NAVIGATING THE ETHICS OF AI

Artificial intelligence has had a place in our collective awareness ever since Alan Turing's Imitation Game raised the question of whether a machine can possess true intelligence. That was back in the early 1950s. No laws governed AI back then, and relatively few have surfaced since. Today we find ourselves navigating a world of artificial intelligence with a rapidly proliferating set of tools and an even more rapidly growing pool of AI-generated content, all without boundaries and only minimal regulations.

So where are the guardrails? What best practices are emerging? Using AI creatively and fairly in film, TV and emerging media requires careful consideration from many perspectives—technical and budgetary, certainly, but also ethical and legal. Fortunately, a great number of resources and guidelines are available to help content creators navigate the constantly evolving AI revolution.

WHILE THE ARTIFICIAL INTELLIGENCE LANDSCAPE IS CHANGING MINUTE BY MINUTE, GUARDRAILS, GUIDELINES AND BEST-PRACTICES RESOURCES ARE EMERGING TO HELP CREATORS UTILIZE AI IN A FAIR AND ETHICAL MANNER.

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GUIDANCE FROM THE GUILDS

In the absence of legal protection, entertainment industry guilds have stepped up to push for legally binding guidelines of their own. AI was at the center of the issues that led to the SAG-AFTRA and WGA strikes of 2023, and the use of AI was addressed in the renewals of their collective bargaining agreements. A number of extremely useful and informative rules and information sources have emerged since.

WGA

The Writers Guild established regulations for using AI on projects covered by its Minimum Basic Agreement (MBA). Most importantly, AI can't be used to write or rewrite "literary material." The details of the Guild's wins are in the 2023 MBA. The Guild has also published on its website a handy "Know Your Rights: Artificial Intelligence" guide, which includes the MBA provisions, a running list of AI-related Guild actions, and information about whom to contact at the Guild for AI-related situations, including how to contact their AI Advisory Committee. One example of these guidelines: WGA members should not consent to AI transcription during a pitch meeting, including on Zoom.

SAG-AFTRA

SAG-AFTRA's 2023 TV/theatrical contract has created new rules on the use of AI-generated performances in film and TV, with a focus on informed consent and compensation for AI use. The contract addresses two main types of AI-generated content: digital replicas and synthetic performers. The first replicates a specific actor's voice and/or likeness using digital technology. The second covers characters created by digital technology that appear to be real-life human performers, but are not identifiable as any existing performer.

A full list of the provisions is available on the Artificial Intelligence Resources page of the SAG website. The site also offers other downloadable documents including FAQs, a two-pager on regulating AI, and a packet called "Digital Replicas 101." The latter addresses contracts, creation of digital replicas, compensation guidelines and more. These documents are not just for actors; they offer useful information for people in various roles on a production.

THE ANIMATION GUILD (TAG), IATSE LOCAL 839

The Animation Guild didn't go on strike over AI usage, but it certainly has a stake in it. TAG established its AI Task Force in April 2023, and along with the Concept Art Association (CAA), the Human Artistry Campaign, and the National Cartoonist Society Foundation, TAG commissioned a study carried out by Los Angeles-based economic development and growth consultancy CVL Economics.

Titled "Future Unscripted: The Impact of Generative Artificial Intelligence on Entertainment Industry Jobs," the study surveyed relevant professionals to better understand the current use of AI, its future use over the next three years, and how these technologies will impact creative workers. A summary and a full PDF containing the report's key findings are on the Animation Guild website.

PRODUCERS GUILD

The Producers Guild is in midst of producing quarterly, timely discussions about how producers can responsibly use AI in film, TV and emerging media. The first of the series of conversations took place during the 2024 Produced By Conference in a session titled "AI, What Every Producer Should Know."

Panelists included Ghaith Mahmood, a partner at the law firm Latham & Watkins; Lori McCreary, CEO of Revelations Entertainment; and Renard T. Jenkins, president of I2A2 Technologies, Labs & Studios. Each addressed the practical, legal and ethical considerations producers face when using and including AI in their projects.

The discussion focused on some of the most important considerations that creatives must take into account and spanned such topics as practical uses like dubbing and creating materials for pitching and sales to the implications of AI for training the next generation of producers. Members have access to the entire session on the Guild's members-only Vimeo channel.

Additionally, *Produced By* magazine is publishing a series of articles on AI, of which this is the second.

GOVERNMENTS CATCHING UP

While the guilds were out in front, government regulation has been playing catch-up. In California, Governor Gavin Newsom took a big leap forward in September 2024, when he signed a whopping 17 new AI bills into law. Those most applicable to creators of film, TV and emerging media are AB 2602, ensuring that California's performers control the use of their own digital replicas; AB 1836, prohibiting digital replicas of deceased performers without appropriate consent; and AB 2013, mandating disclosures about training data sets, such as whether the underlying assets are protected (e.g., copyright,

A Gen Battle presented by Machine Cinema, where creators and teams joined to create a music video in less than three hours.

