

Does AI voice cloning break Copyright twice? The risk of dual infringement and licensing solutions in music creation.

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Summary

The emergence of AI voice cloning technologies has transformed music creation by enabling highly accurate imitations of artists' voices. While this innovation may offer economic and creative opportunities, voice cloning technologies have outrun the pace laws can adapt, raising significant challenges to copyright law.

Within the EU, in the context of musical works, AI voice cloning tools introduce infringement risks during both input (data collection and training) and output (AI-generated content) stages, exploiting vulnerabilities in copyright protection laws. Legal exceptions, like the text and data mining exception, exacerbate these issues by allowing unauthorised uses of protected works. This violates artists' economic rights and erodes the creative incentive at the heart of copyright law. In response to such challenges, licensing frameworks are being developed, rebalancing the reward system by offering financial remedies to artists and establishing clearer legal boundaries. Such licensing schemes aim to restore copyright law's incentive-based structure by ensuring a balance between creativity and technological innovation.

Ultimately, it is hoped that harmonised reforms and further licensing schemes will be developed to uphold the principle of copyright law while fostering sustainable innovation and aligning the interests of creators, producers, and AI developers.

Table of Contents

<i>Introduction.....</i>	<i>3</i>
<i>PART I: AI-cloned voices: a catalyst for copyright infringement?</i>	<i>4</i>
A. Exploiting the input: Copyright infringement issues in AI training data	4
B. Generating the output: Copyright infringement issues in AI-generated content	7
<i>PART II: Licensing AI-generated voices: a framework for economic and creative sustainability</i>	<i>10</i>
A. Reshaping artists' rights: the rise of licensing for AI voice clones	10
B. Incentivising creativity: the preservation of Copyright's core principles	12
<i>Conclusion</i>	<i>14</i>

Introduction

Artificial Intelligence (AI) voice cloning, also known as “audio deepfake”, is an advanced process that leverages AI to create a synthetic yet nearly identical copy of a human voice, capturing its unique pitch, tone, and rhythm. It falls under the broad category of “deepfake”, a mix of “deep learning” and “fake”, which refers to AI-generated or modified content that can create a deceptive resemblance to reality.

Within the EU, the AI Act expressly mentions deepfakes and defines them as follows in Article 3 (60)¹: “AI-generated or manipulated image, audio or video content that resembles existing persons, objects, places, entities or events and would falsely appear to a person to be authentic or truthful;”

According to this definition, the law understands deepfakes as:

- (1) images, audio or videos
- (2) generated or manipulated by an AI
- (3) resembling existing elements: persons, objects, places, entities or events
- (4) likely to falsely appear to a person as authentic or genuine.

By analysing extensive audio samples of an individual’s voice, these technologies can replicate the nuanced qualities that make each voice unique, producing output indistinguishable from the original, even to a discerning ear.

Recently, the use of voice cloning tools has expanded rapidly in the music industry, revolutionising how creators can approach music production, live performances, and fan interactions. By digitally reproducing an artist's voice with stunning realism, this technology allows for many possibilities that were once only hypothetical. It is, therefore, no surprise that it has quickly taken a prominent place in musical creation. For example, the single “Now and Then” by the Beatles was created from an old recording made by John Lennon on a cassette. Lennon’s voice being too “muffled” to recover it properly, the three other Beatles members used AI to isolate Lennon's original, allowing them to revive the voice and complete the new track².

However, while these innovations may seem appealing at first glance, the uses of AI voice cloning tools are fraught with legal issues. Copyright law protects an artist's creative work by

¹ Article 3 of the Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Text with EEA relevance).

² E. Swingle, “Damon Albarn on Posthumous AI Releases: ‘It’s a Good Opportunity for Everyone...There Could Be Hundreds of My Songs Released After My Death.’” (*MusicTech*, 13 Jan 2023) <musictech.com/news/music/damon-albarn-the-beatles-ai-track> Accessed 4 Jan 2025.

granting exclusive economic and moral rights. Consequently, the owner of a copyrighted work may authorise or prohibit reproduction, distribution, communication to the public and adaptation. However, AI voice cloning poses a risk of copyright infringement, especially during the “data collection” phase when the content collected may be copyright-protected. In addition, since AI may be trained on copyrighted content, the output itself may constitute a copyright infringement³. In other words, the process of voice cloning is a gateway to broader copyright infringements.

