

**Before the
UNITED STATES COPYRIGHT OFFICE
Washington, D.C.**

In the Matter of:

Artificial Intelligence and Copyright

Docket No. 2023–6

**COMMENTS OF WILLIAM MORRIS ENDEAVOR
ENTERTAINMENT, LLC¹**

William Morris Endeavor Entertainment, LLC (“WME”) submits these Comments in response to the U.S. Copyright Office’s notice of inquiry and request for comments on topics related to artificial intelligence (“AI”) and copyright.

WME is one of the nation’s preeminent talent agencies. It represents actors, screenwriters, directors, musicians, authors, athletes, and public figures in a variety of commercial negotiations—including to license such clients’ names, images, likenesses and voices, to license or distribute their own copyrighted works, to facilitate their work-for-hire agreements for performances or the creation of copyrighted works, to engage in live musical performance or public speaking engagements, and in sponsorships, endorsements, and other commercial arrangements. WME’s parent company is Endeavor, a global leader in sports and entertainment, whose other portfolio companies include IMG, arts media and event company Frieze, and Professional Bull Riders, among others.

WME has been on the front lines of addressing the impact of generative AI on the entertainment industry, in terms of both the risks and the opportunities that it presents to WME’s talent clients. WME supports clients who have a wide range of perspectives on and experiences with generative AI, ranging from those who are concerned about the impact generative AI may have on their ability to obtain future work to those who have seen their name, image, likeness, and voice used through generative AI without authorization or compensation, to those who are eager to venture into AI-based products and offerings and have already entered into commercial arrangements for the fair and responsible use of generative AI. In addition, and while not the focus of this submission, some Endeavor portfolio companies also engage in content creation, including several non-scripted entertainment companies and well-known cultural and entertainment properties such as New York Fashion Week.

Due to its unique position in the industry, WME has a balanced perspective on the impact of generative AI. WME supports responsible and ethical uses of generative AI and recognizes that

¹ These Comments are submitted on behalf of William Morris Endeavor Entertainment, LLC by Courtney Braun, Executive Vice President & General Counsel, WME.

generative AI has the potential to facilitate innovation in and access to a myriad of new and exciting creative opportunities for its talent. Indeed, WME has already worked with its clients to negotiate AI-specific deals in multiple areas—including a deal between PepsiCo and the estate and family members of The Notorious B.I.G. to celebrate Biggie and his music through the use of AI, a deal to lend Snoop Dogg’s voice to the AI app Artifact, and deals between Meta and WME’s clients to lend their likenesses and personalities to a series of AI-powered chatbots. WME is also working with clients to use AI to protect their legacies following retirement or death, among other things.

However, as a fierce advocate for its talent and creators, WME is keenly aware of the threats that generative AI poses to its clients and other individuals. As discussed in more detail below, generative AI provides a ready-made tool to generate close replicas or even “deepfakes” of individuals’ likenesses, voices, and other identifying characteristics. Such AI-generated replicas threaten to coopt WME’s clients’ likenesses and other key aspects of their personas, including for commercial purposes unbeknownst to them, and without their consent and without compensation. Indeed, AI-generated deepfakes have been and continue to be used for overtly nefarious purposes, such as deceiving or scamming the public—thus posing the threat of lasting damage to WME’s clients’ reputations by undermining the value of the clients’ hard-earned public personas and credibility. In addition, we are aware that multiple current generative AI models are built off the unauthorized use of WME’s clients’ copyrighted material, and often threaten to mimic, compete with, and/or usurp opportunities for those clients. The primary guiding principle for WME, and for Endeavor as it considers its own use of generative AI, has been that all uses of generative AI must be ethical and responsible, and any use of AI that affects talent’s and creators’ rights must come with proper compensation and authorization.

WME submits this response primarily to address the important ways in which generative AI poses risks to the rights associated with the names, images, and likenesses and copyright interests of WME’s clients and other individuals.² This is responsive to Questions 1, 6, 8, 7.4, 15, 16, 30, and 31 of the notice of inquiry, as identified throughout the response.