COURTESY OF MACHINE CINEMA

trademark) or public domain.

The European Union enacted its Artificial Intelligence Act in August 2024. It "establishes a robust, enforceable legal framework with a risk-based approach to regulating the entire life cycle of AI systems," says Victoria Bousis, director of the PGA Innovation Award-winning interactive virtual reality experience *Stay Alive, My Son*.

This framework is designed to ensure accountability, transparency, fairness and user safety, including mandates for chatbot disclosures. Its key provisions include: (1) prohibitions on certain AI practices deemed to pose an "unacceptable risk;" (2) strict requirements for "high-risk" AI systems to ensure rigorous standards are met; (3) transparency obligations for certain AI systems, ensuring clarity for users; and (4) regulation of general-purpose AI models to set clear boundaries.

More importantly, noncompliance with the Act carries significant penalties, up to €35 million or 7% of global annual turnover, reinforcing the importance of accountability across the AI industry.

COURTESY OF VICTORIA BOUSIS

The PGA Award-winning VR experience *Stay Alive, My Son* created a digital replica of its real-life subject with his consent.

INDUSTRY RESOURCES, GENEROUSLY SHARED

Where law or legally binding provisions fall short, industry associations have stepped in to provide guidance. "Generated images were getting dropped into (archival producers' films') edits by the junior editors," says Fred Grinstein, a seasoned producer and executive who cofounded Machine Cinema. "So (archival producers) formed a group that's highly organized and thorough in their efforts to advocate for best practices in the nonfiction industry."

Less than a year after forming, and in the same month that Newsom signed his bills into law, that group—the Archival Producers Alliance (APA)—put out "Best Practices for Use of Generative AI in Documentaries," a 10-page PDF available on its website. It focuses on four key areas: Value of Primary Sources, Transparency, Legal Considerations, and Ethical Considerations of Creating Human Simulations.

When filmmakers encounter novel, unprecedented situations, it can be challenging to determine what is ethical or what is fair. That's where Archival Producers Alliance and other industry associations serve as valuable resources to creators of film, TV and other media. The group represents more than 300 U.S. and international archival producers.

APA Co-director Rachel Antell makes the point that the group's concerns are specific to documentary. "If you're seeing *Jurassic Park* or *Star Wars*, you don't expect that it's real," she says. However, she acknowledges some ethical issues cross over. "You might still, in a nondocumentary, go to create a human being who actually existed." That would be a time to be extra cautious.

Bousis agrees. "As a cross-media director and technologist, I created a digital replica of (Cambodian genocide survivor) Yathay Pin," Bousis says. "Using a hyperrealistic recreation of his likeness, supported by AI, I aimed to foster a powerful, empathetic connection between viewers and Yathay's story. I sought his consent beforehand, firmly believing that digital replicas are an intrinsic part of our privacy rights, underscoring the need for individuals to retain control over their digital identity."

The APA cofounders stress that using generative AI isn't always a bad thing. In fact, it can help make it possible to tell powerful, timely stories to help raise awareness of injustice and persecution. The films *Another Body* and *Welcome to Chechnya* both used generative AI in groundbreaking ways to protect the identities of the brave people who came forward to tell their stories.

Building in time and money around legal concerns is also essential. Antell worked on a film that incorporated AI imagery at a time when standards and best practices weren't yet formulated. But that changed by the time the film was delivered to its broadcaster.

"They got caught in standards and practices for a year," Antell says. "Their broadcast was delayed and they had to go back to the drawing board to redo things because of the software they'd used and the way they had done certain things."

By the time they finished, the broadcaster had developed ethical standards that the film's team had not anticipated. This is a good reminder that being ethical isn't just a solid principle; it's a good business move. Making more ethical choices than are required can often end up saving a production a significant amount of

Stills from the documentary *Welcome to Chechnya*, which used a groundbreaking digital "face double" technique to protect the identities of its subjects.

time and money in the long run.

The example of a full-AI film shows how filmmakers can create content that is both entertaining and ethically sound. "We established clear ethical guidelines from the start," says Nem Perez, director and executive producer of one of the first AI feature films, *Our T2 Remake*. "We made sure that everything we created was transformative and abided by parody and fair-use law. The film was also noncommercial and experimental."

One of the artists behind *Our T2 Remake* created guidelines in Germany called "The FAIR Codex." The Framework for Artificial Intelligence Responsibility (FAIR) is a set of guidelines that put fairness at the core of creating art with AI: by artists, for artists. It advises that creators should not use prompts that refer to or include intellectual property (e.g., Marvel), styles associated with artists or brands (e.g., Pixar), or living people (e.g., Tom Cruise).

