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Fighting AI and Deepfake Misuse in Music

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The music industry is undergoing seismic shifts with artificial intelligence (AI) redefining how content is created, shared, and consumed. While AI offers exciting possibilities such as personalized playlists and virtual collaborations, it also introduces several unprecedented risks. The most alarming is deepfake audio, synthetic recordings that mimic an artist’s voice with uncanny precision.

Musicians must now deal with misappropriation of their intellectual property and very identity, as unauthorized viral tracks generated by AI can replicate their tone, cadence, and emotional nuance. These digital impersonations blur the lines between homage and theft, increasing legal and ethical questions around AI capabilities and uses.

The Threat Landscape of Deepfakes in Music

In April 2023, a track titled “Heart on My Sleeve,” which featured AI-generated vocals mimicking Drake and The Weeknd, went viral, gaining millions of streams before finally being removed. Neither Drake nor The Weeknd created or authorized the AI-generated song. Yet, it sounded convincingly like both artists, marking a turning point in and highlighting how AI can replicate musical styles and voice identities.

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Machine learning models trained on thousands of hours of vocal and musical recordings can produce new songs that sound like they were performed by real artists, even if the lyrics, melodies, and performances are entirely synthetic. This may seem like a creative breakthrough to fans who want to hear an Ozzy Osborne hard rock cover of Chappell Roan’s “Hot to Go!,” but artists and rights holders view it as digital identity theft.

Even more concerning are the significant commercial risks. Unauthorized deepfakes can dilute an artist’s brand, confuse fans, and potentially divert revenue. Moreover, they can cause misleading advertising or performances, falsely implying endorsement or participation. And for emerging artists in an already challenging industry, misuse of their voice could lead to early derailment of their careers.

The biggest struggle is removing deepfake content from online platforms. While AI regulation is still in the early stages, many streaming services and online platforms lack clear policies and technical capabilities to detect and block AI-generated impersonations. As a result, effective legal intervention is becoming a necessary—and increasingly urgent—tool in the final countdown against digital music misappropriation.

Legal Protections: The Right of Publicity

One of the most powerful tools people have against unauthorized AI-generated impersonations, both in and outside the music industry, is the right of publicity. Generally, the right of publicity protects individuals from unauthorized commercial uses of their name, image, likeness, and voice.

The challenge is that the right of publicity is governed state by state. Some states, such as California, already offer robust protections, including significant posthumous rights, while others, such as New York, only recently expanded their laws to include digital replicas and posthumous rights. In 2024, Tennessee enacted the Ensuring Likeness Voice and Image Security Act (ELVIS Act), a first-of-its-kind law addressing AI misappropriation of voices, images, and songs.

This patchwork approach to the right of publicity unintentionally creates significant enforcement challenges. For example, an AI-generated song mimicking a Tennessee artist might be made in a state with weaker protections, complicating jurisdictional claims. Moreover, not all states recognize one’s voice as a protectable attribute, creating gaps in safeguards for musicians whose vocal identity is their most valuable asset.

As a result, calls for federal legislation on the right of publicity continue to grow louder. Several artists and legal professionals believe a unified national standard would help better protect against digital impersonations across state lines while also providing clearer guidance for streaming services and online platforms regarding what constitutes an unlawful AI-generated use of a person’s likeness.

Intellectual Property: Claims and Limitations

While the right of publicity may offer a more direct path against unauthorized use of a musician’s voice or likeness, intellectual property presents an additional—albeit complex—framework for addressing AI-related concerns.

For instance, copyright law protects original works of authorship fixed in a tangible medium of expression. While it expressly covers musical compositions and sound recordings, copyright protections do not extend to an individual’s voice or style unless those elements are embedded in a copyrighted work.

This means an AI-generated song mimicking an artist’s voice could avoid copyright infringement unless it directly samples or reproduces protectable elements of a musical composition or sound recording. Courts

are currently grappling with questions of the extent to which training an AI model on copyrighted works or the outputs of those models constitutes copyright infringement or fair use.

Even when infringement occurs, enforcement can still be difficult despite efforts to ease the process of protecting one's intellectual property online. The Digital Millennium Copyright Act (DMCA), for example, allows rights holders to issue takedown notices to Internet service providers (ISPs). However, ISPs may resist the removal of content if it is deemed transformative or not a derivative of the copyrighted work.

Similarly, while trademark law provides some protection for artists whose name or brand is used in misleading advertising or performances, falsely implying endorsement or participation, it does not necessarily cover vocal style or musical likeness. Nor does patent law provide many avenues for protection, as it covers inventions and useful discoveries rather than creative expressions and one's likeness.

As AI-generated content continues to become more prevalent, legal scholars and policymakers are trying to find ways to evolve the current landscape of intellectual property law. Ideas for adapting intellectual property laws include expanding copyright eligibility to cover AI-assisted works and creating new categories of protection for digital likenesses.

Federal Legislative Developments: NO FAKES Act and No AI FRAUD Act

As concerns around deepfake technologies continue to grow, lawmakers are slowly catching up, with several legislative proposals in recent years aimed at establishing clearer protections, especially in the music and entertainment industries.

One of the most prominent pieces of legislation is the Nurture Originals, Foster Art, and Keep Entertainment Safe Act (NO FAKES Act), introduced in 2024 in the U.S. Senate, which seeks to create a federal right for individuals to control the use of their voice, image, and likeness concerning AI-generated content. Key provisions include:

- subpoena power to identify anonymous creators of deepfake content;
- safe harbor and takedown procedures for online platforms hosting unauthorized AI-generated content;
- digital fingerprinting requirements for tracking and labeling of synthetic content; and
- tiered penalties based on the severity and intent behind misusing one's voice, image, and likeness.

