

Comments on How AI May Affect the Motion Picture Industry

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ANNOTATED TRANSCRIPT

On the movie industry's current distribution model and its history:

[WHEELER] If you put [still] pictures together in a series lasting twenty-two or forty-eight minutes, or two hours, then you get a television episode or feature-length motion picture. That's the origin of motion picture technology—it's the next generation technology of still photography—with the addition, of course, of audio in 1927 with *The Jazz Singer*.

The [audiovisual work/motion picture] licensing model is the thing that's a little different from the still photography licensing model. Each individual motion picture, whether it's a short-form video, a television episode or a movie, is an entire work in itself.¹ And it's actually the performance of the [entire] work that is the licensed object. So, it's not an input into another work, generally speaking. Obviously, you have clip licensing, which is not what we do. It's more like still photography than motion pictures per se.

But . . . Motion Picture Licensing Corporation, the company I work for, is one of only a few IMEs, Independent Management Entities in European parlance, in the United States.² And what we do is we also aggregate.

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1. See 17 U.S.C. § 101, definitions of "Audiovisual Work" and "Motion Picture"; see also U.S. COPYRIGHT OFF., CIRCULAR NO. 45, COPYRIGHT REGISTRATION FOR MOTION PICTURES, INCLUDING VIDEO RECORDINGS, <https://www.copyright.gov/circs/circ45.pdf> [<https://perma.cc/8PAU-BGP6>] [<https://web.archive.org/web/20250321032638/https://www.copyright.gov/circs/circ45.pdf>] (last accessed February 21, 2025) (instructing applicants to submit entire works for a single registration).

2. In the U.S., MPLC is the only IME for comprehensive blanket licensing in an audiovisual context, while other U.S. IMEs license music. ("[T]he [Copyright] Office is aware of only one collective in the United States that specifically licenses the public performance of audiovisual works at this time – the Motion Picture Licensing Corporation ("MPLC") – and it does not license the retransmission of television

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So, we're similar to the [image licensing] companies [...] in that regard. We aggregate TV episodes and movies from over 1,000 producers. We exclusively represent producers. We don't represent directors or any other talent. We have the producer rights that we license as a group in a blanket license, similar to one of the rights that CMOs license in Europe.

And we operate not quite all over the world, but in about thirty-eight countries around the world. Another license we offer outside the United States, though not in the United States or the United Kingdom, is a license to the individual works as well as the separate group license. But the group license, the blanket license, is to play anything in our repertoire. It's all-you-can-eat, similar to the stock licenses [in an image licensing context].

Comments regarding where the movie industry experiences the pain associated with the AI age?

[WHEELER] I think, really, that it's on two different fronts. On the one hand, producers themselves, the people we represent, are very interested in AI as an input to their own productions. A prime application might be, if you just think of what traditionally were called "extras" and are now called "background actors." They're obviously relatively interchangeable.

If background actors were to be AI-generated in the future, rather than real people appearing onscreen, that would save producers a lot of money. Obviously, background actors themselves are not very excited about that. You may remember that one of the big issues in the strikes last year, SAG and the Writers Guild, was precisely replacement of their performances by AI generation.³

So that's one front. It's attempting to use AI to get some of the exorbitant costs of production under control. That's very positive, obviously, for producers, while a mixed bag, perhaps, for talent themselves.

On the output side, the generative side, if you will, I think it's the reverse. In other words, the producers themselves are worried about demand substitution of AI-generated video for human-produced video. Recognizing this, some producers are

programs." U.S. COPYRIGHT OFF., A REPORT OF THE REGISTER OF COPYRIGHTS ON THE SATELLITE TELEVISION EXTENSION AND LOCALISM ACT (2011), <https://www.copyright.gov/reports/section302-report.pdf> [https://perma.cc/DWN2-QCJT] [https://web.archive.org/web/20250317020116/https://www.copyright.gov/reports/section302-report.pdf]. Since this report's publication nearly 15 years ago, MPLC has expanded its ability to license television content as well, and is now the only U.S. source for collective public performance rights for a substantial amount of television content.)

