IE Zomerforum – Deepfakes - De voorbereiding (7): ‘Acteurscontractenrecht’.

In de VS kent men geen naburige rechten van uitvoerende kunstenaars, maar wel zeer nauwkeurige en strenge afspraken gemaakt met vakbonden, zoals SAGAFTRA, waar in de praktijk iedere filmproducent in de VS zich aan moet houden.

Wat zeggen die afspraken over het gebruik van deepfakes van acteurs?

What You Need to Know About the 2023 TV/Theatrical Contracts

In the 2023 TV/Theatrical Contracts negotiations, SAG-AFTRA secured protections for the creation and use of digital replicas of performers, as well as protections relating to digital alterations of your performance. A “Digital Replica” is a replica of your voice and/or likeness that is created using digital technology, such as artificial intelligence.

Zie <https://www.sagaftra.org/files/sa_documents/DigitalReplicas.pdf>

Zie <https://www.backstage.com/magazine/article/sag-aftra-ai-deal-explained-76821/>

Zie: <https://www.sagaftra.org/contracts-industry-resources/contracts/2023-tvtheatrical-contracts/artificial-intelligence-resources>

Zie: <https://www.sagaftra.org/files/sa_documents/TV-Theatrical_23_Summary_Agreement_Final.pdf>

Acteurscontracten

In Nederland wordt niet collectief onderhandeld over de contracten van de acteurs (ketentafel heeft een leidraad opgesteld, maar die ziet op met name op veiligheid en gezond werken, minimum vergoedingen maar niet gericht op de rechtenoverdracht/exploitatie).

De rechtenclausles zijn reeds uitgebreid, alle rechten worden zonder beperkingen overgedragen en van de morele rechten moet, voorzover wettelijk mogelijk, afstand worden gedaan. Ik zie laatste tijd een uitbreiding van die clausules, zoals hieronder aangegeven.

In de US, UK, Denemarken, Zweden, Noorwegen, Frankrijk onderhandelen de unions namens de acteurs met de producenten. In die contracten ligt de rechtenoverdracht vast en welke vergoedingen (naast de te onderhandelingen vergoeding voor de betreffende acteur) er voor de exploitatie van de rechten/periode van gebruik etc worden betaald. Ook wordt in die contracten, bij bijv Pact/Equtiy bepaald dat de vergoeding van de acteur voor de overeengekomen draaidagen een garantie is, ongeacht of er gebruik van wordt gemaakt.

De clausules omtrent de rechtenoverdracht kunnen in principe niet zomaar gewijzigd worden (verschilt ook per land, ben ik niet volledig van op de hoogte). Daarnaast beschermt de garantie van betaling van de geplande draaidagen de acteur tegen vormen van digitale vervanging. Voor zover ik weet zijn de gesprekken in UK gaande, rest weet ik niet.

**Voorbeeld UK**

Maar toch worden in bijv UK agenten gewaarschuwd voor deze wijziging in de contracten met acteurs. In de UK wordt er toch aan contracten gesleuteld, wat heel frusterend werkt hoor ik van collega’s daar. Ook omdat de producenten die de contracten uitsturen, die aanpassingen gewoon laten gebeuren en zelf niet weten wat de streamers er uiteindelijk mee van plan zijn.

Zie hieronder een voorbeeld uit UK waar agenten daar voor worden gewaarschuwd:

*In general this is the language we get that raises red flags:*

*1.1              Name/Likeness: In addition to the provisions of Clause (T46)2 of the PACT/Equity TV Agreement, Artist hereby specifically irrevocably and unconditionally grants Producer the right to use and the right to permit others to use Artist’s name, photograph, biography, voice, and/or likeness (and/or****simulation******thereof****) in any and all media now known and unknown…(look out for SIMULATION language the red flag)*

Nederlandse voorbeelden:

1. Contract 1. Deze clausule wordt door meerdere producenten gehanteerd:

Talent acknowledges that Producer is responsible for producing the Production with the aim of exploiting it and bears the financial risk thereof. To exploit the Production in current and future means, all current and future intellectual property rights that are vested in the Production must rest with Producer.