Therefore, in the first part, this paper will critically analyse how AI voice cloning tools create a risk of copyright infringement, both at the input and output levels. The second part examines emerging legal solutions, in particular the licensing of cloned voices as a means to rebalance the fundamental incentive underlying copyright law. Growing concerns about the unauthorised use of artists’ voices are begging for legal frameworks to evolve, ensuring that both creators’s rights and technological innovation are adequately safeguarded. It is believed that these legal solutions will address the challenging intersection of AI and copyright in a way that preserves artistic integrity and fosters innovation while ensuring that the very foundations of copyright law remain firm.

PART I: AI-cloned voices: a catalyst for copyright infringement?

An AI must extract the singing voice from a musical work to clone a voice. By doing so, it sometimes accesses copyright-protected works and uses them as training data without the right holders' consent, creating an infringement at the input stage⁴. Similarly, the output of a generative AI may resemble a protected work on which it has been trained, resulting in copyright infringement. Therefore, this essay takes the view that, while a cloned voice in itself cannot cause copyright infringement, voice cloning is a gateway to copyright infringement at both the input and output stages.

A. Exploiting the input: Copyright infringement issues in AI training data

One of the fundamentals of intellectual property is that right holders are granted a monopoly over the exploitation of their work. Consequently, if someone exploits a copyrighted work without the rights holder’s authorisation, they are committing an act of infringement. From this general principle stems the fact that any exploitation of a protected creation, such as a musical work, including in the context of an AI system, explicitly requires the rights holder’s

³ E. Rosati, “Infringing AI: Liability for AI-Generated Outputs under International, EU, and UK Copyright Law.” *European Journal of Risk Regulation*. 2024. Published online: 1-25. doi:10.1017/err.2024.72.

⁴ H. Singh Josan, “AI and Deepfake Voice Cloning: Innovation, Copyright and Artists’ Rights”, *Digital Policy Hub — Working Paper*, 2023. <https://www.cigionline.org/static/documents/DPH-paper-Josan.pdf> Accessed 28 Jan 2025.

authorisation. Anyone who deviates from this rule thus exposes themselves to infringement proceedings, regardless of whether or not the use is potentially commercial.

Moreover, it is important to say that the infringement concerns not only copyright but also related rights and, therefore, may involve more than one person. In the music industry, producers typically also contractually acquire the rights to the final music recording, which includes the performer's voice. If this recording is used by an AI to clone the voice it contains, then it could be an indirect infringement on related rights, more specifically the producer's rights, over the sound recording used as data.

When creating a voice clone, AI developers usually use large datasets of recordings to train the AI model. This use of large datasets is an input into the AI model. If these recordings are protected by copyright and used without authorisation, there is a risk of infringement during this AI training phase, provided that no exceptions apply.

In 2019, however, a new exception, known as the "text and data mining" (TDM) exception⁵, was introduced to copyright law. TDM is defined as "any automated analytical technique aimed at analysing text and data in digital form to generate information which includes but is not limited to patterns, trends and correlations". In other words, it is a process that analyses large amounts of textual or digital data to extract useful information. It is important to mention that, at the time the Directive was introduced, the TDM exception was probably not intended to apply at the intersection of copyright and AI training. This may explain why this exception has recently been at the centre of many debates about its applicability.

The use of AI not only creates a risk of infringement for artists but also highlights the shortcomings of the TDM exception. Because this exception may apply "regardless of the purpose of the mining", it opens the door to its use in AI-related contexts, which may again go against the interests of artists. For instance, in the recent obiter dictum of the *Kneschke v. LAION* ruling on TDM exceptions for AI training data, the judges asserted that the commercial TDM exception applies to data collection for AI training⁶, increasing its relevance in AI developments.

However, this exception can only apply if two conditions are met:

- If the access to the creative work was lawful
- If the author has not objected to it or "opted-out".

⁵ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance.)

⁶ *Kneschke v. LAION* e.V. [2024] Case No. 310 O 227/23

Nonetheless, in the context of AI, it can be argued that many of the creations used by AI systems are likely to come from illicit sources. Moreover, the opt-out requirement raises several practical difficulties.

In principle, the opt-out mechanism enables right holders to oppose the mining of their works by AI systems. Some collective management organisations (CMOs) have already exercised their right to optout. In France, for example, the SAIF (Society of Authors of Visual Arts and Still Images) issued a press release in which it opposes itself to “any exploitation of the works in its repertoire by artificial intelligence services. Regardless of who they are, AI operators will now need to obtain prior authorisation from SAIF and negotiate the terms for exploiting the works in its repertoire.”

