



Screen Actors Guild-American Federation of Television and Radio Artists (“SAG-AFTRA”) appreciates this opportunity to comment on the Federal Communications Commission’s (“FCC”) efforts to provide greater transparency regarding the use of artificial intelligence-generated content in political advertising. The unauthorized use of digital replicas of individuals’ voices, likenesses, and performances — their digital selves — poses a danger not just to the individual depicted, but to the foundations of our democratic systems.

SAG-AFTRA is the nation’s largest labor union representing working media artists, with over 160,000 members who are the faces and voices that entertain and inform America and the world. SAG-AFTRA exists to secure strong protections for media artists. This includes through collective bargaining agreements negotiated with motion picture and television production companies, television networks, and commercial producers, as well as record labels and other employers, that govern the wages, hours, and working conditions of SAG-AFTRA’s members.

Whether for purposes of entertainment, commerce, or something more malicious, it is critical that this space be regulated to protect against abuse. This is recognized even by the companies who create and distribute many of the technologies who, in Congressional testimony, have asked for legislation so they better understand the appropriate boundaries of their conduct. This is particularly true in the political space, where the use of AI to create false, deceptive, and misleading content that appears realistic can cast doubt on reality and undermine our system of free and fair elections.

I. Introduction

SAG-AFTRA’s Efforts to Protect Performers Against AI-Based Exploitation Illustrate the Need for Regulation

For decades, SAG-AFTRA has fought to protect performers, and all individuals, from non-consensual replication and use of their voice and likeness. This fight has never been as critical and urgent as it is today, as the Commission clearly recognizes. AI technology is making it exponentially easier, cheaper, and faster to create convincing, realistic digital replicas of individuals. This poses an existential threat, not just to SAG-AFTRA's members and others who make their living through use of their voice and/or likeness, but to society and democracy.

In 2023, SAG-AFTRA reached a historic agreement with the major entertainment studios that included, among other things, the first set of comprehensive terms governing the use of artificial intelligence ("AI") in filmed entertainment projects. It took the longest entertainment industry strike in over forty years to reach that deal. One that lasted nearly four months. The strike – and the public's response – highlighted the importance of AI, both to the entertainment industry and the broader public. Subsequent to that negotiation, we successfully concluded similar negotiations with the major record labels, negotiations which again resulted in the first set of comprehensive terms related to AI in the music industry.

Now, the union's members who work on video games are on strike against some of the largest companies in that space. The issue is the same — global conglomerates refuse to plainly affirm, in clear and enforceable language, that they will protect all performers covered by SAG-AFTRA's Interactive Media Agreement, the one that covers video games, in connection with AI. SAG-AFTRA's demands are simple — in connection with work on video games, the companies should be transparent about their usage, performers should be entitled to negotiate fair compensation, and they should have the ability to consent to and control any use.

SAG-AFTRA believes that these same principles, particularly around transparency, should be true in connection with *all* AI-generated content. All individuals should be clearly informed when their images, voices, likenesses, and

actions are depicted in AI-generated content. Similarly, individuals should know when the content they are receiving has been created or manipulated by AI.

The Importance of Regulating AI-Generated Depictions of Individuals and Events

Until there is a federal property right in their voice and likeness, individuals from all walks of life, including SAG-AFTRA members, cannot control what others do with AI generated digital replicas of them. The lack of any protection means individuals cannot protect against the misuse of their digital selves nor prevent illicit activity. This includes use by unscrupulous politicians hoping to gain an advantage by putting words in the individual’s digital mouth or making them engage in actions they never engaged in.

For media artists like those represented by SAG-AFTRA, their voice and likeness are the foundation of their performance, brand, and identity, developed over time, through investment and hard work. Reputation is critically important to their career. This is particularly true of journalists, many of whom are also represented by SAG-AFTRA. Misuse of that hard-earned reputation to mislead voters — and the public at large, domestically and internationally — can be devastating to their careers. Regulating the unauthorized use of AI-generated digital replicas of individuals is a step in the right direction to protect the individual and the public.

SAG-AFTRA members understand better than most that imitation is not always a form of flattery, sincere or otherwise. This is particularly true when the imitation comes in the form of AI-generated impersonation. For that reason, SAG-AFTRA offers the following comments.

II. SAG-AFTRA’s Comments on the Commission’s Proposals

(1) The Commission’s proposed definition of “AI-generated content.”

For purposes of this proceeding, the Commission has proposed to define “AI-generated content” as:

“an image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual's appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors.”

For the last several years, SAG-AFTRA has been working with legislators and regulators both federally and at the state level, as well as with its collective bargaining partners, to develop definitions related to AI-generated content. Based on those efforts and the understandings obtained in connection with our efforts, we propose the following modified definition:

“an image, audio, or video that has been generated or materially altered using computational technology or other machine-based system and that depicts an individual's appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, ~~AI-generated~~ voices that sound like human voices, and ~~AI-generated actors~~ likenesses or performances that appear to be ~~humans-actors~~.”