Another 2024 proposal, the No Artificial Intelligence Fake Replicas And Unauthorized Duplications Act (No AI FRAUD Act), takes protection further by framing voice and likeness as intellectual property rights rather than merely privacy and publicity concerns. This reframing could empower artists to pursue infringement claims more effectively by establishing clearer ownership over their digital identity.

A landmark moment leading to legislative efforts came when Taylor Swift successfully blocked the unauthorized use of her voice and likeness in explicit deepfake content on Twitter. This set a potential precedent for celebrity-led legal action and underscored the need for quick and decisive legal remedies where reputational harm is specifically at stake.

Practical Guidance for Lawyers

As AI-generated impersonations and deepfakes of musicians become more sophisticated, lawyers must take proactive steps to protect their clients. Although legal remedies are evolving, lawyers can implement practical strategies for immediate safeguards against digital misappropriation.

Contractual Safeguards

Lawyers should ensure that all agreements, especially those involving recording, licensing, and endorsement, include explicit clauses addressing AI and deepfake technologies. Such provisions include: (1) prohibition of unauthorized use of the artist's voice, likeness, or biometric; (2) definitions of acceptable uses of AI in collaborations or remixes; (3) requiring consent for any synthetic reproduction of performances; and (4) language anticipating future technological developments.

Licensing and Rights Management

Lawyers should advise their clients to license their voice and likeness only to trusted platforms and partners, with agreements including limitations on scope and duration of use, audit rights, revocation clauses, and attribution and transparency in AI-generated content. Further, lawyers should encourage artists to register their likeness and voice rights in states with strong publicity laws to bolster their protections.

Risk Mitigation Strategies

One of the biggest things lawyers and artists can do is engage in risk mitigation strategies through technical and procedural safeguards. These strategies can include: (1) watermarking or embedding digital signatures in recordings to verify authenticity; (2) human authorship declarations certifying content creation without AI assistance; and (3) platform due diligence to vet streaming services and online platforms' deepfake policies and takedown procedures.

Monitoring and Enforcement

Lastly, just as with protecting intellectual property, lawyers should establish systems for monitoring unauthorized use of their clients' voices and likenesses. Such efforts may involve setting up alerts for content using their client's name, issuing DMCA takedown notices, sending cease-and-desist letters, or pursuing subpoenas to identify anonymous creators. Furthermore, lawyers should be ready to litigate particularly egregious claims.

Ethical and Industry Considerations

It is important to note that the fight against AI and deepfake misuse in music is not solely about protecting individual artists but also about preserving the integrity of creative expression in an age of synthetic media.

Innovation Versus Exploitation

AI offers unique collaboration, remixing, and genre-blending possibilities, which some artists are embracing to push creative boundaries. However, when AI is used without consent to impersonate artists, create misleading advertising or performances, or cause reputational harm, it crosses the line from innovation to exploitation. The distinction to keep in mind lies in intent and transparency—whether AI is used to enhance artistry or deceive and profit.

Industry Responsibility

Record labels, publishers, and streaming services will be critical in shaping how AI is used within the music industry. Their policies on synthetic content, investments in detection technologies, and support for artists in enforcing rights will be the leading factors in setting industry-wide standards that protect individual musicians from disproportionate burdens.

Platform Accountability

Likewise, online platforms hosting AI-generated content, especially streaming services, must be held accountable for distributing the content. Implementing content moderation, labeling synthetic media,

and promptly responding to takedown requests are just a few ways online platforms can help musicians protect their digital likeness while balancing users' rights.

Advocacy and Education

Lastly, lawyers, artists, and industry leaders must advocate for stronger protections against AI and deepfakes while educating the public about the risks associated with misuse and misappropriation. Transparency in how AI is used and who benefits from it will be essential to maintaining trust in creative industries and technologies.

Beyond Litigation

Just as with the advent of the Internet in the 1990s, the rise of AI and deepfake technologies has introduced a new frontier of legal and ethical challenges, especially for the music industry. With deepfakes becoming more convincing and more accessible, artists are facing growing threats to their identity, reputation, and livelihood.

Legal protections such as the right of publicity and intellectual property claims may provide initial avenues for enforcement against unauthorized digital impressions, but they are not fully equipped to handle all the nuances of AI-generated content. And while legislative efforts such as the NO FAKES Act and the No AI FRAUD Act indicate federal progress toward clearer standards, lawyers must nonetheless rely on patchwork regulatory schemes and creative strategies.

The path forward in the battle against AI and deepfakes involves more than just litigation. It requires proactive contract drafting, vigilant monitoring, and strategic advising to help musicians navigate this complex and ever-evolving landscape. Furthermore, it calls for collaboration among key industry leaders to establish both ethical norms and technical safeguards, prioritizing consent and transparency.

Once a speculative concern only seen in movies and television dramas, unauthorized digital impersonations are now a pressing reality with negative impacts on not only musicians but all individuals. Protecting against the harms of digital impersonation is about more than just defending rights; it is also about preserving the authenticity of artistic expression and individual identity in a rapidly changing world.

By staying informed and engaged, legal professionals can play a vital role in ensuring that individuals' voices remain their own. In a world where machines can sing like us, it's up to the law to ensure they don't steal the spotlight.

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