To achieve the foregoing, Talent irrevocably and unconditionally assigns and transfers to Producer, who accepts, all intellectual property rights, including copyrights and neighbouring rights, that Talent has obtained through the performance of Talent's work under this agreement and/or that Talent could otherwise claim as an author/performer on the Production and/or parts thereof. For completeness: This transfer relates to the transfer of the aforementioned rights in their fullest and most comprehensive legal scope, **including any potential future, replacement or new and future rights**, and for all current and possible new and future rights and all present and possible subsequent, alternative and future forms of distribution and exploitation, independent of platform, device, and technology, in all languages, worldwide, exclusive, and in perpetuity (together the “**Rights**”).

The Rights hereby assigned include, without limiting the generality of the assignment:

1. all unlimited, worldwide, present and future, rights of communication to the public and the right of making available to the public (globally) by any means of publication and/or business model in whatsoever kind of form, in whole or in part, in whatever language, subtitled and/or dubbed, including all copyrights, neighboring rights, trademarks and any and all other ownership and exploitation rights now or hereafter recognized in any territory but not limited to theatrical and non-theatrical exhibition, broadcast by all forms of (free, basic- or pay-)tv and via all means, e.g. free-, cable-, digital- and satellite-television, internet, mobile technology, all forms of VOD, social media, apps, podcasts, exploitation through DVD and Blu-Ray, games, podcast, live stage, (e)-books and magazines, rental and lending rights in relation to the Production based thereon in whole or in part and copies of any thereof;
2. the right to commercially exploit or have others commercially exploit the material in any way whatsoever by any and all means, media, devices, processes and technology;
3. the right to exercise and/or exploit the merchandising and 'commercial tie-up and tie-in' rights (as those expressions are customarily understood in the international audio-visual industry);
4. the right to add to, to subtract from, change, arrange, revise, adapt, rearrange, delete, make variations, and to translate the same into any and all languages (including but not limited to dubbing, subtitling and/or translating), change the sequence, change the characters and the descriptions thereof contained therein;
5. the right to exercise and/or exploit the remake rights and allied, subsidiary, serial, sequel, prequel, spin off, rights (as those expressions are customarily understood in the international audio/visual industry).
6. Ancillary rights, to develop and sell goods and services in any and all formats and media based on the results of the Services, its characters and figures, the plot, the narrative universe, environments and/or trademark, including without limitation advertisement, promotional activities, consumer products (such as toys/apparel/food/beauty), printed or electronic media such as books/magazines/comics, audio products, audio books, soundtracks, location based experiences/theme parks, stage play, music works, art works, competitions/quiz, digital/interactive gaming products, virtual/augmented/mixed reality features (including networks and platforms), non-fungible tokens (known as NFTs) and “apps”;
7. Behind the scenes/making-of material and outtakes in connection with the Production and/or derivative;
8. Compile and incorporate in any multimedia product/service, online and offline database, including archive right;
9. the right to use the title of the Production in connection therewith or otherwise and to change such title.

The transfer/grant of rights referred to in this clause also applies to any results and proceeds arising out of the Services of Talent, that are not used in the final cut, including any and all materials or elements rendered, provided, supplied or acquired in connection with the Production.

**Doubling and Dubbing**

Producer shall have the right **to simulate Talent’s voice, acts, poses, performance** and all instrumental, musical and other sound effects to be performed by Talent in and in connection with the Production or any part thereof or in any advertising, publicizing or exploitation thereof.

**Waiver of moral rights**

Talent hereby irrevocably waives all moral rights to the fullest extent allowable under any applicable law (including but not limited to article 5 (1) under (a), (b) and (c) of the Dutch Neighbouring Act, article 25 (1) under (a), (b) and (c) and article 45e Dutch Copyright Act) and agrees that Talent will not seek to enforce such moral rights against Producer, to extend allowable under any applicable law.

Talent further agrees that Producer shall have **the right to vary, change, alter, modify, add to and/or delete from the results of the Services,** and to rearrange and/or transpose the results of the Services, and change the sequence thereof and the characters and descriptions of the characters contained in the results of the Services, and to use a portion or portions of the results of the Services or the characters, plots or theme thereof in conjunction with any other literary, dramatic or other material of any kind.