3. Lesley Goldberg & Katie Kilkenny, *As SAG-AFTRA Responds to Studio Offer, AI Protections for High-Earning Members Remain Sticking Point*, HOLLYWOOD REP. (Nov. 6, 2023), <https://www.hollywoodreporter.com/business/business-news/sag-aftra-ai-protections-for-high-earning-members-sticking-point-1235638247/> [https://perma.cc/K934-VBUJ] [https://web.archive.org/web/20250317020401/https://www.hollywoodreporter.com/business/business-news/sag-aftra-ai-protections-for-high-earning-members-sticking-point-1235638247/] (last accessed Feb. 21, 2025).

increasingly trying to get ahead of the curve a bit by pushing the positive (for them) aspects of AI.

You may have seen that Lionsgate, one of the mini-majors in Hollywood, just negotiated a deal just two weeks ago. I think it is with an AI company named Runway. It's an exclusive deal with Lionsgate for its own library of films and TV shows to train its producers, if you will, and the associated talent on the creative works that have gone before so that they can have ideas for future productions.⁴

The classic concept for elevator pitches is something like, "Well, it's *Star Wars* meets *Breaking Bad*," that sort of thing. If you think about that, that's essentially an AI concept. What would *Star Wars* be like if it were married with *Breaking Bad*? You could have generative AI generate that idea. Then humans would have to write it up and act in it. At least the lead actors would be human!

So, I think it's early days in the motion picture industry, but I think those are the two poles of where AI is going to play a significant increasing role.

I would briefly add another reference to the Lionsgate example I mentioned. Lionsgate itself wants AI generated ideas, really. They're not interested in Runway itself displaying anything, but Runway is essentially a vendor to Lionsgate to generate ideas for future projects.⁵ That's an example of the licensing model being very different from the other AI examples that we've been discussing. And that's why licensing is the way to go here.

Regarding what form of licensing is most appropriate in the movie industry and where that's headed.

[WHEELER] Going back to my initial comment that AI ultimately could be perceived as a threat to the motion picture industry, I think deals like the Lionsgate deal are at least the short-term future of AI in the motion picture industry, where basically it's a tool for producers to generate new content, new original and human-created content, fully authentic and copyrighted by the producers.

I think that's going to come along. Right now, the competitive threat is mostly a still photography issue, but I think it's only a matter of time before fake TV episodes (and eventually, full-length features) are also ubiquitous on the internet and elsewhere. Fake short-form video already is.

I think that in the short-term, AI is going to be a tool used by producers for their internal purposes. I suppose, obviously, if the money is right, apropos of the licensing discussion that we've had all morning, if the money is right, producers might say, "Well, gee, if you pay me enough, I'll let you use my images to create your own videos,

4. Etan Vlessing, *Lionsgate CEO Says AI Deal Promises "Transformational Impact" on Studio*, HOLLYWOOD REP. (Nov. 7, 2024), <https://www.hollywoodreporter.com/business/business-news/lionsgate-ai-deal-runway-1236055999/> [https://perma.cc/E63B-5NJ6] [https://web.archive.org/web/20250317020609/https://www.hollywoodreporter.com/business/business-news/lionsgate-ai-deal-runway-1236055999/] (last accessed Feb 21, 2025).

5. *Id.* ("Runway will create and train a model for the use of Lionsgate[.]").

your own TV and movies.” But I think that’s a ways off because of the threat model that I mentioned earlier.

Regarding improvements that AI will confer in the movie production industry.

[WHEELER] I’ve already mentioned the background actor/extra issue in motion picture production, but you can also think of CGI. [T]he movie *Gladiator*, one of my favorite movies of all time, has CGI generated pictures of images of the crowd at the Colosseum and other places where the gladiators battle.⁶

You could easily imagine AI making that way better. I mean, if you remember, it actually looks a little bit fake because it’s a twenty-plus-year-old film. So, there’s lots of exciting things that AI can do for the motion picture industry in an input phase. And I think you’ll see more and more of that in the early phases. Later on, there’s going to be the issue of fake *Gladiator*. But that’s a ways down the pike, I think.

