



In the fall of 2023, the Writers Guild of America (WGA) and the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) each ratified new agreements, amending and building upon their collective bargaining agreements with the Alliance of Motion Picture and Television Producers (AMPTP). The WGA, a union that represents film and TV writers, and SAG-AFTRA, a union that represents actors and performers, sought to protect their members from replacement by generative and non-generative artificial intelligence (AI). These negotiations followed months of strikes from both organizations that effectively halted the making of movies and TV shows for much of 2023. These new agreements take somewhat different approaches—in part because of the nature of what each union is trying to protect—a member's voice and likeness for SAG-AFTRA vs. written content for WGA. But both agreements contain provisions aimed at

protecting the jobs and income of their members. This blog post will provide an overview of key AI provisions in both agreements and how they will apply to the writers, performers, and producers covered by these guild agreements.

WGA

The 2023 [WGA agreement](#) creates mutual disclosure requirements and protections for writers, such as policies for credit and payment for generative AI (GAI) content. The focus of these new provisions is who can be a "writer" and how the use of AI affects a writer's credits, all seeking to ensure that a writer cannot be cut out of the creative process or paid substantially less (as credit impacts compensation). The agreement does not address issues regarding the use of writer's materials for training GAI systems. Rather, it merely reserves WGA's and each member's right to assert that use of literary materials for training of GAI violates the agreement or applicable law. This WGA [FAQ page](#) provides more information on the changes made under this new agreement.

- **Authorship:** The 2023 WGA agreement specifies that no form of AI (generative or otherwise) may be considered a writer, and as a result written material produced by AI cannot be considered "literary material" (which is the content created by writers and protected by the WGA's collective bargaining agreement).
- **Credit/Compensation:** If a company provides GAI content to a writer that has not been previously published or exploited and asks that writer to use that GAI content as the basis for a script or treatment, the GAI content is not considered "assigned materials" (for the purpose of determining compensation) or "source material" (for the purpose of allocating credit) and would not disqualify the writer from eligibility for separated rights. This means that the writer will be credited as the first writer of the screenplay, which impacts the writer's writing credit, residuals, and other compensation.
- **Disclosure:** Companies must disclose to writers whether any provided content has been generated by AI or incorporates content generated by AI.
- **Use by Writers:** Writers may use GAI when performing writing services, but they must obtain consent from the company and follow any relevant company policies to do so. Companies cannot require a writer to use AI to create content. Such use will also not detract from a writer's status as the writer of the materials. Rather, the resulting materials will be considered the writer's literary material (and not considered produced by the GAI).

SAG-AFTRA

The 2023 SAG-AFTRA's TV/Theatrical contract, the collective bargaining agreement covering the rights of performers in theatrical motion pictures and scripted dramatic content produced for television and new media platforms, sets forth new rules on the use of AI-generated performances in film and TV. The focus of these new rules is informed consent and compensation for AI use.

The 2023 agreement contemplates two types of AI-generated content, "Digital Replicas" and "Synthetic Performers." Digital Replicas are replicas of a specific actor's voice and/or likeness that is created using digital technology (including generative AI). Synthetic Performers are characters created by digital technology that appear to be a natural performer, but that are not recognizable as any identifiable performers. If the digitally created performer is recognizable as a specific actor, or if the performance is voiced by a natural person, it is considered a Digital Replica. The agreement also provides rules for digital alteration of existing content.

- **Digital Replicas:** The new agreement makes a distinction between Digital Replicas that are created during an actor's employment with the participation of the actor (Employment-Based Digital Replicas) and those that are created without the participation of the actor, generally using preexisting materials (Independently Created Digital Replicas). The SAG-AFTRA agreement also provides separate terms for background

actors.

- **Employment-Based Digital Replicas:** An Employment-Based Digital Replica is a Digital Replica created during a performer's employment and with their participation, and used to create scenes they did not shoot. When using Employment-Based Digital Replicas, producers must:
 - Obtain clear and conspicuous consent from the performer to create the Digital Replica and for its initial use (generally requires 48-hour notice).
 - Obtain separate consent for use of the Digital Replica in additional projects, which must generally be obtained at the time of the subsequent use (not at the time of employment).
 - Compensate performers for the time spent to create the Digital Replica, and also for its use, including any residuals that the performers would normally receive from their participation in the work. For the original project, payment for use is based on the number of days the actor would have worked if the Digital Replica were not used. For additional projects, the rate is negotiable (although union minimums apply). Certain exceptions apply to the payment requirements.

- **Independently Created Digital Replicas:** An Independently Created Digital Replica is a Digital Replica created without the actor's participation (and without an employment relationship) using existing materials of an actor, such as photos or previously filmed video, and used to create new scenes that the performer did not shoot. When using Independently Created Digital Replicas, producers:
 - Must obtain clear and conspicuous consent from the performer for use.
 - Can freely bargain with the actor regarding compensation and residuals for the use of the Digital Replicas. Any agreed-to compensation is subject to pension or retirement and health contributions.

The agreement provides a limited exception for uses of Independently Created Digital Replicas protected by the First Amendment.

