

# Actors' vs AI: Exploring Copyright Law



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# Acknowledgment of the Country

I respectfully acknowledge the Aboriginal People and Torres Strait Islander People as the first inhabitants, traditional custodians and owners of the lands, waters and seas across Australia. I pay my respects to their cultures, ancestors and Elders, past and present - and all future generations.





***Black Mirror's*** season 5 episode "Rachel, Jack and Ashley Too"  
starring Miley Cyrus

Image source - <https://screenrant.com/black-mirror-season-5-rachel-jack-ashley-too-ending-explained/>



"[Actors are concerned that] 'I mightn't even get my next job, because my AI-interpretive one might get it'"

"But people deserve to have human stories told by humans."

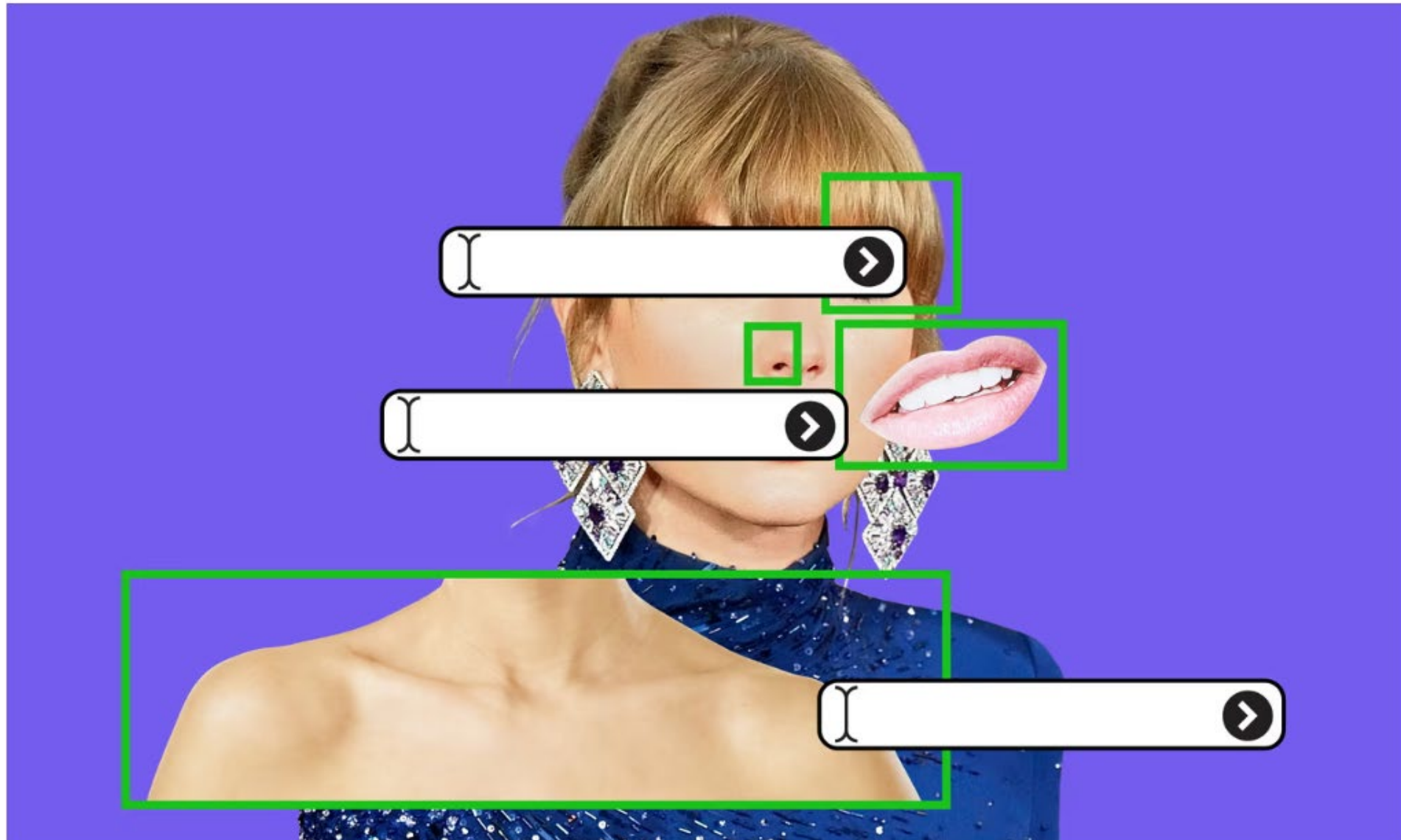
"We're seeing in crew agreements the same thing — clauses to capture them behind-the-scenes, and their voices, and wanting to sell it to a third party,"

"And these are people who aren't even paid for their image."