Responding to Professor Jane Ginsburg’s question (“You said that Lionsgate is making deals with itself. And I’m wondering if the reason for that is the old license, new media problem. That is that the various contributors to a motion picture may have signed contracts well before the advent of AI. And there’s some ambiguity as to whether that contract covers this use.”).

[WHEELER] [A]bsolutely true. Obviously—or perhaps not obviously—in the case of motion pictures, shame on any producer who doesn’t have releases—contracts with every single element of the production. And they either do or do not permit licensing for AI purposes.

My guess—I obviously don’t work at Lionsgate, [and] I have no familiarity with the details of that particular deal. I’ve only read publicly available articles about it. But my guess is since they did license the content, that there’s probably—the analysis was probably that, since it’s actually only for Lionsgate’s use, that it was well within the bounds of their contractual arrangements with the talent.

That’s a guess on my part. But I have a feeling that they have good lawyers over there. They’re one of our clients, actually. I think they probably checked that all out before they signed the deal with Runway.

But it’s a good point. [T]he actual talent is the source of the creative work, obviously[,] so their interests have to be taken into account. And they have representatives, of course, individually as well as collectively.

6. “The camera . . . shows a computer-generated environment of the whole Colosseum populated by 20,000-30,000 people. [.]” Tim Masters, *Q&A: Oscar-Winning Digital Trickery*, BBC (Jul. 6, 2001), <http://news.bbc.co.uk/2/hi/entertainment/1424927.stm> [https://perma.cc/B6D6-5LT3] [https://web.archive.org/web/20250317020914/http://news.bbc.co.uk/2/hi/entertainment/1424927.stm] (last accessed Feb. 21, 2025) (quoting Robin Shenfield, CEO of Mill Film, 2001 Academy Award Winner for Best Visual Effects for his work on *GLADIATOR*).

In terms of the guilds, the guilds have played a large part—I previously mentioned the strikes last year. A huge element of the settlement of the strike was arrangements about compensation for AI uses.⁷ And in fact, there's also recently, just again earlier this month, a new law putting some of those protections into California law that Governor Newsom signed at, I think, DGA headquarters in LA.⁸

Responding to a question from Sharon Weinstock with McGraw Hill (“And further to your comment about or your letting us know about that internal licensing for internal use by Lionsgate, is there money flowing back and forth from which the original writers, producers are getting paid in some way for the ideas that are being generated from that review of the existing scripts?”).

[WHEELER] I have to say, I don't know. I only know what's in the article. And I don't believe the article discusses any financial terms. Runway likely doesn't work for free, but they may have negotiated a barter arrangement of some kind. My guess is that Lionsgate probably compensated them in some form to perform the generative AI.

Again, it's a guess. I'm not knowledgeable about the details of the deal—but in that case, there would be no money coming to Lionsgate, and therefore nothing to distribute to the talent. On the other hand, back to the talent contracts that Professor Ginsburg referred to, it may well be that they say, “If you license for AI purposes, even for your internal use, and something is created from it, then we get a residual.” I can just imagine that.

But again, the creative talent, and their lawyers and agents, would be the ones to control the licensing. Another example of why licensing is the way to go, rather than having it be fair use or anything else.

Following other panelists' responses, commenting on a question asked by Suzanne Kelsey with McGraw Hill (“We're talking about doing licenses that bake in guardrails to protect against competitive output. How comfortable are we that this is enforceable?”).

[This] question is far more apt for the unlicensed case, where you're trying to figure out whether your creative work has been scraped and fed into a large language

7. Goldberg & Kilkenny, *supra* note 3.

8. See CALIFORNIA GOVERNOR'S OFFICE PRESS RELEASE, GOVERNOR NEWSOM SIGNS BILLS TO PROTECT DIGITAL LIKENESS OF PERFORMERS (Sept. 17, 2024), <https://www.gov.ca.gov/2024/09/17/governor-newsom-signs-bills-to-protect-digital-likeness-of-performers/> [https://perma.cc/BP5V-DSPE] [https://web.archive.org/web/20250317021140/https://www.gov.ca.gov/2024/09/17/governor-newsom-signs-bills-to-protect-digital-likeness-of-performers/] (last accessed Feb. 21, 2025) (referencing the newly signed California Assembly bills 2602 and 1836, which “help ensure the responsible use of Artificial Intelligence (AI) and other digital media technologies in entertainment by giving workers more protections.”).

model or some other generative AI. That's much more challenging than enforcing the terms of a contract.