In practice, the effective implementation of this opt-out mechanism faces several challenges. First of all, many authors are still unaware of the existence of such a right or its implications⁷, which ends up having no real impact on the protection of works. Also, unlike the 2019 Directive, which allows all rights holders to exercise their opt-out right, the transposition order has restricted this right to authors only. This reduces the ability of publishers, producers, and other rights holders to protect their interests, making the mechanism less effective. There is also a problem of transparency. Once the opt-out right has been exercised, it is challenging to ensure that the creation is not actually exploited, with authors having no visibility into past or future uses of their works. Hopefully, the transparency measures provided for in the AI Regulation⁸ will address this issue.

Beyond these considerations, the TDM exception’s compatibility with the “three-step test”⁹, as set out in Recital 6 of the 2019 Directive, remains questionable. Article 7(2) of the DSM Copyright Directive states that this three-step test applies to all exceptions, including the TDM one. Acting as a safeguard, this test requires that copyright exceptions:

- Be limited to certain special cases;
- Not conflict with the normal exploitation of the work;
- Not unreasonably prejudice the legitimate interests of the author.

However, the broad application of the TDM exception, particularly in AI training, risks undermining those principles, especially regarding the first requirement. According to the World Intellectual Property Organization, “certain special cases” should be understood as permitting certain exceptions that are not only clearly defined but also serve specific public

⁷ E. Rosati, “Copyright and the Court of Justice of the European Union” (2nd edn OUP Oxford 2023) 105.

⁸ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No.167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Text with EEA relevance)

⁹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Article 5(5)

or cultural policy objectives¹⁰. Therefore, given the demonstrated use of generative AI models in connection to music, it is clear that the first requirement is hardly met. In addition, due to the large number of deepfakes that are created, this exception has the potential to seriously disrupt the normal exploitation of works, posing a significant risk of prejudice to authors, a phenomenon already widely observed.

Finally, the third step requires proportionality to be considered¹¹, balancing the interests of the rights holders against the interests served by the exception. Regarding the TDM exception, some believe that such balance is definitely not struck: “As things stand, the entire economic model of creation is at risk. If intellectual property can be co-opted, as is happening today with content-generating artificial intelligence, the harm is entirely disproportionate as it undermines the very value of intellectual property”¹².

In summary, while intellectual property law establishes a principle of authorisation for the exploitation of copyrighted works, the text and data mining (TDM) exception opens the door to massive use of these works without any prior authorisation, despite the “opt-out” mechanism. On top of this, without the necessary visibility of how the TDM exception works, authors remain vulnerable to infringements.

As a result, it is clear that the risk of infringement at the input stage remains high. To mitigate this risk and secure the economic creation model, AI systems should be restricted to only using approved material as training data. To this end, licensing schemes appear to be a viable solution since AI models would not need to train on copyrighted music to extract a singer’s voice, reducing the risk of copyright infringement at the input stage.

B. Generating the output: Copyright infringement issues in AI-generated content

Using songs to extract a person’s voice also creates the risk for an AI to generate a song - an output - which would be too similar to an existing one. As a consequence, it might be considered as an infringement. The famous *Suno and Udio* case in the music industry also illustrates how AI models trained on copyrighted material can lead to infringing outputs¹³.

¹⁰ M. Ficsor, “Guide to Copyright and Related Rights Treaties Administered by WIPO and Glossary of Copyright and Related Rights Terms” (Geneva World Intellectual Property Organization WIPO 2003) paras BC-9.14–BC-9.18.

¹¹ D. Jongsma, ‘The Nature and Content of the Three-Step Test in EU Copyright Law: A Reappraisal’ in E Rosati (ed) *Handbook of European Copyright Law* (London Routledge 2020) 348.

¹² S. Le Cam, F. Maupomé, “IA Génératives De Contenus : Pour Une Obligation De Transparence Des Bases De Données !” *IP/IT Et Communication* | Dalloz Actualité, www.dalloz-actualite.fr/node/ia-generatives-de-contenus-pour-une-obligation-de-transparence-des-bases-de-donnees. Accessed 28 Jan 2025.