I. Importance of Name, Image, and Likeness Protections in Entertainment Industry Agreements (Responsive to Question 30)

To understand the impact that generative AI has on WME’s clients, and on the types of deals that WME negotiates for its clients on a day-to-day basis, it is important to understand the numerous name, image, and likeness-related concerns that WME’s clients have with respect to the use of AI. First, WME’s performer clients have legitimate concerns that AI may be used by their contractual

² This submission is framed in terms of state law protections for “rights of publicity” or protections against the misappropriation of name, image, and likeness without permission. In addition, some of WME’s clients may have similar and overlapping rights under federal trademark law protecting against the use of their names and personas in a manner that falsely suggests endorsement or sponsorship of a third party’s products or services. See, e.g., *Facenda v. N.F.L. Films, Inc.*, 542 F.3d 1007, 1023–25 (3d Cir. 2008); *White v. Samsung Elecs. Am., Inc.*, 971 F.2d 1395, 1399–1401 (9th Cir. 1992); *A.V.E.L.A., Inc. v. Est. of Marilyn Monroe, LLC*, 131 F. Supp. 3d 196, 206–08 (S.D.N.Y. 2015).

counterparties in ways that go beyond conventional film editing, such as by manipulating their facial expressions, tone of voice, or other core aspects of their performances. Indeed, even before the advent of generative AI, studios drew criticism for manipulating actors' performances without approval.³ Generative AI has only made such manipulation more widely accessible and easy to apply.

Moreover, WME's performer clients have similarly legitimate concerns that their performances or works will be used by contractual counterparties to train AI tools to generate wholly new content without compensation. For example, the natural extension of training an AI model on an actor's performances is that the AI model will ultimately be able to emulate that actor, and the natural extension of training an AI model on a singer's performances is that the AI model will ultimately be able to emulate that singer in either live performances or "recorded" music videos.⁴ And, even if the AI model does not specifically imitate a performer's name, image, likeness, or other identifiable characteristic, it is still building a new performance off that performer's existing labor.

WME's clients historically have had control over these and similar uses of their names, images, and likenesses. But the advent of technology that can cheaply and easily replicate an individual's entire persona threatens to unsettle the balance, particularly at this juncture, where there is little regulation or guidance on permissible and impermissible uses of AI tools. Because right-of-publicity laws vary widely across states and jurisdictions and there is often not a robust body of right-of-publicity case law in certain jurisdictions, the existing status of protection is unclear and does not provide a useful backdrop for reaching consensus. This lack of certainty also chills WME's clients' ability to enter into commercial arrangements, because WME's clients need to make sure they are not signing away rights to their names, images, or likenesses indefinitely, without consent or compensation, as a result of generative AI. WME has heard from a number of clients that they would like to explore creative uses of AI that give them control over their names, images, and likenesses with respect to AI (such as "authorized" tools that would allow fans to generate custom messages), but are concerned that doing so will hinder their ability to protect and control other uses of their personas in the future. Clarity is sorely needed.

II. Importance of Name, Image, and Likeness Protections Against Deepfakes (Responsive to Question 30)

³ See Armando Tinoco, *Keanu Reeves Calls Out "Scary" Deepfakes & AI Technology*, Deadline (Feb. 15, 2023), <https://deadline.com/2023/02/keanu-reeves-calls-out-scary-deepfakes-ai-technology-1235260761/> (detailing how Keanu Reeves had a performance manipulated in the 1990s or early 2000s to add a teardrop to his face).

⁴ Even a rudimentary text-to-video AI model was able to generate a video of a person recognizable as Will Smith, indicating that it was trained on other images or videos of Mr. Smith. See Benj Edwards, *AI-Generated Video of Will Smith Eating Spaghetti Astounds with Terrible Beauty*, Ars Technica (Mar. 30, 2023), <https://arstechnica.com/information-technology/2023/03/yes-virginia-there-is-ai-joy-in-seeing-fake-will-smith-ravenously-eat-spaghetti/>. Similarly, as discussed below, there has been a spate of musical tracks emulating well-known musical artists.