2. Contract 2.

* 1. **Assignment**: Artist as owner with full title guarantee irrevocably and unconditionally grants and assigns to the Company (by way of an immediate grant and assignment of present and future rights) the entire copyright and all other rights, title and interest of whatsoever kind or nature, whether vested or contingent (including all neighbouring, rental, lending and exploitation rights in all media now known or hereafter devised to which Artist may now or hereafter become entitled) in and to the products of Artist’s services in connection with the Programme (the “**Products**”, which expression shall be deemed to include all performances and literary, dramatic, artistic and musical material contributed by Artist to the Programme), the Programme and all allied and ancillary rights thereto to hold the same unto Company absolutely throughout the world for the full term of copyright together with all possible renewals, revivals, reversions and extensions thereof and thereafter (insofar as may be or become possible) in perpetuity to the extent permitted by law. All the rights, title, interest and consents granted by Artist to the Company under this clause and elsewhere in this Agreement shall be the “**Rights**”. If and only to the extent that a right cannot be assigned to Company by applicable law as aforesaid, Artist grants an exclusive, unlimited, royalty-free, fully sub-licensable license of such right to Company in all languages and media now known or hereafter devised throughout the world for the full term of such right together with all possible renewals, revivals, reversions and extensions thereof and thereafter (insofar as may be or become possible) in perpetuity to the extent permitted by law, and Artist undertakes as a separate undertaking not to institute, support, maintain or permit any action or lawsuit anywhere in the world on the grounds that the Products, the Programme or any derivative, version or adaptation thereof or any rights therein in any way constitutes an infringement of such right.
	2. **Editing; Moral Rights**: Artist recognises that the Company has the unlimited right to edit, copy, alter, add to, take from, adapt and/or translate the Products and the Programme, and to the extent permissible Artist irrevocably and unconditionally waives in perpetuity (and agrees and undertakes not to assert) any and all moral rights that Artist may have in and to the Products, the Programme and all allied and ancillary rights thereto, whether arising under sections 77 to 85 (inclusive) and/or sections 205C to 205N (inclusive) of the United Kingdom Copyright, Designs and Patents Act 1988 (as amended) (the “**Act**”) or otherwise, and the benefits of any “droit moral” of Artist or any similar right in any Role of the world, and Artist undertakes as a separate undertaking not to institute, support, maintain or permit any action or lawsuit anywhere in the world on the grounds that the Products, the Programme or any derivative, version or adaptation thereof or any rights therein in any way constitutes an infringement of any moral rights or “droit moral” of Artist or is in any way a distortion, defamation or mutilation of the Products or contains unauthorised alterations, adaptations, additions, deletions or translations or on the grounds that the Products have been subjected to a derogatory treatment. If and to the extent that Artist is not permitted to waive their moral rights under applicable law, Artist expressly acknowledges that any action by Artist aimed at, intended to or actually preventing, stopping, restricting or otherwise interfering with the development, production, distribution, exhibition or, in any way with the exploitation of the Products or the Programme or rights granted or assigned hereunder would be excessively harmful and detrimental to Company and to its assignees and third parties and consequently Artist
1. 3. Producent wenst aan Acteur de opdracht te verstrekken tot het verrichten van acteerwerkzaamheden voor de rol Thomas Wagenaar in de serie met als (werk)titel *“XX.”* (deze serie hierna: de “**Productie**” en deze werkzaamheden hierna: de “**Werkzaamheden**”), welke opdracht Acteur wenst te aanvaarden;
2. Overdracht en afstand van rechten
	1. Acteur draagt hierbij, onder de opschortende voorwaarde dat aan de betalingsverplichting jegens Acteur en zijn agent is voldaan, reeds nu voor alsdan onvoorwaardelijk en onherroepelijk zonder enige beperking alle in de uitvoering van de Overeenkomst ontstane intellectuele en industriële eigendomsrechten waarop Acteur aanspraak kan maken, waaronder maar niet beperkt tot de volledige naburige rechten en auteursrechten op zijn/haar Bijdrage over aan Producent, zonder zich enige bevoegdheid of recht voor te behouden. Deze overdracht is in alle opzichten onbeperkt, wereldwijd voor de gehele duur van het auteursrecht en omvat, naast de thans bestaande exploitatiemogelijkheden, uitdrukkelijk ook exploitatiemogelijkheden die ten tijde van deze overdracht nog niet bestonden en/of voorzienbaar waren. Producent aanvaardt deze overdracht. Producent zal gelden als producent in de zin van artikel 45d auteurswet. Acteur staat ervoor in dat Producent in het ongestoorde genot is c.q. zal blijven van de in deze Overeenkomst aan Producent overgedragen rechten.
	2. Zonder afbreuk te doen aan de algemeenheid van dit artikel bedoelde overdracht van rechten, omvat deze overdracht onder meer het recht de Bijdrage onverkort wereldwijd
		1. openbaar te maken, waaronder; het middels “free to air television” uitzenden van de opnamen van de Bijdrage, analoog dan wel digitaal via antennesystemen, kabelsystemen en/of satellietsystemen maar ook andere vormen, niet zijnde “free to air television", waaronder onder meer begrepen interactieve televisie, pay-TV, closed circuit TV en/of on demand beschikbaarheidsstelling; het verspreiden via computer- en/of telecommunicatiesystemen, zoals (breedband) internet, mobiel internet, WiFi, mobiele telefonie, GSM, GPRS 4G, UMTS en/of vaste telefonie valt hieronder en; het openbaar vertonen, waaronder ondermeer vertoning in bioscopen, andere zalen, educatieve instellingen, vliegtuigen en schepen, bedrijven, horeca en winkelruimtes en hotels (al dan niet via een kabel);
		2. te verveelvoudigen, waaronder het verspreiden, vastleggen, verkopen, verhuren, uitlenen, in licentie geven, aanbieden, in voorraad hebben of anderszins in het verkeer brengen van de opnames van de Bijdrage via beelddragers, zoals Blu Ray, DVD, VHS, film, en/of via geluidsdragers, zoals CD, MD en of andere gegevensdragers zoals CD-ROM, USB en/of via niet fysieke systemen waaronder download- en streamingtoepassingen;
		3. te bewerken, waaronder aanpassen, er aan toevoegen, er uit weglaten en/of anderszins veranderen en/of wijzigen in de ruimste zins des woords, waaronder uitdrukkelijk verstaan het recht een audiovisueel werk te vervaardigen van de Bijdrage, waaronder maar niet beperkt tot een (aflevering van een) televisieserie en/of een film en dit audiovisuele werk en/of delen daarvan openbaar te (doen) maken en te (doen) verveelvoudigen, in welke vorm, media en voor welk doel dan ook voor en over de gehele wereld, het aanbrengen van ondertitels en nasynchronisatie van de teksten, vertalen, dubben, vervaardigen van nieuwe (taal)versies, delen en bewerkingen, het maken van een versie waarbij de kijker de volgorde bepaalt en het maken van een spel of ander interactief werk;