This modification is minor but has a few important effects. First, removing the term “actor” and replacing it with “likenesses or performances” clarifies that the definition is not limited to those who act for a profession, such as SAG-AFTRA’s members. While the term has broader meaning, professional actors have

been among those at the forefront of this issue, both as victims¹ and as advocates², garnering heavy media attention.

Additionally, the proposed modification helps clarify that it includes content that has been substantially modified, not just generated. AI-generated content is often based upon footage that has been recorded by traditional means and later altered using AI. Additionally, just the audio-track of an audiovisual clip might be AI-generated or altered. As drafted, the definition can be read to include only content that has been wholly fabricated and to exclude altered content. The proposed modification uses the term “materially altered” to capture AI-based alterations that alter the footage while excluding non-material alterations such as those typically done in post-production.

(2) The Commission’s proposals to require disclosures that a political ad contains AI-generated content.

SAG-AFTRA supports labeling AI-generated content. This is true particularly in contexts where it can mislead the public. We support the Commission’s proposal here. Given the ease of creating AI-generated content,³ it is

¹ Nicolae Postolachi, *et al.*, *Audio deepfakes: Celebrity-endorsed giveaway scams and fraudulent investment opportunities flood social media platforms*, BITDEFENDER, (Feb. 14, 2024), <https://www.bitdefender.com/blog/labs/audio-deepfakes-celebrity-endorsed-giveaway-scams-and-fraudulent-investment-opportunities-flood-social-media-platforms/> (“Audio deepfakes”); *2023 State of Deepfakes*, HOME SECURITY HEROES, <https://www.homesecurityheroes.com/state-of-deepfakes/> (last visited April 29, 2024). While the *2023 State of Deepfakes* Report focuses on nonconsensual pornographic deepfakes, and the commercial market therefore, it also provides data and information on the tools used to create deepfakes, which would be relevant to § 461.5, as discussed below. According to the report, approximately 94% of deepfake victims are celebrities.

² See, e.g., SAG-AFTRA, *The Ongoing Fight for AI Protections Makes Waves on Capitol Hill and Beyond* (Aug, 16, 2024) <https://www.sagaftra.org/ongoing-fight-ai-protections-makes-waves-capitol-hill-and-beyond>; Gene Maddau, SAG-AFTRA Wins Passage of California Bill to Limit AI Replicas, VARIETY (Aug 27, 2024), <https://variety.com/2024/politics/news/sag-aftra-limit-ai-digital-replica-california-bill-1236120379/>.

³ See, e.g. Matthias Bastian, *A 15-second voice sample is all OpenAI’s Voice Engine needs to clone your voice*, THE DECODER (Mar 30, 2024), <https://the-decoder.com/a-15-second-voice-sample-is-all-openais-voice-engine-needs-to-clone-your-voice/>; Benj Edwards, *Microsoft’s new AI can simulate anyone’s voice with 3 seconds of audio*, ARS TECHNICA (Jan 9, 2023), <https://arstechnica.com/information-technology/2023/01/microsofts-new-ai-can-simulate-anyones-voice-with-3-seconds-of-audio/>.

critically important that regulators and legislators start putting guardrails around it to protect the public. A rule requiring clear disclosure that content has been AI-generated would provide the public with important context necessary to making an informed decision on the reliability of the information being provided.

The proposed disclosure rule would also provide the depicted individual(s) with some protection from the reputational harm that can flow from AI-generated content. AI-generated versions of celebrities, such as Tom Hanks and Taylor Swift have been used in various fraudulent schemes, potentially causing significant harm to their reputations.⁴ This is not unique to hawking shoddy products—an AI-generated image of Taylor Swift has already been used this political cycle to falsely imply a candidate endorsement.⁵ While a disclosure rule would not prevent this kind of content from airing on television and radio, it would at least help protect the individual’s reputations when it does.

The potential harm AI-generated content poses both to the public and the individual is particularly heightened when an individual depicted is a journalist. Trust in “mainstream media,” including TV news, is already at a historic low, with 39% of U.S. adults having no trust at all in the media “to report the news in a full, fair and accurate way.”⁶ The rise of AI-generated content will only further fuel this.

Where SAG-AFTRA has concerns with rules requiring disclaimers is when inclusion of a disclaimer precludes liability for content that infringes upon an individual’s rights. For example, mere inclusion of a disclaimer should not preclude a depicted individual from bringing suit for a violation of their right of

⁴ Alli Rosenbloom, *Tom Hanks warns against deceptive AI ads with his image: ‘Do not be fooled,’* CNN (Aug 30, 2024), <https://www.cnn.com/2024/08/30/entertainment/tom-hanks-deceptive-ai/index.html>; Anna lovine, *Taylor Swift, Selena Gomez deepfakes used in Le Creuset giveaway scam*, MASHABLE, (Jan. 15, 2024), <https://mashable.com/article/taylor-swift-selena-gomez-le-creuset-deepfake-scam>; Andrew Paul, *Tom Hanks says his deepfake is hawking dental insurance*, POPULAR SCIENCE, Oct. 2, 2023, <https://www.popsci.com/technology/celebrity-deepfake-tom-hanks/>.

