



A summary of recent California legislation relating to Artificial Intelligence (AI) and its usage related to performers' likenesses.

CALIFORNIA AB 2602

On September 17, 2024, Governor Gavin Newsom signed AB 2602 (Kalra), a bill that requires explicit consent from performers across TV, film, videogames, audiobooks, and commercials to create digital replicas.

The brief of the bill states that it will “prohibit contracts between a studio, individual, or any other party allowing the use of a digital replica of a performer’s voice or likeness in place of in-person work unless the performer is represented by a union or legal counsel.” The bill applies the same requirements to the use of a performer’s voice and likeness to train a generative artificial intelligence system. Digital replica is defined as a “computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that is embodied in a sound recording, image, audiovisual work, or transmission in which the actual individual either did not actually perform or appear, or the actual individual did perform or appear, but the fundamental character of the performance or appearance has been materially altered.” The definition of “digital replica” “does not include the electronic reproduction, use of a sample of one sound recording or audiovisual work into another, remixing, mastering, or digital remastering of a sound recording or audiovisual work authorized by the copyright holder.”

The law requires that the rights to an AI replica must be explicitly bargained for, and the contract must include a “reasonably specific” description of the eventual use. Without this language, the performance contracts would be unenforceable under the legislation. This mirrors language in the SAG-AFTRA TV/Theatrical contract signed with the AMPTP in 2023.

Initially, the Motion Picture Association opposed the bill, arguing that it would interfere with common post-production techniques. Legislators amended some of the language to address those concerns and the MPA took a neutral position on the amended language.

CALIFORNIA AB 1836

Governor Gavin Newsom also signed a law that requires consent for the use of dead performers' likenesses for AI-created digital replicas, AB 1836. The bill requires that estates of deceased performers be contacted before using their likenesses in digital recreations of TV shows, video games, and other media, including commercials. According to SAG-AFTRA, the law is intended to supplement the protections already included in last year’s TV/Theatrical Contract with the AMPTP.

AB 1836 establishes “a cause of action in an amount equal to the greater of \$10,000 or the actual damages suffered by the person or persons controlling the rights for the unauthorized production, distribution, or availability of a digital replica, as defined, of a deceased personality in an audiovisual work or sound recording.” “Digital Replica” is defined as “computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that is embodied in a sound recording, image, audiovisual work, or transmission in which the actual



individual either did not actually perform or appear, or the actual individual did perform or appear, but the fundamental character of the performance or appearance has been materially altered.” The person who died must have been domiciled in California at the time of their death for California rights of publicity to exist.

The bill states that a digital replica may be used *without* consent if the use of the digital replica is (i) in connection with any news, public affairs, or sports broadcast; (ii) for use for purposes of comment, criticism, scholarship, satire, or parody; (iii) for use as a representation of the individual as the individual’s self in a documentary or in a historical/biographical manner; (iv) fleeting or incidental; or (v) in an advertisement or commercial announcement for a work described in the foregoing clauses.

KEY TAKEAWAYS

- The term “computer generated,” in the definition of digital replicas in AB 2602 is quite broad. With respect to signatories to the SAG-AFTRA CBAs (e.g., the AMPTP TV/Theatrical and the JPC/Commercials Contracts), the collectively bargained definitions and specific carveouts for animation and CGI as both technologies have previously commonly been used in the industry will continue to apply. Similar carveouts are not present in either bill, meaning non-signatories looking to use AI to create Digital Replicas may have greater limitations than signatories.
- It is also unclear if AB 2602 would prevent producers from refusing to hire actors who do not consent to be replicated, and there are questions about how the legislation would affect the replication of performances in which the actor is not immediately recognizable.
- AB 1836, which extends consent requirements to the use of deceased performers’ likenesses for AI-generated digital replicas, protecting their estates’ rights raises practical challenges, such as determining who has the authority to grant consent on behalf of the deceased performers.

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