**- Michelle Rae from the Media, Entertainment and Arts Alliance  
(Australia)**



The stand-off between writer-actors and major Hollywood studios began in July. (AP: Chris Pizzello)



Deepfake pornographic images of Taylor Swift spread across the social media platform X. Composite: FilmMagic/Jeff Kravitz/Getty images

# Generative AI, Intellectual Property and Copyright Law\*

- **Generative AI** = based on machine learning; capable of creating new content. Examples of GenAI – ChatGPT, Midjourney, Copilot
- **Intellectual Property** = creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. Protected in law by, for example, patents, copyright and trademarks.
- **Copyright** = legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

## **Key Issue 1:**

Is the current system of protection for performers under copyright law (Australia) sufficient?

# Performers and Performers' Rights in Australian Copyright Law

- Copyright Law regulated by *Copyright Act 1968* (Cth)
- No explicit definition of 'performer' in the Act
- Art 3(a) of Rome Convention –  
*“actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works”*
- Section 248A of the Copyright Act



# Performers and Performers' Rights in Australian Copyright Law

- Performers' rights also known as Neighbouring Rights
- First recognised under Rome Convention (1961)
- Introduced in Australia - *Copyright Amendment Act 1989* (Cth)
- Part XIA of the *Act* (Performers Protection)

# Key Difference between Copyright and Performers' Right



**versus**



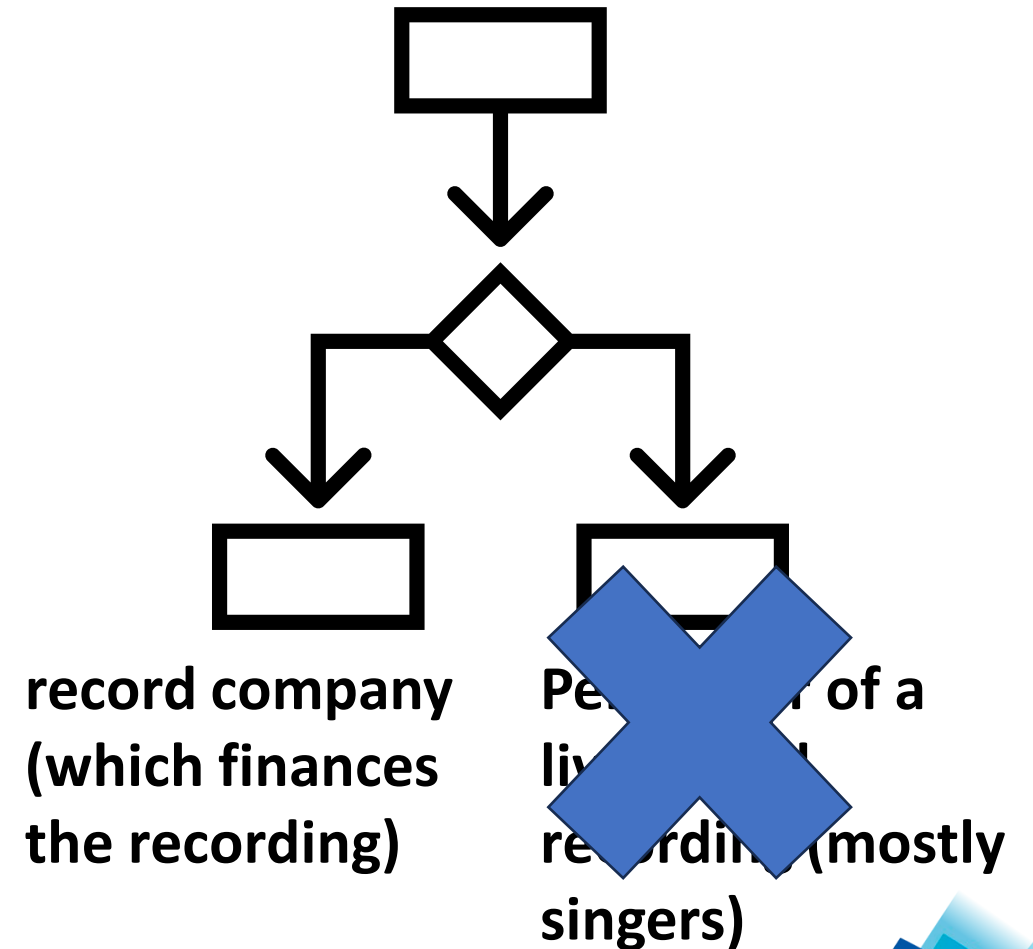
## Exceptions –

Where there is a Contract (s 22(3B))

Or

If the performance was commissioned (s 97(3))