⁵ Julia Shapero, *Trump posts fake AI images of Taylor Swift, fans*, THE HILL (Aug 28, 2024) <https://www.cnn.com/2024/08/19/politics/donald-trump-taylor-swift-ai/index.html>.

⁶ Megan Brennan, *Media Confidence in U.S. Matches 2016 Record Low*, GALLUP, (Oct 19, 2023), <https://news.gallup.com/poll/512861/media-confidence-matches-2016-record-low.aspx>.

publicity or under section 43(a) of the Lanham Act, particularly when the individual's endorsement is implied.

(3) The Commission's proposals regarding broadcasters' inquiry and recordkeeping obligations around AI-generated content

SAG-AFTRA agrees with the Commission's proposals that the broadcaster inquire as to whether a political ad includes AI-generated content and maintain records regarding these disclosures. While other commenters are better situated to comment on the nature and scope of the required inquiry, and the consequences for noncompliance, we believe an inquiry requirement is a critical element of an effective disclosure rule. Requiring this simple inquiry will undoubtedly help ensure compliance with the rule.

Further, SAG-AFTRA supports the Commission's proposal that stations be required to maintain copies of the disclosures in their online political files. As the Commission notes, this helps ensure greater transparency for the public. This is particularly important when transmedia political ads might spread in a context that is not regulated or less regulated. For example, if the same political ad—or excerpts therefrom—runs on a platform regulated by the Commission and later spreads via social media, availability of the disclosure in online political files would allow fact-checkers and the public to determine whether the content is authentic or AI-generated. Given the rapid spread of political misinformation on social media, this small added step will provide important context to the public.

(4) The Commission's proposals regarding on-air announcements.

SAG-AFTRA supports the Commission's proposal that the station make an on-air announcement that the ad contains AI-generated content, as well as that the Commission provide standardized disclosure language.

The on-air announcement should be both written and oral, to help ensure that the disclosure is not hidden in small, sometimes illegible text that might be cut off on some screens or that might flash by too quickly to be comprehended by viewers. Additionally, by requiring it *before* and/or *during* the ad, it ensures that the public

is primed to recognize the content as having been AI-generated or manipulated. A disclosure made after the ad might have lesser impact or be disregarded altogether.

Further, SAG-AFTRA supports disclosure being made in the primary language of the station and/or the ad. This would help ensure that the station's primary viewing audience, and the ad's target audience, comprehend the disclosure, particularly if English is not their primary language.

Similarly, requiring standardized disclosures helps the public. If left to the advertiser's or station's discretion, the language of the disclosure could be manipulated to lessen its impact on the public. The Commission's proposed language—"The following message contains information generated in whole or in part by artificial intelligence"—serves the important goal of alerting the public to the fact that the content in the ad may be false or manipulated with little room for confusion.

(5) Whether the rules comport with the First Amendment

SAG-AFTRA agrees with the Commission's tentative conclusion that the proposed rules comport with the First Amendment right to free speech regardless of the level of scrutiny applied. The Commission has sufficiently recited its basis for this conclusion.

While the Commissions' analysis puts great weight on the First Amendment rights of the broadcasters and candidates, it is important to note that there are other competing constitutional rights to consider, including those of individuals depicted in the AI-generated content and the rights of the recipients of the AI-generated content.

With respect to the rights of the depicted individuals, SAG-AFTRA has long argued that there is a compelling government interest in protecting against false and deceptive uses of individuals' images, voices, likenesses, performances—their very personas. The individual possesses a property right in their persona and their right to protect this valuable property interest must be reasonably balanced with the right of the speaker to convey their message. This has become an even more urgent

need in connection with the rise of AI and similar technologies, which can believably make people say things they have never said and do things they have never done. This is all the more critical in connection with political ads. An informed electorate is critical to ensuring the functioning of our democracy and the use of harmful or manipulative AI content threatens to undermine that foundation.

As the Commission noted, the proposed rule is narrowly tailored to meet the compelling governmental interest and the means of accomplishing this are similarly appropriate. While the rule would place a slight burden on speech, this burden is far outweighed by the public interest in transparency and in free and fair elections. Additionally, the burden on the stations is minimal. If anything, the inquiry and record retention requirement would potentially help insulate them from liability where they made the required inquiry and the advertiser failed to disclose what was later discovered to be AI-generated content.

(6) The cost of compliance

SAG-AFTRA acknowledges that there is a cost to compliance with this rule, just as there is with most regulations. However, the cost to the public interest of leaving this space unregulated is far greater. While it is certainly reasonable to take a closer look at the *financial* impact this rule may have on smaller broadcast entities, SAG-AFTRA does not support relaxing the rules in a manner that would allow for the airing of AI-generated political ads without disclosures. Any carve-out for smaller entities would no-doubt result in them being the preferred outlet for false and deceptive AI-generated content, likely disadvantaging individuals, families, and communities that rely upon those outlets.

III. Conclusion

SAG-AFTRA welcomes the Commission's proposal as an important step toward protecting our democracy and as another important protection of individuals from harmful and abusive AI-generated content. False and deceptive AI-generated content, particularly when it depicts individuals, harms the public trust and, consequently, degrades the ability to conduct free and fair elections.