

Legal Responses to Unauthorized Use of Portraits and Voices by Generative AI

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I Introduction

Recent advances in generative AI have enabled highly accurate imitation and reproduction of human portraits and voices. As a result, deepfakes, AI cover songs, and synthesized voice products that use the faces and voices of celebrities and voice actors without authorization have become increasingly prevalent. These technological developments raise the risk of infringing rights and interests that have not been fully addressed by traditional legal frameworks, and give rise to complex questions regarding the scope and availability of legal protection.

From a corporate perspective, there is a growing risk that a company's characters or its employees' portraits and voices may be misappropriated without consent via generative AI. Conversely, companies that use generative AI for advertising, marketing, or presentations also face the risk of inadvertently infringing the portrait or voice rights of third parties. This article examines the legal issues surrounding the unauthorized use of portraits and voices, from the following perspectives:

- Copyright and neighboring rights
- Trademark law
- Tort law (portrait rights, publicity rights, and potential human voice rights)
- The Unfair Competition Prevention Act

II Protection by Copyright Law

1. Copyrightability of Voices

Under the Copyright Act, a “work” is defined as a creative expression of thoughts or feelings (Article 2, paragraph 1, item 1). As such, natural speech or singing, in and of itself, generally does not meet the threshold for copyright protection.

That said, the unauthorized reproduction of a music CD containing a performer's singing or performance typically qualifies as infringement of the right of fixation (Article 91). Similarly, the unauthorized replacement or alteration of audio fixed in a cinematographic work may infringe the right to maintain the integrity of the work (Article 20). Where a voice is fixed in a tangible medium and made perceptible in a concrete form, copyright protection may arise indirectly. However, in these cases, the protected interests belong primarily to the copyright holder or record producer, rather than to the individual whose voice is used. Therefore, it should be noted that the owner of the voice is not necessarily protected under copyright law.

2. Copyrightability of Portraits

A portrait itself does not constitute a copyrighted work, as it does not express thoughts or feelings. However, a painting, photograph, or other creative depiction of a person's portrait may be protected as a copyrighted work. In these cases, the rights belong to the creator of the work, and copyright law does not directly protect the interests of the person depicted.

III Protection under Neighboring Rights

1. Rights of Performers

Performers are granted neighboring rights in relation to expressive performances, such as musical performances or recitations. Where a voice actor's or singer's vocal performance qualifies as a "performance," it may be protected by neighboring rights, including the right of attribution, the right of fixation, and the right to make the performance available for transmission (Article 89, paragraph 1).

By contrast, ordinary daily conversation or routine news reading generally is unlikely to be regarded as a "performance" and therefore typically will not be protected by neighboring rights.

2. Rights of Record Producers

Record producers, as those who fix sounds on a tangible medium, are granted neighboring rights, such as reproduction and transfer rights (Article 89, paragraph 2). As with copyright protection, these rights vest in the record producer, not necessarily in the individual speaker or performer.

IV Limitations on Rights

As discussed above, the scope of copyright and neighboring rights protection for human voices is relatively limited. Even where these rights exist, certain uses—such as reproduction or adaptation—may fall within statutory limitations and therefore not constitute infringement.

1. AI Learning

The act of reproducing or analyzing works or performances for machine learning purposes may fall within the non-enjoyment use exception in Article 30-4 of the Copyright Act and, in principle, not constitute infringement. However, where the purpose of learning is to generate output that specifically replicates particular voices or portraits, the use is unlikely to qualify as non-enjoyment use, and Article 30-4 may not apply. Pursuant to Article 102, paragraph 1, this limitation also extends to neighboring rights.

Uses that are intended for enjoyment or that unjustifiably harm the legitimate interests of rights holders fall outside the scope of Article 30-4.

2. AI Generation and Use

Where generative AI is prompted using a different person's voice and the user's own text, and generates audio that reads the text in a voice closely imitating that of the person named in the prompt, infringement of the rights to reproduction of the work or the right to fixation of the performance may arise if copyright or neighboring rights subsist in the original voice recording.

Similarly, if the generated audio is substantially similar to the original audio, reproduction of the output may infringe the rights to reproduction of the original work or the performer's rights to fixation. In practice, however, generative AI output often replicates the style or characteristics of a voice without reproducing the original expressive content. For example, where the voice of an anime voice actor is used to generate audio of that voice reading a user's own novel, the output reflects the vocal characteristics but not the content of the anime itself. In these cases, infringement generally is unlikely, due to the absence of substantial similarity.

V Limits of Protection under Trademark Law

Voices and portraits may be protected under trademark law if they are registered as trademarks (Trademark Act, Article 2, paragraph 1; Article 5, paragraph 2, item 4). However, in practice, registration requires distinctiveness, and examples of trademarks consisting solely of a "voice" are rare. Moreover, use for machine learning purposes generally is not considered "trademark use" (Article 26, paragraph 1, item 6), making trademark infringement unlikely.