Responding to a question from Makena Joy Binker Cosen (“[The panelists suggested that] for commercial purposes, generative AI may be used more so for ideation than the final product, because companies are interested in owning and making sure that whatever they put out, they have some level of control over it. [I]deas aren't copyrightable. But if we're using generative AI to make ideas, it may suggest expressive elements [. [If using] that idea [] to make [a] commercial image or movie, how much does using generative AI for the ideation process limit your ownership, if at all []?”)

[WHEELER] []. Well, it has to be copyrightable, right? That's the whole discussion about whether anything generated in whole by AI is, at least so far in the United States anyway, considered not to be copyrightable. But how about partial, or expressions of the ideas behind it, and so on. I'm interested in what [the other panelists] have to say about it, but that's the whole copyrightability question.⁹

If you're Lionsgate, actually, you absolutely want to have a copyrightable product when you take whatever you take from your Runway deal and turn it into [] whatever it is.

Responding to a question from a Korean Judge and Columbia Law School graduate (name inaudible) (“[W]hen image creators or movie creators license their works to AI, can they limit the use of their work[, for example, to prevent output being used for] propaganda, or politically, or commercially[?]”).

[WHEELER] They can certainly try. Just to take a slightly different example, all of [MPLC's] customer agreements with people who display the movies and TV shows that we license for public performance, say that you may not use any of our content to endorse another product or service, whether of yours or anyone else's. Again, a challenge to enforce perhaps, sometimes, but licenses can absolutely prohibit uses that you don't want.

Commenting on a question by David Strickler, Copyright Royalty Board judge, regarding the use, onerousness, and enforceability of liquidated damages in an AI training context.

[WHEELER] [In] my personal experience, liquidated damages clauses are not as valuable as people sometimes think they are, because, of course, you have to collect on the liquidated damages themselves—they are not self-enforcing. And if the other

9. See generally Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16190, 16191 (Mar. 16, 2023) (to be codified at 37 C.F.R. pt. 202).

party disagrees that the clause has been triggered, then you don't get the liquidated damages, absent litigation.

I think the strongest remedy that a licensor has is termination, recognizing that the issue of unlearning, which is yet to be decided, whether a termination can be effective once something has been trained. But to me, that's the strongest weapon that any licensor has.

Commenting on a question by Roy Kaufman from CCC regarding whether AI is causing creators who use, e.g., Creative Commons licenses or open licenses on YouTube, to rethink perhaps what they did in the past.

[WHEELER] You mentioned YouTube creators. Actually, my own experience with YouTube comes from the fact that I used to work almost twenty-five years at 20th Century Fox, 16 of which I spent leading Fox's anti-piracy efforts. YouTube was, of course, a piracy platform at the beginning.¹⁰ And then it became primarily original user-generated content. And now if you go on YouTube, as I do, it's increasingly licensed copyrighted works. Full movies are on there, sometimes free with a subscription, sometimes you pay on a per-use basis.¹¹

My general sense of the world is that everyone who started off looking for name recognition, and clicks, and so on, eventually says, show me the money. I think that the direction of the world—not exclusively, of course, there are plenty of platforms where free content is available without a license or maybe a Creative Commons license. But I think the long run trend is actually, to use the theme of this conference, licensing copyrightable works.

10. See *Viacom Intern., Inc. v. YouTube, Inc.*, 676 F.3d 19, 34 (2d Cir. 2012) (quoting YouTube cofounder Jawed Karim discussing hosting of CNN's copyrighted content in 2005: "we can remove it once we're bigger and better known, but for now that clip is fine.").

11. See *Movies & TV, YOUTUBE*, <https://www.youtube.com/feed/storefront> [<https://perma.cc/TF5T-25YC>] [<https://web.archive.org/web/20250317020807/https://www.youtube.com/feed/storefront>] (last accessed Feb. 21, 2025).