undertakes not to so act and not to support or adhere to any of such actions. In the event that Artist invokes respect for Artist’s moral rights, Artist undertakes to do so in good faith and in a manner that will not have the effect of restricting or prohibiting the exploitation of the Products, the Programme or all the secondary and derivative rights attached to it. Artist’s sole remedy will be an action at law for damages (if any) actually suffered by Artist, as Artist has expressly agreed that such action is a satisfactory and proper remedy and hereby waives any right to enjoin, restrain, restrict, request a seizure or any other measure which may affect the exploitation of the Products, the Programme or any of the aforesaid rights.

* 1. **Work for Hire**: Artist acknowledges that the Company shall be the sole owner of the copyright in the Products and the Programme and that for the purposes of the copyright law of the United States of America and any jurisdiction which does not recognise an assignment of future copyright, insofar as there is resort or subjection to such jurisdiction in relation to this Agreement, the Products are and shall be deemed to be works made for hire under a contract of service to the Company, and the Company shall be deemed the author thereof.
	2. **Rental & Lending**: Artist further confirms that the Rights include any and all rights of communication to the public by satellite, cable retransmission rights and any and all rental and lending rights whether now known or hereafter existing in any part of the world in relation to the Products, the Programme and all allied and ancillary rights thereto, and Artist.
	3. **Consents**: Artist irrevocably grants to the Company all consents under Part II of the Act (including the making available right) and any similar legislation in any part of the world to enable the Company to make the fullest use of the Products, the Rights, the Programme and all allied and ancillary rights thereto throughout the world in any and all media whether now known or hereafter devised in any manner or form or by any method, that the Company may in its absolute discretion decide and nothing in this Agreement shall impose any restriction on the manner, form or method that the Company advertises, publicises, exhibits or exploits (or refrains therefrom) the Products, the Rights, the Programme or any derivative, allied and ancillary rights thereto, including Artist’s likeness, biography and/or voice in connection with the exploitation of the Programme and all derivative, allied and ancillary rights thereto. **Company shall have the right to re-voice, dub and/or simulate Artist’s voice and shall have the right to simulate and/or use a body double to represent Artist’s physical appearance in and in connection with the Programme, any part thereof or in any advertising, publicising or exploitation of the Programme or otherwise in connection with this Agreement.**