



The singularity of intellectual property

Mike Kraft

abstract

Whose intellectual property is an actor's performance? Digital production and distribution present a whole new set of challenges for working actors.

According to futurist Ray Kurzweil, we are fast approaching 'The Singularity', or a point at which the rapid acceleration of technological capabilities will reach a point beyond human comprehension. The subsequent rise of machine intelligence will far surpass our capabilities, rendering corporeal beings nearly unnecessary. It is predicted that the leading edge of this singularity will occur approximately by the year 2035.

Whether or not you believe in this concept, it is a certainty that the value of the intellect will soon exceed all other forms of revenue-generating economies. The agricultural, industrial and service economies have all been through this accelerating process, with each having a diminishing window of economic influence. As creators and conduits of intellectual property, it appears we may have a relatively narrow time in which to assert our rights for appropriate consideration, representation and compensation for our (digital) labour.

As a professional union actor working in the United States, I see the exploitation and theft of intellectual property on a daily basis. In its most immediate form, this happens at the hands of those who benefit from the use of the property, i.e. producers, employers and clients. This comes from a willful, constant devaluation of the performance by those producing the media, despite the fact that it is often the performance that brings the most value to the ultimate product.

As relatively powerless individuals, with no means to afford legal representation to negotiate contracts on a per-job basis, non-union performers are at a complete disadvantage when negotiating for fair compensation. Additionally, they have little or no recourse in the event the employer reuses the product or expands the scope of the media usage, or even if they deliberately withhold pay completely.

Exacerbating this is the frustrating tendency for less-experienced performers to give away their rights for little or nothing, gaining only the experience or at most, a very small emolument. This, despite the fact that the (lack of) quality of the performance

work often times has no bearing on the value of the product created. This may seem at odds with the concept of experienced, professional performers adding value to a production, but all productions are not created equal. Take as examples any of the hundreds of 'reality' shows and commercials that rely on 'real' people as the willing participants in the creation of value for producers. These producers effectively and efficiently monetize and leverage inexpensive productions for vast revenue, including multiple reuses of the original product, all with the tacit assistance of the 'performers', who are often paid little or nothing.

As representative bargaining agents, the performers' unions (primarily AFTRA and SAG) do a fairly good job of negotiating and enforcing their contracts with producers and employers. However, their influence is not evenly distributed, and many parts of the US remain uninfluenced or less impacted by these efforts than the media centres of Hollywood and New York. Performers in Topeka, Kansas have little or none of the protections afforded those in Burbank, California or even Boston, Massachusetts, and yet their rights as individual performers should be the same as those in New York City.

Insofar as the American government is concerned, their focus on intellectual property theft is largely aimed at brands, logos, patents and completed films and music properties owned by corporations. It is less focused on the individual's rights to protect their intellectual property, whether they are independent actors, musicians, photographers, videographers or graphic artists.

As performers, we face multiple issues regarding fair use and fair pay for performances, depending on the type of performance and its ultimate usage. There are many categories of performances, each with its own business model and unique circumstances that require deliberation and bargaining to arrive at fair compensation structures. These include local, regional and national commercials; scripted television dramas, comedies, soap operas and reality shows; major motion pictures, independent films and low-budget theatrical releases; industrial, educational & informational on-camera and voice-over performances; episodes, webisodes, mobisodes and dozens of other modes of media transfer. This creates a confusing and rapidly changing milieu for parties on both sides of the bargaining fence.

Compounding this, it is difficult to value content for web-only distribution. This poses many vagaries, including variations in local, regional, national and global scope; misrepresentation by the producer or client as to expected audience size; unknown variables in distribution such as viral videos; the nature of the content itself, including educational, entertainment, advertising and informational; and calculating the anticipated value of advertising revenue generated by the production.

Regardless of these difficulties, the essential element to all of this is the idea that the intellectual property created at the individual performer level, regardless of ultimate ownership, has certain value that should be inalienable from that performer without their explicit consent. Unions are currently the only agencies capable of exercising any authority on behalf of performers toward this ideal, and should be seen as the enablers of performers' rights, while not being antithetical to legitimate business interests.

The Singularity of the intellectual property economy is upon us, and is accelerating logarithmically. It is up to us as performers and creators of intellectual property to seize this fleeting moment and capitalize on it. If we do not, others surely will, and it will not be to our benefit.

The opinions expressed here are those of Mike Kraft and do not necessarily represent those of AFTRA or SAG.

the author

Mike Kraft has been a full-time professional performer since 1981. He is a member of both AFTRA and SAG, and is currently the President of the Cleveland AFTRA local, and chairman of the national Non-Broadcast Standing Committee. He has appeared in over 2000 industrial training films, hundreds of television and radio commercials and numerous live performances, hosts distance learning events for General Motors and Volkswagen and moderates live interactive webcasts for Ernst & Young. He has also appeared in independent and feature films.

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