

# **ACTRA**

**ACTRA Submission to Canadian Heritage and Innovation,  
Science and Industry**

**Consultation on a Modern Copyright Framework for Artificial  
Intelligence and the Internet of Things**

**September 17, 2021**

## Introduction

ACTRA (Alliance of Canadian Cinema, Television and Radio Artists) and ACTRA Performers' Rights Society (PRS) welcome the opportunity to provide our feedback and recommendations to the Departments of Canadian Heritage and Innovation, Science and Economic Development (ISED) as part of the joint Consultation on a Modern Copyright Framework for Artificial Intelligence (AI) and the Internet of Things (IoT).

For over 75 years, ACTRA has represented performers living and working in every corner of the country who are pivotal to bringing Canadian stories to life in film, television, sound recordings, radio and digital media. ACTRA PRS is a collective management organization (CMO), incorporated by ACTRA, mandated to represent the rights and interests of artists who perform in audiovisual productions and on sound recordings. ACTRA and ACTRA PRS represent the collective voice of over 32,000 professional performers working in the English-language recorded media sector in Canada as well as performers represented in partnerships with CMOs from 41 different countries, including the U.K., Germany, Spain and India.

From its earliest days, ACTRA has actively contributed to public policy development processes and played a critical policy role in Canada and internationally. Through its own work and that of its branches and hundreds of leading Canadian performers, ACTRA plays an indispensable role advocating for Canadian storytellers. While Canada's *Copyright Act* (the Act) is an important piece of legislation that has a material impact on performers and their ability to sustain a living and contribute to Canadian culture, new technology has dramatically changed the way creative industries work and the Act needs to reflect the new economic reality in which Canadian artists operate.

ACTRA is pleased to participate in this consultation process, which is intended to help the Government ensure Canada's copyright framework for AI and the IoT reflects the evolving digital world. While the Government of Canada has raised several legitimate concerns respecting text and data mining (TDM), and technical standards for repair and interoperability, ACTRA will not be commenting on those specific aspects of this consultation. ACTRA is continuing to research and develop its position on these issues and will be happy to share its views in the future once it has solidified and evolved its understanding of how TDM, repair and interoperability standards affect the preservation and advancement of copyright in Canada.

In the last 20 years, software ate the world.

In the next 20 years, AI will eat software.

- Vala Afshar

Instead, ACTRA's submission will focus on the extent to which copyright-protected works are integrated in AI applications and the consequences of the misuse of AI technology. As a potential solution, ACTRA advocates for the importance of Canada's implementation of economic and moral rights for audiovisual performers in Canada's *Copyright Act* either prior to, or at the same time as, the introduction of any new copyright measures for AI or IoT.

To be clear, ACTRA supports innovation and investment in AI and other digital and emerging technologies in all sectors in Canada. AI in particular, has tremendous potential for society if used ethically and responsibly, and could also drive productivity growth across the economy. For performers, AI has the potential to allow performers to appear in multiple productions across a single period. In the absence of effective laws or regulation, however, we are beginning to see abuses emerge. Copyrighted material is appearing in deepfake

technology, blurring the lines between reality and fiction. Deepfake technology will only improve over time, increasing both the threat and benefits to users.

## Deepfakes and Artificial Intelligence

Rapid advances in technology continue to have a profound impact on how Canadians do business, innovate, create and share cultural products, including audiovisual content. The impact of AI, specifically the use of deepfake technology, on the creation and sharing of audiovisual content has only reinforced the need for the international protection of both moral and economic audiovisual rights of performers.

ACTRA's sister union in the U.S., SAG-AFTRA, defines deepfakes as "realistic digital forgeries of videos or audio created with cutting-edge machine-learning techniques." Deepfakes are an amalgamation of artificial intelligence, falsification and automation. They use deep learning to replicate the likeness and actions of real people. SAG-AFTRA estimates the vast majority (96 per cent) of deepfakes are pornographic and depict women. It further estimates 99 per cent of deepfake subjects are from the entertainment industry. One could be forgiven for thinking that such technology is a decade away. It has, in fact, already arrived:

- Recently, an Anthony Bourdain documentary was [heavily criticized for using a deepfake of Bourdain's voice](#) to read a letter posthumously;
- A new [AI app uses deepfake technology](#) to allow users to turn anyone (predominantly women) into a porn star by swapping a person's face into an adult video with the push of a button;
- [Deepfake music technology](#) has been the subject of *Digital Millennium Copyright Act* takedown filings;
- The Pentagon, through the Defense Advanced Research Projects Agency (DARPA), is [working with several of the country's biggest research institutions to get ahead of deepfakes](#);
- In 2020, State Farm debuted a television commercial that has become one of the most widely discussed ads in recent memory. [It appeared to show footage from 1998 of an ESPN analyst](#) making shockingly accurate predictions about the year 2020. It was, in fact, a deepfake; and
- There are concerns [deepfake technology has advanced to the point where it could influence elections](#).

SAG-AFTRA has been working diligently to convince legislators in the U.S. to introduce legislation to curb the insidious impacts of deepfake technology. Thus far a number of states have introduced legislation, including Virginia, Texas, New York and California.