¹³ *UMG Recordings Inc v. Suno Inc*, No. 1:24-cv-11611 and *UMG Recordings Inc v. Uncharted Labs Inc d/b/a Udio.com*, U.S., No. 1:24-cv-04777.

Similarly, in 2023, a song called “Heart on my sleeve”, attributed to a collaboration between the rapper Drake and the singer The Weeknd, was actually a deepfake audio recording¹⁴. These examples highlight the extent to which training on such inputs - bearing in mind that AI training can rely on the TDM exception to do so - can result in very realistic outputs.

With the development of AI voice cloning, this essay argues that the risk of infringement at the output level has increased because generative AIs need to use existing songs and sound recordings to extract a voice and clone it. For example, it is possible to think that a prompt such as “Create a melody and an instrumental in the style of ‘Imagine’ using John Lennon’s voice” could result in something very similar to the existing song. There may even be a high risk of infringement since the prompt mentions not only the song itself but also the artist’s voice. In other words, the AI would be even more “tempted” to re-create an extremely resembling output. Voice cloning thus provides an additional path for generative AI to produce outputs that may infringe on protected material. However, at what point does this similarity become an infringement?

The main requirement in determining if an AI-generated output infringes on a protected work is whether the output reflects the author’s creative expression. In music, elements such as the lyrics, the harmony and the melody of a song are considered creative elements. If an AI tool were to copy these elements very closely, this would constitute a copyright infringement, especially if the resemblance is accentuated by voice cloning. In the EU, the right of reproduction is protected by Article 9 of the Berne Convention¹⁵, and according to the *Infopaq* case from 2009, the CJEU explicitly set out a test to determine whether an act of reproduction has taken place. In this case, the court stated that reproduction occurs when the copied portion is original, meaning it reflects the author’s creative stamp and may encompass short extracts as long as they reflect a creative choice¹⁶. Therefore, if an AI trains on copyrighted material without authorisation, the generative AI’s output might reproduce some original parts of the original song, thus leading to copyright infringement. It is worth noting that while licensing does not prevent such unauthorised use, it would help establish legal boundaries and make it easier to take action against infringements.

Furthermore, if an AI output resembles a protected performance or sound recording, related rights could also be a concern. Under EU law, a “recognisability” test is made. According to it, if the reproduced part is recognisable to “one’s ear” and reflects a financial investment, then an act of reproduction will be found¹⁷. While this “recognisability” test is largely debated¹⁸, it

¹⁴ R. Reed, “AI Created a Song Mimicking the Work of DRAKE and The Weeknd. What does that Mean for Copyright Law?” (Harvard Law School, 2023). Available at <https://hls.harvard.edu/today/ai-created-a-song-mimicking-the-work-of-drake-and-the-weeknd-what-does-that-mean-for-copyright-law/>. Accessed 24 Jan 2025.

¹⁵ Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979), Article 9.

¹⁶ *Infopaq*, C-5/08, EU:C:2009:465, para 39.

¹⁷ *Pelham I*, C-476/17, EU:C:2019:624, paras 29–30.

¹⁸ K. Grisse, “On the significance of (un)recognisability for the reproduction right in European copyright law” (2022), 44(2) EIPR 78

remains the EU's legal basis for determining whether an AI model replicates without authorisation elements protected by the fixation of a performance or a sound recording. Thus, if an AI output is too similar to an existing song, it can also cause an overlap by infringing on copyright and related rights. It is essential to underline that this "recognisability" test seems particularly relevant in the context of voice cloning. If an AI produces an output that sounds similar to an existing melody or instrumental, and the cloned voice of a certain famous artist is added to it, then there is a higher chance that it will resemble a copyrighted work and that "one's ear" will easily recognise it. While what is meant by "one's ear" remains poorly defined - are we talking about an expert's ear, a musician's ear or an average person's ear? - , it seems fair enough to think that, in the case of voice cloning, the resemblance will be recognisable by an average ear or even by an inattentive ear should the cloned voice belong to a very famous artist. Therefore, by making it more likely that an output will create a sense of "recognisability", voice cloning makes it easier to find an infringement on protected sound recordings.

Overall, if a generative AI is trained on songs and ends up reproducing a work that closely resembles a protected subject-matter without the artist's authorisation, there is a likelihood of infringement if the reproduced parts reflect the artist's creativity in the original work. If, in addition to the similarity of the melody or lyrics, the voice is that of the artist, then there is a greater likelihood of finding a reflection of the author's personality, as a voice also contributes to a song's originality.

