness, voice, or performance without the performer's **informed consent**, and any such use requires separate compensation negotiated in advance.

Two years into the contract's life, the compliance picture is more complicated than the headline language suggests. Grievances over digital replica use are mounting, the definition of "informed consent" is being tested in arbitration, and performers outside the SAG-AFTRA umbrella have essentially no contractual protection at all.

I. What the Contract Provides

The AI provisions of the 2023 Basic Agreement cover two categories of digital creation:

A. Synthetic Performers (Wholly AI-Generated)

A "synthetic performer" is a computer-generated image trained to replicate the voice, likeness, or performance of a real person without any underlying performance from that person. The contract requires affirmative consent before creating a synthetic performer and prohibits using one to replace a covered performer in a role that would otherwise be played by a union member.

B. Digital Replicas (AI-Altered Performances)

A "digital replica" is an altered or augmented version of an actual performance — using AI to modify the performer's voice, face, body, or appearance in ways that go beyond traditional post-production techniques. The contract requires:

- Separate written consent from the performer before filming begins, specifying the intended use
- Additional compensation at rates negotiated individually (with a minimum floor for background performers)
- Notice to the union before the digital replica is incorporated into a final product

> *"The consent requirement sounds robust. In practice, studios have argued that a general AI disclosure clause buried in a day-player agreement satisfies the 'informed consent' standard. The union disagrees. That dispute is now in arbitration."*

II. Where the Disputes Are Arising

A. The "Informed Consent" Battle

The most significant active dispute concerns whether consent obtained during general production paperwork — a single-line AI disclosure clause — qualifies as the "informed, specific consent" the contract requires. SAG-AFTRA's position is that informed consent must be role-specific, use-specific, and obtained before the performer is aware of production pressures that might coerce agreement. Multiple studios have taken the contrary position in grievance proceedings.

B. Voice and Audio Replicas

The AI voice replication market has moved faster than the contract anticipated. Third-party AI companies — not signatories to the SAG-AFTRA agreement — have trained models on recordings of union performers obtained through secondary channels: archival audio, YouTube performances, publicly available content. The contract does not bind non-signatory technology companies, and the performers' remedy in these situations is through intellectual property and right-of-publicity law rather than the collective bargaining agreement.

C. Background Performer Protections

The contract established a $868/day minimum for digital replicas of background performers (scale day rate), but complaints have emerged that background performers are being asked to sign over broader digital rights as a condition of being cast — with the replica fee characterization used to reduce the total compensation paid.

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WHAT TALENT SHOULD KNOW IN 2026

- Review every production agreement before signing: any AI, digital replica, or synthetic media clause should specify the exact uses contemplated and the additional compensation
- Consent obtained under production pressure — on set, with cameras ready — may not qualify as the independent, informed consent the contract requires
- Non-union performers have no contractual protection; their only remedies are through California's Right of Publicity statute (Civil Code § 3344) and common law misappropriation — both of which require a showing of commercial use without consent
- Voice replication without consent may give rise to § 3344 claims even for non-union performers where the voice is distinctive and commercially associated with the performer

The 2023 SAG-AFTRA agreement established important principles, but the enforcement of those principles depends on performers understanding exactly what was promised — and being willing to use the grievance machinery when studios fall short.

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