- **Digital Replicas of Background Actors:** A Background Actor Digital Replica is a replica of the voice or likeness of a background actor made with the participation of the actor, for the purpose of depicting them in scenes that they did not actually film. In order to create and use a Background Actor Digital Replica, producers must:
 - Obtain clear and conspicuous consent from the performer to create the Digital Replica (generally requires 48-hour notice) and for its initial use.
 - Obtain separate consent before using the Digital Replica in additional projects.
 - Pay background actors for their time creating Digital Replicas. This includes providing payment for a full day of work, even if the actors only provided enough content to create a Digital Replica.
 - Compensate background actors for use in additional projects, as negotiated between the parties. Payment for use in the original project for which the background actor was hired is covered by the payment to create the Digital Replica. However, if the Digital Replica is used as a principal character, the background actor is "upgraded" and must receive the corresponding level of pay applicable to principals.
 - Digital Replicas cannot be used to meet daily background counts or avoid the engagement of background actors.
- **Consent for all types of Digital Replicas:** Note that the consent provided by producers to performers under the SAG-AFTRA agreement must provide a reasonably specific description of the intended use. On

post-mortem rights, consent continues after death, unless explicitly limited otherwise. If a performer is deceased, consent may be granted by an authorized representative of the deceased performer or, if a representative cannot be found, by SAG-AFTRA.

- **Synthetic Performers:** In contrast to a Digital Replica, a Synthetic Performer is a digitally created performer that does not resemble a real actor and is not voiced by a real person. The only obligations under the agreement with respect to Synthetic Performers are:
 - SAG-AFTRA must be notified of any intended use of a Synthetic Performer and given an opportunity to bargain for appropriate consideration, if any, if the Synthetic Performer will replace a human actor.
 - If a producer wants to make a Synthetic Performer with a principal facial feature (e.g., eyes, nose, mouth, ears) that is recognizable as that of a real actor and that is created by giving the GAI tool that actor's name or facial feature as a prompt, the producer must bargain with and obtain consent from such actor.
 - The parties also agreed to meet through the term of the TV/Theatricals contract to keep an open dialogue on this topic.

- **Digital Alterations:** Digital Alterations include any digital editing to an actor's performance in previously recorded material. In order to digitally alter such a performance, producers must:
 - Obtain clear and conspicuous consent from the affected actor, unless the photography or soundtrack of the performer remains substantially as scripted, performed, and/or recorded.
 - Provide a reasonably specific description of the producers' intended alterations.
 - Upgrade a background actor to a day performer if the actor's lip or facial movements are digitally altered to make it appear that the background actor is speaking and dialogue is added.

Other exceptions apply for certain minor post-production alterations and where dubbing or the use of a double would otherwise be permitted under the agreement.

- **Other SAG-AFTRA AI-Related Developments**
 - **Interactive Agreement Strike Authorization:** In September 2023, SAG-AFTRA members overwhelmingly voted in favor of a strike authorization for the Interactive Media Agreement (which covers a variety of performers who work on interactive or video game programs). A strike authorization does not mean that a strike will be declared but instead gives the National Board the authority to call for a strike. While the National Board has not yet declared a strike, as the sides are still in negotiations to reach an agreement, AI has been a big issue in the ongoing negotiations.
 - **Agreement with Replica Studios:** In January, SAG-AFTRA [announced](#) it had reached an [agreement](#) with Replica Studios related to the use of AI digital voice replicas in video games. The agreement contains two contracts. The first, a "Development" agreement, sets terms for Replica Studios' creation and internal use of digital voice replicas of actors; and the second, the "Licensing and External Use" agreement, governs how Replica Studios and its clients may integrate the voice replicas into video games. Similar to the general SAG-AFTRA contract, this agreement with Replica Studios focuses on informed consent and compensation for the use of digital voice replicas in video games. The agreements also set requirements regarding limitations on how long the content may be used without further disclosure and payment, limits on confidentiality agreements, and

- security protections for the voice replicas.
- **Tentative Animation Terms:** SAG-AFTRA also announced in late March that it had reached a [tentative agreement](#) for voice actors in animated works. The tentative agreement mostly matches that of the live-action agreement, but it goes a step further and specifically defines animation "voice actors" as human beings.
 - **Tentative Record Label Terms:** SAG-AFTRA [announced](#) on April 12 that it had reached a tentative agreement on a successor contract to the SAG-AFTRA National Code of Fair Practice for Sound Recordings, which will last through the end of 2026. The tentative agreement covers the use of Digital Replicas of artists' voices in sound recordings. It defines "artist," "singer," and "royalty artist," as humans, requires clear and conspicuous consent (including specific use details), and mandates minimum compensation in order to release such sound recordings.

Takeaways

The AI provisions in both agreements strike a delicate balance between the creative and financial interests of the writers, actors, and artists who create our favorite shows and songs, and the producers and companies who fund and distribute those shows and songs. One common thread in the AI provisions of the WGA and SAG-AFTRA agreements is that one needs to be human to be a writer of literary material or a performer behind a Digital Replica and thus eligible for credit and compensation for the work. However, both agreements also leave open for another day more looming issues for guild members in the face of AI—the WGA agreement leaves open the future use of (and compensation for) WGA material for GAI training, while the SAG-AFTRA agreement calls for the right to bargain the future use of (and compensation for) Synthetic Performers. As AI continues to disrupt how audio and audiovisual content is created and produced, the 2023 WGA and SAG-AFTRA agreements could very well serve as a helpful framework in navigating the financial and creative interests of writers, performers, and producers in an AI-powered future.

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