Furthermore, on top of the dual risk of infringement caused by AI voice cloning, determining liability becomes a complex challenge once an infringement is identified. In the case of AI-generated outputs, liability is difficult to pinpoint, as it can be shared between multiple actors. Typically, the user who prompts an input that results in an infringing output is considered primarily liable, since the user would have directly caused the creation of the infringing act of reproduction¹⁹. However, liability can also extend to AI developers and providers, particularly if their role is proven to have facilitated the infringement. Under EU law, the Digital Services Act mainly addresses these issues and states that platforms can be held accountable if they have played an active role in distributing infringing content. In addition, in numerous cases²⁰, the CJEU has emphasised that, to be held liable, a platform or provider must have acted intentionally and expressly failed to take adequate measures against the infringement. Therefore, platforms hosting potentially infringing AI-generated outputs will likely be held liable. However, in the EU, an AI Liability Directive introducing specific provisions for liability²¹ is currently under discussion. It aims at adapting existing liability rules to the challenges

¹⁹ Korean Ministry of Culture, Sports and Tourism and Korea Copyright Commission, "A Guide on Generative AI and Copyright" (16 January 2024), p.30. <https://www.copyright.or.kr/information-materials/publication/research-report/view.do?brdctsn=52591>.

²⁰ C-682/18 (Youtube) and C-683/18 (Cyando)

²¹ Proposal for a Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive), COM/2022/496 final.

brought today by AI systems. For example, it focuses on high-risk AI, proposing to lower the burden of proof for victims seeking compensation. By doing so, the proposed Directive seeks to respect the principle of proportionality, mirroring Article 17 of the DSM Directive which requires platforms to prevent the unauthorised use of protected content by implementing effective and proportionate measures.

When *prima facie* liability is found, exceptions under the Copyright Directive, such as quotation, parody, or pastiche, may apply if the AI output was created or used for the purpose of commenting on or denouncing the original work, provided that it does not go against the public interest²². Some AI voice cloning models, such as Musicfy, offer “AI parody voices”, adding a humorous touch that could reduce the likelihood of copyright infringement. However, the legal tests may vary depending on the jurisdiction.

In summary, AI voice cloning increases the risks of copyright infringement at the output stage because it enables the creation of works that closely resemble protected material. Even if a voice cannot be copyrighted in itself, the use of protected songs and sound recordings in AI training data increases the likelihood of reproducing elements that reflect the author’s creative expression. The EU “recognisability” test and the “creative choice” criterion from the Infopaq judgment highlight how similarities in melody, lyrics, or sound recordings can result in copyright infringement, particularly when these elements are combined with a cloned voice. However, determining liability for such infringements is not an easy task, given that responsibility can be attributed in part to the user, but also to the AI provider.

In the music industry, copyright remains the key to preventing illegal voice cloning. Nonetheless, while more transparency is still needed from AI model developers, AI voice cloning also opens the door to further infringement, both on the input and output stages. Therefore, new legal solutions, such as licensing frameworks, have emerged to ensure respect for artists’ rights and to restore the balance of the incentive system underlying copyright law.

PART II: Licensing AI-generated voices: a framework for economic and creative sustainability

A. Reshaping artists’ rights: the rise of licensing for AI voice clones

Traditionally, commercial licensing was mainly used in advertising contexts, where an artist’s voice or image was used to promote products or services. In today’s digital age, the scope of licensing has broadened to include other types of uses, such as AI-generated songs and voice

²² *Deckmyn and Vrijheidsfonds*, 2014, C-201/13, EU:C:2014:2132.

cloning. As regards the use of a cloned voice in music, this paper will show that licensing has become a precious tool for an artist to retain control over their voice, as licensing schemes enable a performer to monetise their cloned voice while keeping control over its usage²³. Indeed, by licensing their cloned voice to generative AIs, artists are guaranteed compensation for each use as well as being provided with beneficial creative opportunities, such as reaching new audiences, making collaborations or remixes without having to record new material²⁴. Moreover, collaborative efforts, such as the recent LOI between ProRata.ai and the Danish Press Publications' Collective Management Organisation (DPCMO), demonstrate the growing concern on ensuring fair compensation for artists in the age of generative AI²⁵. Therefore, introducing and developing voice cloning licensing deals seem to be an attractive solution to address the discrepancy created by AI-generated content and give artists the compensation they deserve.