The above sets forth concerns that WME must address on behalf of its clients with respect to legitimate commercial dealmaking. WME clients also face an onslaught of new, unauthorized uses of their personas by third-party bad actors with whom they have no contractual relationship. The problem of “deepfakes” is no longer a theoretical concern. Widely available generative AI technology allows virtually anyone, not just sophisticated production studios, to create misleading videos that are difficult to distinguish from reality.

For example, Endeavor company IMG has recently been working with its client Wayne Gretzky to address a troubling deepfake that purports to depict him encouraging viewers to invest with a purported AI-powered investment services platform.⁵ The video features a realistic simulacrum of Mr. Gretzky’s face and voice before a CNN interview background, and appears to show a CNN interview with Mr. Gretzky where he endorses the company running the platform. This is just one of a series of AI-generated deepfake scams that seek to prey on fans of public personalities.⁶ These scams exploit the goodwill that WME’s clients, other Endeavor clients, and other public figures have earned over the years by capitalizing on their images and likenesses—attributes that until recently could not be replicated so easily in a believable way without their authorization.

WME’s clients are also cognizant of the rise of deepfakes that do not appear to constitute any deliberate effort to manipulate an individual’s persona to facilitate an overt scam, but which nonetheless capitalize on a celebrity’s recognizable image, likeness, or voice—as in the form of “soundalike” musical recordings or digital models that allow users to replicate performers.⁷ These deepfakes may be well-intentioned or derive from a place of respect for performers and their works, but they still have the potential to tarnish WME’s clients’ images by associating them with words they did not say and actions they did not take.⁸ Moreover, such deepfakes may usurp a potential market for the use of AI to generate “authorized” interactive digital versions of a performer, where the performer retains control over what the AI product does or says. This problem is even more acute where a performer is no longer alive. Unauthorized deepfakes threaten to usurp estates’ valid interests in preserving and strengthening artists’ legacies through the *legitimate* use of AI (as in the example of the collaboration between The Notorious B.I.G.’s estate and Pepsi discussed above).

⁵ See AlphaWealth, <https://alphawealth.ai> (last visited Oct. 30, 2023).

⁶ See Kevin Collier, *Deepfake Scams Have Arrived: Fake Videos Spread on Facebook, TikTok and YouTube*, NBC News (Aug. 29, 2023), <https://www.nbcnews.com/tech/tech-news/deepfake-scams-arrived-fake-videos-spread-facebook-tiktok-youtube-rcna101415>.

⁷ See, e.g., Chloe Veltman, *When You Realize Your Favorite New Song Was Written and Performed by ... AI*, NPR (Apr. 21, 2023), <https://www.npr.org/2023/04/21/1171032649/ai-music-heart-on-my-sleeve-drake-the-weeknd> (discussing viral phenomenon “Heart on My Sleeve,” which featured soundalike vocals resembling Drake and The Weeknd); Griffin Davis, *TikTokers Use AI to Make Michael Jackson Sing Bruno Mars’ ‘Treasure’! Here Are the Results*, Tech Times (Apr. 22, 2023), <https://www.techtimes.com/articles/290694/20230422/tiktok-users-use-ai-make-michael-jackson-sing-bruno-mars.htm> (discussing viral trend of users making soundalike clips and variety of tools that allow users to copy singers).

⁸ For example, only recently, dozens of tracks purporting to be unreleased Harry Styles songs have been “leaked” on forums, and fans lack the ability to determine which of them are real or fake. See Jason Koebler, *The Specter of AI-Generated ‘Leaked Songs’ Is Tearing the Harry Styles Fandom Apart*, The 404 (Sept. 12, 2023), <https://www.404media.co/harry-styles-one-direction-ai-leaked-songs/>.

