Legal Challenges in Protecting Human Performers in The Age Of AI

Dr. Müge Çetin[1*]

Recent advancements in complex AI technologies have made it easier and more affordable to replicate human faces and bodies. A significant example of this is deepfake technology. Deepfakes refer to any type of media, such as video, that has been digitally manipulated to convincingly replace one person's likeness with that of another. Deepfake images are created using generative adversarial networks (GANs), which involve two neural networks working together in a dynamic process. This process resembles a back-and-forth between a forger trying to create a convincing image and an art detective attempting to detect the forgery, as they try to outwit one another.

Deepfake technology can be used for various purposes within the visual arts. In the context of cinema, two main types of deepfakes are important: "employment-based deepfake" and "independently created deepfake" The employment-based deepfake represents a performer's voice or likeness and is created in connection with a specific motion picture. This replica utilizes digital technology and may also involve the performer's physical participation. It allows the performer to appear in the film, even in scenes where they did not actually perform. In contrast, an independently created deepfake is made by the studio using existing performances, videos, or photos. This type of replica allows the studio to create scenes featuring the performer without their direct involvement.

In 2023, the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA), which represents over 150,000 television and movie actors, went on strike due to concerns about generative AI. One of the union members' key issues during the strike was the use of deepfake technology to create digital replicas of actors without providing additional compensation.

The use of a deepfake of an actor typically requires specific agreements with the actor. As artificial intelligence (AI) becomes more common, many of these agreements now include clauses related to the use of the actors' digital likenesses. However, current European legal frameworks provide fragmented and insufficient protection in this area. Copyright law

[1*] Asst. Prof., Ozyegin University Faculty of Law, Istanbul Turkey, muge.cetin@ozyegin.edu.tr, https://orcid.org/0000-0002-9825-3262

generally does not cover performative identity while personal rights and GDPR offer only limited safeguards. These gaps leave performers at risk of exploitation, erasure, and economic harm. Appropriate regulations are essential for ensuring that human performers are protected and treated fairly in an evolving creative ecosystem influenced by AI.