

WIPO Draft Issues paper on Intellectual Property and Artificial Intelligence Contribution by the International Federation of Actors

The International Federation of Actors (FIA) represents performers' trade unions, guilds and professional associations in about 70 countries. In a connected world of content and entertainment, it stands for fair social, economic and moral rights for performers working in all recorded media and live theatre.

We have read with great interest the WIPO draft issues paper on intellectual property and artificial intelligence and wish to address one specific topic on this document bearing profound implications for our members' and society at large: deep fake.

In essence, deep fake refers to a digital manipulation whereby someone's voice and/or appearance on a picture or video is replaced with someone else's to produce a very realistic and often undetectable fiction. The aim is to trick people into believing that what they see or hear is real when in fact it is not.

The technology required to make a deep fake has quickly become more sophisticated and very affordable. Top shelf proprietary software, and even open-source alternatives, is now easily available to consumers, to the point where anyone with a computer and an internet access can create a convincing hoax.

Several mobile app companies rely on this technology to grow their customer base. Popular social media and online service providers, from content-sharing platforms to various types of streaming services, regularly appeal to a global audience also thanks to the making available of various types of deep fake.

Many deep fakes on the internet today feature pornography, misappropriating the likeness of actors, mostly female celebrities, without their approval – causing them severe economic and moral prejudice. Deep fakes have also been used maliciously for political purposes, with a view to swaying the course of democratic elections.

FIA is very concerned about the potential copyright implications in this field. Cyber scanning of performers and ownership of their digital likeness may well result in audiovisual production being carried out entirely without their consent and their physical contribution. Sophisticated computer-generated imagery (CGI) can create realistic digital replicas of actors and have them appear in commercial productions, sometimes years after their passing. The fact that such use of their persona may be possible without their prior authorization, or the consent of their legitimate heirs, and without proper compensation is something that FIA is heavily opposed to.

FIA warns WIPO and the member States to exercise maximum caution when discussing the copyright regime of deep fakes and stresses the potential implications of any such protection not only for performers and those whose likeness is used to simulate reality but for society at large.

FIA stresses that any such protection may only be awarded when the work is made with the consent of all stakeholders in the underlying digital material and to the extent that the use thereof is in accordance with the terms agreed with them or their estate. Our federation categorically opposes regulating this sensitive matter by way of a statutory equitable remuneration right, as such right – in essence a legal license – would render all prior authorization by concerned stakeholders, or their legal heirs, superfluous. We feel strongly that the digital likeness of performers should be clearly identified as their (unwaivable) property right and its use made subject to their prior authorization.

Member States should rather be encouraged to regulate strictly around the use of deep fake technology and adopt appropriate civil remedies enabling concerned stakeholders, or their legal heirs, to stop any misappropriation of their likeness and voice and seek statutory damages.

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