The threat of unauthorized deepfake content is also particularly acute where the performer is no longer able to generate innovative non-AI art to counteract such unauthorized activities.

Here too, there is often limited recourse. Right-of-publicity laws are generally limited to commercial uses, leaving it unclear whether they apply to fan-generated deepfakes that were not created for profit or for commercial distribution.⁹ And, even when a use is obviously commercial, as in Mr. Gretzky’s case, it places an enormous burden on individuals to bring potential legal action against the creators of unauthorized AI-generated deepfakes—particularly where such deepfakes have been proliferating more and more rapidly in recent months. Indeed, in many instances the creators of these deepfakes—and in particular “scam” deepfakes—hide their identities behind fake companies and are based outside the United States, making it difficult to seek legal recourse or even to identify whom to contact. One further issue in managing this challenge is that certain platforms do not yet have reliable tools that identify when content was AI-generated;¹⁰ WME’s clients are concerned that, in certain instances, platforms may be making money off of user-posted content depicting WME’s clients’ likenesses, without consent from or remuneration to the people depicted. Legislation or rulemaking that would require greater transparency by companies who traffic in, or host on their platforms, deepfakes would benefit our clients.

III. Proposed Solutions to Name, Image, and Likeness Issues (Responsive to Question 31)

WME has been a first mover in developing creative solutions to challenging issues that arise from emerging technologies. For example, WME is working with clients to explore ways to develop “authorized” models of their likenesses that they can then license to interested parties, giving them more control over whether and how the entities they contract with use their likenesses to train additional AI models.

However, WME also welcomes further exploration of ways in which right-of-publicity protections can be clarified in light of generative AI. A uniform regime is essential—whether it takes the form of a federal right-of-publicity statute or an effort by the Copyright Office or another governmental body to provide guideposts for a standardized approach.

At minimum, stakeholders would benefit greatly from Copyright Office guidance on the right of publicity’s application to uses involving generative AI, including but not limited to ways in which a unified regime could protect the interests discussed throughout these Comments. Copyright Office guidance could focus on both current baseline protections under state law and the fact that federal copyright law does not necessarily address these concerns. The Copyright Office is well-

⁹ See, e.g., Cal. Civ. Code § 3344(a) (applying right-of-publicity protections to uses “on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services”); N.Y. Civ. Rts. L. § 51 (applying right-of-publicity protections to uses “for advertising purposes or for the purposes of trade”).

¹⁰ See, e.g., Stuart A. Thompson & Sapna Maheshwari, *‘A.I. Obama’ and Fake Newscasters: How A.I. Audio Is Swarming TikTok*, N.Y. Times (updated Oct. 13, 2023), <https://www.nytimes.com/2023/10/12/technology/tiktok-ai-generated-voices-disinformation.html>.

positioned to provide this useful analysis, and/or to make appropriate recommendations to Congress, as it explores topics related to uses and misuses of generative AI. These recommendations could include urging Congress to explore enacting a federal right-of-publicity law,¹¹ which could potentially address the current difficulties talent faces arising from having to navigate a patchwork of varying state laws and statutes, and which would also provide federal jurisdiction over the issue.

IV. Clients' Concerns About Use of Their Copyrighted Material to Train AI Models (Responsive to Questions 1, 6, 7.4, 8, 15, 16)

WME also represents clients with respect to their copyrighted works, including in the areas of publishing, theatre, music recording and performance, and film and television. These copyrighted works include sound and audiovisual recordings, books, plays, films, television series, music for theatrical productions, choreography, and costume design. Many of WME's clients who create their own copyrighted works have concerns about their works being used to train generative AI models that can in turn produce infringing copies of the copyrighted works or generate works in their distinctive styles, be used to modify and manipulate their existing works, or otherwise compete with these clients' works and livelihoods.