It also insists that creators create in good faith. Creators who abide by the codex can use the FAIR Seal and the FAIR Promise in promotion of their project; both are provided on faircodex.com.

For their next film, Perez and his team are making sure to abide by the FAIR Codex to ensure their work is both ethically sound and copyrightable when it is presented to major studios for possible sales.

"This, along with using fair models such as Adobe Firefly, is how we are approaching the ethical issues for our next AI-powered feature film," Perez says. "We're meticulous about our prompts—no copyrighted material, no actor names, no studio references."

He adds, "While the legal framework around AI-generated art is still evolving, we're positioning ourselves on the side of human-driven creativity, where the AI output is substantially transformed through artistic interpretation."

Other industry groups are doing their part. The Academy of Television Arts & Sciences is hosting an AI Toolkit Series for TV Professionals, admission and recordings of which are available to members. The Television Academy's website (emmys.com) also has a collection of articles from its AI Task Force's Executive Summary and additional relevant videos and articles.

Few media productions are truly complete without music. ASCAP and BMI—the performance-rights organizations that represent songwriters, composers and music publishers—are naturally concerned with the impact of AI on visual media.

An AI-specific page on the ASCAP website offers information on how they're helping music creators navigate AI, including an AI FAQ and specifics about copyright and advocacy. It also outlines the six key creator-centric principles guiding the ASCAP board of directors' response to AI. The site offers videos from ASCAP's AI Symposiums, a podcast, and a short documentary related to AI.

The "BMI & AI: What Music Creators Need to Know" page on the BMI website lays out the organization's position on a human-centric approach to AI, shares

COURTESY OF THE FILMMAKERS

their advocacy and legislative action, provides answers to FAQs, and offers resources and events.

While the U.S. Copyright Office is obviously a federal agency and not an industry association, it too has AI resources relevant to film and TV producers. In July 2024, the office published "Part 1: Digital Replicas," the first in a series of promised reports analyzing copyright law and policy issues raised by artificial intelligence. These include the scope of copyright in AI-generated works and the use of copyrighted materials in the process of teaching AI to better interpret data and respond to queries.

The Digital Replicas report suggests to Congress that, although current federal statutes on artistic style and copyright are adequate, an urgent need exists for federal updates to address other issues pertaining to digital replicas. More reports are forthcoming and will be posted on the agency's website.

Beyond ethical considerations, best practices can be helpful to creators. Fortunately, even in AI's infancy, multiple organizations are ready to provide education, community and more.

One such organization is Curious Refuge, the self-proclaimed "world's first home for AI storytellers."

"Joining Curious Refuge's community set off a sequence of events and opportunities that seemed unimaginable to me one year ago," says Jagger Waters, director of programming for Escape AI and a producer for Curious Refuge. The organization offers courses in AI Animation, Filmmaking, Advertising and Documentary. Their website has an AI Film Gallery and lists of tools, resources and prompts. They also sponsor AI contests, host events and list AI jobs.

Learning about AI terms and tools can feel overwhelming, making it difficult to know where to start. One easily accessible resource that may help is Curious Refuge's AI Film News, posted to YouTube every Friday. The group also presents meetups and events that anyone can attend.

Another group devoted to sharing AI best practices is Machine Cinema. While it started with friends sharing prompting tips, Machine Cinema is now helping AI creators build, create, learn and prepare for the future of AI creation. They organize events for AI creators all over the world, particularly in San Francisco and Los Angeles.

The organization designs learning experiences in partnership with various organizations and institutions. They also publish a Substack for sharing discussions on AI film, creativity, gaming and more.

Another group, Digital Hollywood, hosted an AI summit last July with three days of roundtables and keynotes. The sessions were all recorded, including the special track for Television Academy Emerging Media Peer Group members. The videos are on the Digital Hollywood website.

The resources covered here are by no means comprehensive. AI is evolving quickly and the engagement process—including AI-oriented laws, contracts, ethics, best practices and resources—will evolve with it.

"We are no longer in an era where AI adoption is optional," says Bousis, who began her career as a prosecutor for the attorney general of Illinois. "Ethics must be at the core of legislation and discussions about AI."

This requires an approach that includes voices from production companies, data analysts, machine learning programmers, sociologists, anthropologists, psychologists, educators and economists. "A multidisciplinary approach is essential to address AI's impact holistically, ensuring we move forward as responsible global citizens," Bousis adds.

These resources are intended to help our community be among those voices shaping responsible use of AI. Calling it by its full name, artificial intelligence, reminds us that we can't count on AI to sort itself out. It falls on us to work together to create order out of chaos.