## Copyright in Sound Recording



## **Key Issue 2:**

**Are current industry practices and contracts  
in light of AI inherently unfair to  
performers?**



Peter Cushing as Grand Moff Tarkin in the first Star Wars. Photo: Lucasfilm

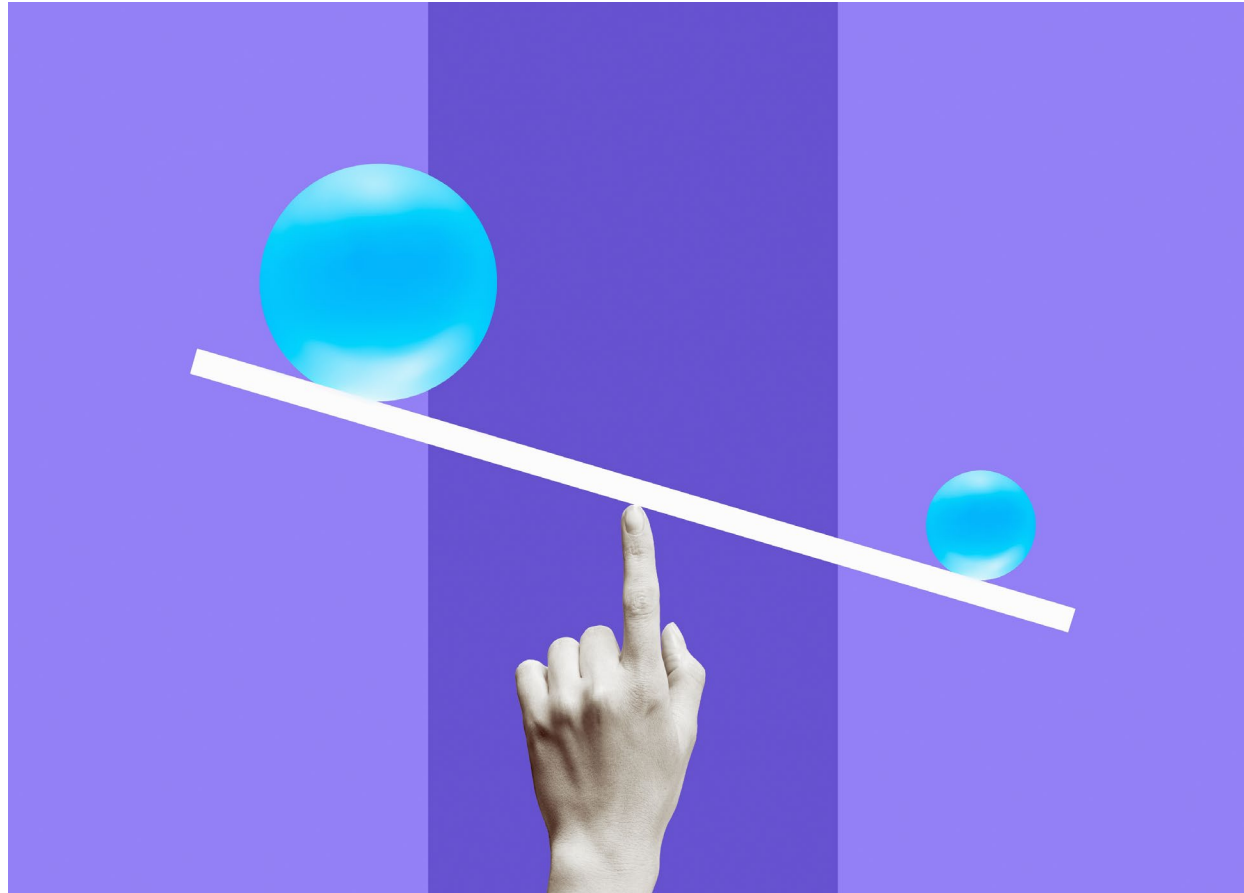


# Findings from research

- Importance and impact of contractual agreements in the creative industries, especially on performers' rights, is exponential.
- Performers' bargaining power in the entertainment industry can vary depending on several factors
- A recurring theme among the actor and singer interviewees was that they agreed that one major factor that could influence a performer's bargaining power was the level of fame.

# Actors' vs AI

- **Lack of sufficient legal protection under copyright law**
- **Industry practices and performers' contracts**



# **Key Issue 3:**

How do we move forward?

# Broadly,

- Industry Agreement - compensation for reuse of the scans, along with consent.
- AI Copyright Code
- Australian Government's Interim Response\* -
  - place people and communities at the centre when developing and implementing its regulatory approaches
  - use a risk-based framework to support the safe use of AI and prevent harms occurring from AI (approach similar to EU AI Act)
  - will be open in its engagement and work with experts from across Australia in developing its approach to the safe and responsible use of AI.

\*Summary Source: Zena Assaad. (2024, February). LinkedIn.

<https://www.linkedin.com/feed/update/urn:li:activity:7157462347198984192/>

# Individually,

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Content creators and performers should actively monitor digital and social channels and examine the risk to your intellectual property in any contracts

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As AI developers or Users of AI tools – seek suitable assurances or permissions from the provider