Many of WME's clients have already become aware that their works have been used to train generative AI models, based on journalism identifying which works were included in a database of written texts used to train multiple generative AI models.¹² Indeed, that particular database and others are believed to be built on huge volumes of pirated works that are unlawfully made available freely on the internet.¹³ However, it is not always clear whether a copyrighted work was used in the training data for a given AI model, particularly where AI companies treat that information as proprietary. WME's copyright owner clients would welcome a requirement that copyright owners be notified of or otherwise be able to easily identify whether their work was used to train an AI model, and certain clients have secured opt-out and takedown rights in connection with AI deals, which should be encouraged. For example, where AI companies have disclosed information about

¹¹ WME is closely following the "No Fakes" Act introduced recently by a bipartisan group of senators. *See, e.g.,* Emilia David, *No Fakes Act Wants to Protect Actors and Singers from Unauthorized AI Replicas*, The Verge (Oct. 12, 2023), <https://www.theverge.com/2023/10/12/23914915/ai-replicas-likeness-law-no-fakes-copyright>. WME also recognizes, however, that, given the potentially slow pace of legislative change, additional regulatory guidance may be impactful.

¹² *See, e.g.,* Alex Reisner, *These 183,000 Books Are Fueling the Biggest Fight in Publishing and Tech*, The Atlantic (Sept. 25, 2023), <https://www.theatlantic.com/technology/archive/2023/09/books3-database-generative-ai-training-copyright-infringement/675363/>.

¹³ *See id.* A number of WME's clients were signatories to an open letter to AI companies submitted by the Authors Guild, which among other things, criticized AI companies' use of unauthorized copies of books and other creative works currently hosted on "pirate" websites to train their generative AI models. *See* Authors Guild, *Open Letter to Generative AI Leaders*, Action Network, <https://actionnetwork.org/petitions/authors-guild-open-letter-to-generative-ai-leaders> (last visited Oct. 29, 2023).

the datasets they used to train their models, there has been significant interest in publicly available tools that allow artists to determine whether their works were included in the dataset.¹⁴

In addition, many WME clients worry that their own works may ultimately be used to train AI models that will then imitate their existing creative efforts. Developments in recent months have illustrated that these concerns are not theoretical. For example, AI has already been used to create a program that allows users to generate short “South Park” episodes based on their own prompts.¹⁵ AI was also used to create the opening credits for the recently released Marvel television show *Secret Invasion*.¹⁶

WME’s clients ultimately hold a variety of perspectives on the impact that AI will have on the creative industries. But the factors discussed above counsel against any sort of blanket rule that the unauthorized use of copyrighted works to train AI models is per se permissible, or is per se fair use. It may well be that certain types of training based on copyrighted works constitute fair use, but it is also clear that other forms of training should not constitute fair use and instead constitute copyright infringement. This is particularly the case where AI models are capable of creating output that is substantially similar to particular inputs or capable of mimicking the style of a creator by virtue of being trained on that creator’s works without consent.

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WME welcomes and appreciates the Copyright Office’s timely efforts in the area of generative AI. Please do not hesitate to reach out if any further details would be helpful to inform the Copyright Office’s perspective.

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Respectfully submitted,

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¹⁴ See Benj Edwards, *Have AI Image Generators Assimilated Your Art? New Tool Lets You Check*, Ars Technica (Sept. 15, 2022), <https://arstechnica.com/information-technology/2022/09/have-ai-image-generators-assimilated-your-art-new-tool-lets-you-check/>.

¹⁵ See Ina Fried, *AI Grabs “South Park” Director’s Chair*, Axios (July 20, 2023), <https://www.axios.com/2023/07/20/south-park-generative-ai-episode-generator>.

¹⁶ Zosha Millman, *Yes, Secret Invasion’s Opening Credits Scene Is AI-Made—Here’s Why*, Polygon (June 22, 2023), <https://www.polygon.com/23767640/ai-mcu-secret-invasion-opening-credits>.