## The Audiovisual Right

To combat the deepfake use of copyrighted material, Canada must meet the global standard for performers' rights in audiovisual performances. Copyright audiovisual performances will not just to protect performers' moral and economic rights, but will also help maintain and grow a thriving domestic cultural industry. ACTRA has taken steps to negotiate use provisions into its contracts with engagers to ensure performers are paid for their work throughout the lifetime of its use, but strong copyright legislative provisions are still necessary to ensure a complete set of internationally recognized rights for audiovisual performers.

The types of economic and moral rights ACTRA seeks for its members are the international standard. Countries around the world grant performers rights for their audiovisual performances, which in Canada have only been enjoyed by performers of audio performances under the *1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* ("Rome Convention") and the *1996 WIPO Performances and Phonograms Treaty* ("WPPT").

The International Federation of Actors (FIA) – of which ACTRA is a founding member and a strong supporter – was instrumental in efforts to create and ratify the *WIPO (World Intellectual Property Organization) Beijing Treaty on Audiovisual Performances*. The Treaty, which was adopted on June 24, 2012, and came into force on April 28, 2020, addresses the long-standing need to extend the economic and moral rights of actors and performers to audiovisual performances, including films, videos and television programs. Over 70 countries, including Canada’s major trading partners, have recognized the full value of audiovisual performances to all participants by implementing the Beijing Treaty. To date, Canada has taken no substantive steps to grant similar rights to audiovisual performances and has not implemented the treaty it was so instrumental in creating.

The Beijing Treaty deals with the intellectual property rights of performers in audiovisual performances. It grants performers four kinds of economic rights for their performances fixed in audiovisual fixations, including:

- i. the right of reproduction;
- ii. the right of distribution;
- iii. the right of rental; and
- iv. the right of making available.<sup>1</sup>

In the context of this consultation, the Treaty also grants performers moral rights. Moral rights are the right to claim to be identified as the performer, subject to exceptions, and the right to object to any distortion, mutilation or other modification that would be prejudicial to the performer’s reputation, taking into account the nature of the audiovisual fixations. Moral rights are precisely the tool required by performers when defending against AI-generated or AI-assisted deepfake content.

The granting of moral rights in-line with the Beijing Treaty would allow performers, and ACTRA as their representative, to combat the misappropriation of their images, likenesses, and performances. Without the implementation of moral rights for performers in Canada’s *Copyright Act*, the defence of misappropriation and copyrighted material is unclear and ineffective. One interpretation of Article 17 of the *Copyright Act* in its current form would grant deepfake producers the right to misappropriate performers’ audiovisual performances without penalty.

Residuals and royalties, payments for the use and exploitation of their work, at home or internationally, are the fair compensation all performers deserve. In ACTRA’s view, there is no valid reason for audiovisual performers to be denied the statutory rights their fellow sound recording performers possess in Canada, and both sound recording and audiovisual performers possess around the world. Once these rights have been enshrined in the *Copyright Act*, performers and producers will have the tools necessary to combat deepfakes, which exploit and destroy the value of copyrighted material.

### **Limiting Copyright to AI-assisted Works**

With respect to whether copyright should vest in AI-generated and/or AI-assisted material, ACTRA submits copyright should be limited to AI-assisted material with a clear human component. As noted in the consultation document, there are a number of challenges associated with vesting copyright in AI-generated content. These concerns have been echoed by academics, lawyers and producers across the country. Macmillan LLP noted “the concept of authorship is not readily applicable to AI-generated works, as the existing copyright regime assumes an author to be a natural person and ties the term of copyright protection to a certain period beyond the author’s lifetime.” In ACTRA’s view, copyright should always be tied to the actions of a human.

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<sup>1</sup> [Summary of the Beijing Treaty on Audiovisual Performances \(2012\)](#), World Intellectual Property Organization.

By denying copyright to AI-generated works, the Government of Canada will simultaneously accomplish two goals:

1. it will discourage the creation of a market for the sub-licensing of technology that allows for the creation of AI-generated works because those works will not accrue any intellectual property rights; and
2. it will encourage the creation of a sub-licensing regime that will persuade software companies to sub-licence their AI software to legal entities focused on creating, or assisting with creating, AI-assisted material.

By focusing on the human element, the Government of Canada will encourage the creation of private regimes focused on residuals (and other compensation regimes) that attach to content created by AI technology. In turn, those actors will be incentivized to prevent the misuse of that content, strengthening the Canadian copyright regime.

## **Conclusion**

ACTRA remains steadfast in its support of the recommendations made by the Standing Committee of Canadian Heritage in its May 2019 [Shifting Paradigms](#) report, specifically, to extend moral and economic rights to audiovisual performers under the *Copyright Act*.

The ongoing and increasing use of deepfake technology for the creation and sharing of audiovisual content is an imminent threat that must be addressed. The best protection against this danger is to grant moral rights to audiovisual artists in Canada's *Copyright Act*. Specially, copyright protections should only apply to AI-assisted works (i.e., where a human element exists), not to AI-generated works. This will encourage the creation of a marketplace for the sub-licensing of AI technology to creators and performers. Canada must recognize the full value of audiovisual performances on an international level and implement the Beijing Treaty by updating its copyright legislation to include the required protections for audiovisual performers.

ACTRA appreciates the opportunity to share its views as part of this Consultation on a Modern Copyright Framework for Artificial Intelligence and the Internet of Things. We would be pleased to address any questions of clarification from the Departments of Canadian Heritage or ISED.

Sincerely,



Marie Kelly  
National Executive Director, ACTRA