



Voices on Trial: Voice Actors, AI Cloning, and the Fight for Identity Rights

By: James Gatto

A New York court [just decided](#) some important preliminary motions (which I previously covered here in this [post](#)) involving allegedly unauthorized AI cloning of voice actors. The court reached a split decision, concluding “that, for the most part, Plaintiffs have not stated cognizable claims under **federal** trademark and copyright law. However, that does not mean they are without a remedy. Rather, claims for misappropriation of a voice, like the ones here, may be properly asserted under Sections 50 and 51 of the New York Civil Rights Law [which protect name, image and likeness], which, unlike copyright and trademark law, are tailored to balance the unique interests at stake. Plaintiffs also adequately state claims under state consumer protection law and for ordinary breach of contract.”

The court commented on the uniqueness and significance of this case, stating: “The case involves a number of difficult questions, some of first impression. It also carries potentially weighty consequences not only for voice actors, but also for the burgeoning AI industry, other holders and users of intellectual property, and ordinary citizens who may fear the loss of dominion over their own identities.”

This ruling portends potential challenges that may arise for others whose voices may be AI-cloned. The problem is that there is no federal right of publicity, which covers a person’s name, image and likeness (NIL). This court’s dismissal of the federal law claims under trademark and copyright law, if followed by other courts, will limit plaintiffs’ NIL claims to those under state law, such as those here under Sections 50 and 51 of the New York Civil Rights Law. However, not every state has a right of publicity law.

This issue has received significant attention for some time. Recent efforts to address this issue has led to proposed federal legislation – the NO FAKES Act by a bi-partisan group of senators. This legislation was introduced within days of U.S. Copyright Office’s release of its [digital replicas report](#) asserting an “urgent need” for more cohesive protections at the federal level. For more on this see my colleague’s post on [Congress Reintroduces the NO FAKES Act with Broader Industry Support](#).

The issue of voice cloning is not new, but with the advent of generative AI it has come more into focus due to the ease and realism with which this cloning can be done and scaled. The implications of this case reach far beyond the parties to this lawsuit – it will impact voice actors, celebrities, politicians, and individuals.

The Court’s Decision

Plaintiffs Lehrman and Sage brought this putative class action against Lovo alleging that Lovo used AI to synthesize and sell unauthorized “clones” of their voices. Plaintiffs asserted claims for violations of New York civil rights and consumer protection laws, the Lanham Act, and the Copyright Act, along with common-law contract, fraud, conversion, unjust

enrichment, and unfair competition claims. Lovo moved to dismiss all claims – on which I previously [posted](#). Plaintiffs alleged that LOVO users have created over seven million voice-overs including many based on narrations allegedly “stolen” from real actors.

Some of the key takeaways from the court’s decision are as follows.

- **Breach of Contract of Claims** – Plaintiffs have plausibly identified a series of written communications subscribed to by the relevant parties and identifying the material terms of their transactions with Lovo. Lovo’s motion is therefore denied as to Plaintiffs’ contract claims
- **Unfair Competition, False Affiliation and False Advertising** – Plaintiffs claims for “Unfair Competition and False Affiliation,” and for “False Advertising,” pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) create two distinct bases of liability: false association, § 1125(a)(1)(A), and false advertising, § 1125(a)(1)(B).
 - Because Plaintiffs have failed to identify a protectable mark, the Court need not consider whether Plaintiffs have pleaded a likelihood of confusion. Lovo’s motion to dismiss was granted as to Plaintiffs’ claims under Section 43(a)(1)(A)
 - Because Plaintiffs have pleaded neither falsity nor injury, their false advertising claims under Section 43(a)(1)(B) of the Lanham Act were dismissed.
- **Copyright Claims** – On the copyright claims, the court addressed several issues. Some were just fact specific to this case. The findings of broader significance are the following.
 - **AI Training** – The Court granted Lovo’s motion to dismiss Plaintiffs’ training-based copyright claims with leave to amend for lack of specificity but this could be remedied with “on information-and-belief” pleading
 - **AI Outputs** – As to the copyright infringement claims (both direct and indirect infringement) based on the output of the AI model, i.e., the voice clones themselves, the claims were determined to be “barred by the relevant statutory language” finding that “a new recording that mimics the copyrighted recording is not an infringement, even if the mimicking is very well done, so long as there was no actual copying.” The Court elaborated that Plaintiffs did not contend that Lovo ever used the AI tool to output “perfect, AI-generated reproductions of their original recordings” or that it is even capable of doing so. Rather, they claimed that the AI tool was able to “create new recordings that mimic **attributes** of their voices like “pitch, loudness, tone, timbre, cadence, inflection, breathiness, roughness, strain, jitter, (variation in pitch), shimmer (variation in amplitude), spectral tilt, and overall intelligibility, and other qualities.” It produced **new** audio recordings using those mimicked voices. The Court did caution that it is conceivable that an AI clone might be used to generate from scratch a perfect copy of a copyrighted sound recording, including identical words and sonic attributes, but those facts were not alleged here. The Court concluded that “Copyright protection does not extend to this kind of imperfect mimicry, even when accomplished using advanced technology rather than more traditional techniques like musical covers or impersonations.” It noted that Plaintiffs improperly sought “copyright protection for their voices *qua* voices” but that copyright “must concern the expression of ideas, not the ideas themselves” and does not extend to something as abstract and intangible as a “voice.” It further clarified that previous cases distinguish between the recognizable sound of a voice (which is not within the subject matter of copyright)” and “the copyrighted work in which that voice is embodied (which, of course, is within the subject matter of copyright)”. Additionally, Plaintiffs did not have a copyright registration for their voice
- **New York Right of Publicity** – The Court dismissed various arguments on the interpretation and scope of the NY law, finding it was not limited to deceased persons, covered any recognizable likeness, and that it covers digital clones. On the sufficiency of the allegations, it found that Plaintiffs easily cleared the bar for pleading “recognizability,” adequately alleged use in New York, and use in both advertising and trade (and Lovo did not raise a First Amendment, newsworthiness, or public interest defense)

- **New York Consumer Protection Law** – On this claim, the Court found:
 - o Plaintiffs failed to identify “material misrepresentations” and that they cannot rely on misrepresentations that Lovo made to them in the course of their contract negotiations, as Plaintiffs were not acting as consumers in those transactions, and the law does not reach such narrow, private disputes.
 - o Plaintiffs did adequately allege that Lovo misrepresented the scope of the “commercial rights” that it promised to provide to its subscribers, thereby making its offerings appear more attractive
- **Fraud** – The Court ruled that Plaintiffs’ fraud claims failed, in part, because Plaintiffs did not adequately plead compensable damages, alleging only that they “have not been fully compensated for the use of their voices by LOVO,” “have suffered from the degradation of their services,” and “would not have given permission for their voices to be used had they known the truth.” But the Court found Plaintiffs were compensated pursuant to their contracts with Lovo, and the allegation that Lovo later breached those contracts does not transform Plaintiffs’ contract claims into fraud claims.

Conclusion

This case is one to continue to watch. While some of the facts here are unique to this case, the broader issue of using AI to create digital replicas of name, image and/or likeness will arise in many other cases. Some of the rulings here, specifically, those on the AI outputs will likely be addressed by other courts. We will see if other courts address this issue consistent with this decision. Perhaps, the NO FAKES Act will pass and provide a comprehensive federal law that will hopefully lead to greater consistency on the protection of NIL in the context of AI-generated digital replicas.

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