However, the use of AI technologies gives cause for concern about the authenticity of an artist's signature on a musical work. It rightfully raises the question of whether a song created with an artist's cloned voice has the same creative touch and personal stamp as when the artist actually sings and records a piece of music themselves. In this case, the singing carries the emotional state of the artist at the exact moment they perform. It captures a moment that cannot be replicated twice with the same energy or emotional connection to it. Ultimately, it all depends on how much an artist values the authenticity of their voice and creative expression. However, if an artist such as Grimes praises the use of technology in her songs, one may argue that it is also part of her identity as an artist, which, in a way, makes her authentic. Nonetheless, setting aside the question of authenticity, one has to face reality. With the advent of AI and the way technology is developing and getting better and better every day, it is hard for an artist to avoid having their voice cloned.

On-demand licensing platforms are developing to try and palliate the economic loss of artists. Similar to a marketplace, these platforms enable artists to "market" their voice by listing it on the platform, specifying what use can be made of it, as well as the price they charge. Record companies can search these platforms for voices and pay the artist whose voice they are interested in. The Narrativ platform, for example, recently reached an agreement with SAG-AFTRA, a union representing 160,000 media artists²⁶. AG-AFTRA National Executive Director said: "Narrativ has agreed to our terms, and its platform is an excellent example of how AI can be ethically used, by putting compensation, informed consent and control in the hands

²³ S. Din, "The Legal Implications of AI Voice Creation." Brodies LLP, 27 Sept. 2024, brodies.com/insights/ip-technology-and-data/the-legal-implications-of-ai-voice-creation. Accessed 29 Jan 2025.

²⁴ D. Jjalali, "What Is AI Voice Licensing?" Voices, 20 Aug. 2024, www.voices.com/blog/what-is-ai-voice-licensing/#commercial-use-of-ai-voices. Accessed 13 Jan 2025.

²⁵ ProRata.ai and The Danish Press Publications' Collective Management Organisation (DPCMO), 2024 November 25, "ProRata.ai and DPCMO Sign LOI to Enhance Content Consent, Credit, and Compensation in the Age of Generative AI" (press release), <https://www.businesswire.com/news/home/20241125818129/en/ProRata.ai-and-DPCMO-Sign-LOI-to-Enhance-Content-Consent-Credit-and-Compensation-in-the-Age-of-Generative-AI> Accessed 28 Jan 2025.

²⁶ "SAG-AFTRA and Narrativ Announce New Agreement." SAG-AFTRA, 12 Aug. 2024, www.sagaftra.org/sag-aftra-and-narrativ-announce-new-agreement, Accessed 28 Jan 2025.

of individual performers". These platforms tend to create a more transparent system where artists can monitor how their voice is being used and get fair remuneration in return.

As a result, it is hoped that, soon, platforms such as Narrativ will further develop and that similar deals will be reached with artists' unions to enable companies to rent voice clones for specific musical projects, ensuring performers like singers and voice actors earn revenue each time their voice likeness generates value.

B. Incentivising creativity: the preservation of Copyright's core principles

Copyright aims to protect creative expression but also to guarantee that artists receive fair compensation for their work. By giving them exclusive rights to control the distribution and reproduction of their work and to profit from their creations, copyright has historically encouraged artists and has established a clear connection between their artistic output and financial gains. As a result, copyright is an essential part of the economic cycle in the music industry. This cycle supports further creation by enabling artists to reinvest earnings from past works into new projects. However, voice cloning technology is undermining this incentive system²⁷ since it deprives artists of their source of income, illegally using their voice without any compensation. Without safeguards, artists face a future where the economic benefits traditionally provided by copyright could be significantly eroded. Therefore, this paper argues that, in addition to financially compensating artists for using their voices, the development of licensing schemes could also help sustain the music industry's creative ecosystem. In other words, financial compensation fuels continued artistic output, ultimately ensuring the creative cycle's continuity. Restoring the incentive brought by the copyright system has become critical to keeping the value of human creativity in the face of technological advances²⁸.