With respect to portraits, infringement may arise where a registered illustration depicting a person is used. However, as with voices, use in the learning process of generative AI generally will not qualify as trademark use.

VI Tort Remedies under Civil Law

1. Portrait Rights

Although portrait rights are not codified expressly, they have been recognized by Japanese case law as interests protected under tort law. In its decision of November 10, 2005 (the courtroom photography case), the Supreme Court of Japan recognized that individuals have a legally protected interest in not having their appearances photographed or published without consent. Whether an unauthorized act exceeds permissible limits is assessed comprehensively in light of social norms and the surrounding circumstances.

It is difficult to interpret "appearance, etc." as encompassing a person's voice, and voices therefore are unlikely to be protected under portrait rights. At the learning stage of generative AI, the use of a portrait without consent generally does not involve photography, publication, or public recognition and therefore is unlikely to constitute an infringement of portrait rights. By contrast, where an AI-generated image can be identified as a portrait of a specific individual and is published without consent, infringement may be found if the use exceeds socially acceptable limits.

2. Publicity Rights

In its decision of February 2, 2012 (the Pink Lady case), the Supreme Court characterized publicity rights as the exclusive right to commercially exploit the customer-attracting power associated with a person's portrait or similar attributes. The Court identified three categories of infringing acts:

- Use of a portrait or similar attribute as a product to be independently appreciated;
- Use of a portrait or similar attribute to differentiate products; and
- Use of a portrait or similar attribute in advertising products.

While the decision did not expressly include "voice" within the scope of protected attributes, a supplementary opinion by the presiding judge cited "signature, autograph, voice, pen name, and stage name" as examples of "portrait, etc." Where identifying informational functions as a symbol of personal identity, a person's voice—which is tied closely to that individual—likewise may fall within the scope of publicity rights.

That said, portraits generally have a higher degree of identifiability and customer-attracting power than voices. It often is difficult to associate a voice alone with a specific individual, absent additional information, suggesting that the scope of protection for voices is likely to be narrower.

Publicity rights are infringed only where the use falls within the three categories identified by the Supreme Court or involves a similar commercial exploitation of customer-attracting power. Where it is difficult to identify whose voice is used, or where the voice of an ordinary individual is involved, infringement is unlikely. Machine learning itself does not constitute commercial exploitation, but the use of AI-generated output for these purposes may give rise to liability.

3. The Emerging Concept of "Human Voice Rights"

In academic commentary following the Pink Lady case, Judge Motoyuki Nakajima suggested that the commercial value of a person's voice is protected by publicity rights, while its spiritual or personal value may be protected as a personality right akin to portrait rights—sometimes referred to as "human voice rights." However, at present, these rights have not been clearly established, and their future recognition remains uncertain.

VII Application of the Unfair Competition Prevention Act

1. General Overview

Protection of portraits and voices also may be considered under the Unfair Competition Prevention Act, which regulates acts that cause confusion (Article 2, paragraph 1, item 1) and misappropriation of well-known indications (item 2) to ensure fair competition.

In 2025, the Intellectual Property Policy Office of the Ministry of Economy, Trade and Industry published a document titled "On the Organization of Current Thinking Regarding the Publicity Value of Portraits and Voices under the Unfair Competition Prevention Act." The document notes that, depending on the circumstances,

unauthorized use of portraits or voices may qualify as causing confusion (item 1), misappropriation of well-known indications (item 2), acts causing misunderstanding (item 20), or acts damaging credibility (item 21). The applicability of these provisions depends on factors such as the degree of fame of the portrait or voice and the manner of use.

2. Illustrative Examples

The document provides several examples, including the creation and sale of AI-generated portraits, the use of AI-generated portraits in advertisements, posting AI-generated cover songs using a celebrity's voice, and selling products incorporating AI-generated voices. The legal characterization of each example varies depending on the degree of recognition and the specific context of use.

VIII Conclusion

Generative AI enables the easy reproduction and commercial exploitation of individual human characteristics—such as faces and voices—that once were considered inherently personal. As a result, it gives rise to legal issues that are difficult to resolve via existing legal frameworks.

Addressing the unauthorized use of portraits and voices requires a multifaceted approach that draws on copyright law, trademark law, tort law, and the Unfair Competition Prevention Act. However, none of these regimes was originally designed with generative AI in mind, underscoring the need for continued interpretive development and, potentially, legislative reform. Ethical and social considerations will also play an increasingly important role.

Companies that use generative AI must exercise caution to avoid infringing the rights of others. Even where a particular use may be lawful, reputational risk and ethical concerns should not be overlooked. As a practical matter, companies may wish to consider entering into license agreements with relevant individuals when using portraits or voices in connection with generative AI.

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