Furthermore, these licensing schemes not only ensure that artists are remunerated, but also create opportunities for all parties within the music industry. For instance, licensing schemes make it legal and easier for producers to use cloned voices. In the same way they can buy a license to use a sample to create music, producers can also purchase a license to use a cloned voice from platforms such as Narrativ or Replica. Developing licensing options can also greatly benefit AI developers by providing them with a legal way to access and use cloned voices, reducing the number of potential infringements. Furthermore, licensing might stimulate collaboration between artists and other stakeholders in the music industry. Indeed, it could enable artists to explore new creative opportunities, such as licensing their voices for virtual

²⁷ Z. L. Catanzaro, "Beyond Incentives: Copyright in the Age of Algorithmic Production." NYU Journal of Intellectual Property & Entertainment Law, 29 Feb. 2024, jipel.law.nyu.edu/beyond-incentives-copyright-in-the-age-of-algorithmic-production. Accessed 13 Jan 2025.

²⁸ Z. Catanzaro, "Beyond Incentives: Copyright in the Age of Algorithmic Production" (September 16, 2023). 13 NYU Journal of Intellectual Property & Entertainment Law 1, Available at SSRN: <https://ssrn.com/abstract=4573483>

performances or creating new content, opening up new sources of income and fueling the creative cycle²⁹.

On top of that, licensing gives an artist control over their creative identity. Licensing agreements can stipulate specific terms regarding how, where, and in what context an artist's voice can be used, ensuring alignment with their personal and professional ethos. For instance, licensing partnerships such as the SAG-AFTRA and Narrativ agreement create official channels for the legal use of cloned voices, which foster the ethical and legal use of voices, making it less appealing (and riskier) to use an unauthorised clone. These platforms also feature tracking and monitoring tools, helping artists stay aware of any misuse of their voices and providing them with evidence should they need to make a claim.

In addition to protecting artists' financial interests by transforming what was an unauthorised commercial exploitation of their voice into a source of income, licensing also offers the possibility to set clear legal boundaries³⁰. It may contain exclusivity or limitation clauses on the usage (e.g., "not for commercial music release"), which helps distinguish between authorised and unauthorised uses. Moreover, licensing schemes provide artists with legal tools to fight any unauthorised use of their voices. By providing a clear framework of what is and isn't permitted, licenses reduce the gray areas that often lead to infringement, both in the input and output stages³¹. They can act as a deterrent to misuse, encouraging potential users to comply with the rules rather than risk legal action. For example, an artist can sue for breach of their licensing rights, which is much easier to prove than a generic claim. Licensing also establishes financial damages by setting a market value on their voice. If someone uses their cloned voice without paying the licensing fee, they can claim not only infringement but also the lost licensing revenue as financial damage, strengthening their case.

To conclude, licensing benefits all parties – artists, producers and AI developers – as it sets a clear framework for the legal use of cloned voices. This approach not only reduces the risk of a dual copyright infringement but would also reinforces the incentive structure at the heart of copyright law, ensuring fair rewards for creative works.

²⁹ C. Wieduwilt-Ai, "Musical.AI + Kanjian Just Changed the Game for AI Music Training — Here's How:" The AI Musicpreneur - Learn How to Build a Music Career With AI., 12 Nov. 2024, www.aimusicpreneur.com/ai-music-news/musical-ai-kanjian-partnership-ai-music-training. Accessed 13 Jan 2025.

³⁰ V. Appalla, "The Ethical and Legal Dilemma of AI Voice Cloning in the Music Industry." Intellect Vidhya Solutions Law LLP, 13 July 2024, intellectvidhya.com/ethical-and-legal-dilemma-of-ai-voice-cloning-in-music-industry/#Industry_Response. Accessed 15 Jan 2025.

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Conclusion

AI voice cloning has fundamentally reshaped music creation. While it allows for creative opportunities, the technology's capacity for dual copyright infringement, at both input and output stages, poses a significant threat to the rights of creators. The existing EU legal framework, particularly regarding the TDM exception, struggles to safeguard creators' rights effectively.

As a way to protect both economic and creative interests, licensing schemes emerge as a pivotal solution and present a promising pathway. Through licensing agreements, artists can retain control over their voices, secure fair remuneration, and set clear boundaries on how their cloned voices are used, lowering the risk of infringement for all parties involved.

Therefore, while AI voice cloning tools clearly increase the risk of breaking copyright law twice, licensing agreements offer a practical and balanced solution to mitigate these issues. These agreements uphold the creative incentive central to copyright law and promote more ethical collaboration across the industry. As a result, it is hoped that the music industry can adapt to evolving technologies while preserving its creative core and ensuring protection for all stakeholders.