Through the Looking-Glass: AI Holography, Digital Personas, and the CDPA 1988

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Abstract

The rapid development of artificial intelligence (AI) and digital holography has exposed gaps in UK legal protection for performers, particularly after death. This commentary examines whether the Copyright, Designs and Patents Act 1988 (CDPA) adequately protects performers against unauthorised posthumous digital reanimation through AI and deepfake technologies. It argues that the CDPA protects recorded performances rather than a performer's personality, likeness, voice, or identity, leaving estates with limited recourse where AI-generated recreations are not derived from identifiable copyrighted recordings or where training datasets cannot be established. The commentary distinguishes between direct and indirect digital personas and examines the evidential difficulties created by opaque AI datasets and synthetic performances. Comparative analysis of developments in Denmark, the Netherlands, France, the EU, and California identifies emerging approaches to personality rights, posthumous protection, and AI transparency. It concludes that the UK should introduce statutory personality rights, extend posthumous protection, and impose transparency obligations upon AI developers and deployers.

1.1 Introduction

The announcement that a British performer has been posthumously 'revived' using AI holography for a tour against the wishes of their estate furthers the argument that the rapid advancement of generative technologies - namely, artificial intelligence (AI) and 'deepfakes' - has fundamentally disrupted the creative sector. The prospect of performances without live performers, achieved

through simulated (or digitally-exploited) personalities, resulting in a lack of posthumous control over recordings and image rights, has now left the realm of science fiction.

Through comparison with the relative scope and limitations of other jurisdictions' legal frameworks, this commentary will argue that, at present, UK performance rights offer insufficient protection against posthumous digital reanimation. In summary, the Copyright Designs and Patents Act 1988 (CDPA) was designed to protect works and recorded performances, not a performer's 'personality rights': identity, image, persona or likeness. [1] As a result, the deceased performer's estate has next to no possibility to argue against the unauthorised digital resurrection of the performer via AI holography. Their only hope would be if they could prove (on an evidential basis) that an AI was *trained* on (and, as such, the final hologram *derived* from) recordings of the performer's qualifying performances, which would trigger the relevant 'performance rights' within the CDPA. [2] In this regard, this commentary will also present potential legal and policy reforms that could be introduced to the UK framework in order to better address issues such as posthumous protection and transparency over training datasets.

2.1 Holography and Performance

2.1.1 A Brief History of Holography

Before analysing this particular scenario and the UK's current legal framework, one must first understand the technology at the core of this legal question and acknowledge the flawed nomenclature at play. The term "hologram" is merely an umbrella term for the projection (or reflection) of a two-dimensional object or video to give the illusion of a three-dimensional image.

[1] Copyright, Designs and Patents Act 1988 (CDPA).
[2] *Ibid.*, s29A; *Ibid.*, ss180–182D.

[3] Early examples utilised a theatrical effect known as 'Pepper's Ghost' to reflect objects or actors in ghost-like form. [4] This technique was enhanced by the advent of computer-generated imagery (CGI) projection and advanced audio-visual systems. This modern method uses digitally-rendered two-dimensional footage to create the illusion of a three-dimensional performance (by evoking depth, volume, parallax etc.): a famous example is the performance of Tupac Shakur's 'digital persona' at Coachella in 2012. [5] This commentary will refer to all such technologies simply as "holograms."

2.1.2 Digital Personas and the Advent of AI

Crucial to understanding the potential use of AI in this field (and the performance rights of the CDPA) is the distinction between 'direct' and 'indirect' digital personas. In the direct approach, motion-capture is used to accurately map the movements and mannerisms of either the original performer or a body double onto a digital avatar: an example of the former is the four "ABBA-tars" of *ABBA Voyage*. [6] Conversely, in the indirect approach - typically used for deceased original performers - an entirely new performance is created, ideally using archival recordings and (traditionally) CGI to reconstruct the likeness and mannerisms of the performer in a new

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[3] Victor Robert Kennedy, 'How the Music Machine Makes Myths Real: AI, Holograms, and Ashley Eternal' (2024) 13(5) *Humanities* 140, 140. See also Stephen Anson, 'Hologram Images and the Entertainment Industry: New Legal Territory?' (2014) 10 *Washington Journal of Law, Technology & Arts*, 109, 111; Hannah Skopicki, 'Pixelated Poltergeists: Synchronization Rights and the Audiovisual Nature of 'Dead Celebrity' Holograms (2020) 70 *American University Law Review Forum* 1, 21; Alan Hughes, 'Death is No Longer a Deal Breaker: The Hologram Performer in Live Music' in Ewa Mazierska, Les Gillon and Tony Rigg (eds) *The Future of Live Music* (Bloomsbury 2020) 114 28, 115; Kenny Forbes, 'Dead Stars Live: Exploring Holograms, Liveness, and Authenticity' in Chris Anderton and Sergio Pisfil (eds) *Researching Live Music: Gigs, Tours, Concerts and Festivals* (Focal Press 2021) 156–69, 158.
[4] Joe Nickell, *Secrets of the Sideshows* (University Press of Kentucky 2005) 288-91.
[5] Marie A. Kessel, 'Holograms are Taking Over the World! An Analysis on Legal An Analysis on Legal Implications Holograms Pose in Right of Publicity and Copyright Law' (2024) *Fordham Intellectual Property, Media and Entertainment Law Journal* 35(1) 200, 201-6.
[6] A. Kessel (n 5) 205-6. See also Shannon F. Smith, 'If It Looks Like Tupac, Walks Like Tupac, and Raps Like Tupac, It's Probably Tupac: Virtual Cloning and Post-Mortem Right-of-Publicity Implications' [2013] *Michigan State Law Review* 1719, 1724.

performance context. [7] An example of this approach can be seen in the *Bizarre World of Frank Zappa* tour. [8]

AI entered the equation recently and has primarily been used to enhance the work of CGI artists: for instance, for *ABBA Voyage*, the direct digital personas (derived from motion-capture sessions) were de-aged by AI during post-production. [9] For the indirect process, hypothetically, AI could be trained during *production* to generate a digital avatar (complete with movements, mannerisms etc.) without the need for motion capture, perhaps by sifting through hours of archival footage and photography (or material perhaps evoking the performer rather than actual footage of them, as discussed in the following section). As of writing, no such examples exist and the extent to which AI has been used in the creation of the hologram in question has not been made sufficiently clear by the entertainment company.

This is where the UK's legal framework (or potential lack thereof) comes in: if recorded qualifying performances (i.e., copyrighted works) were used to *train* an AI, and led to the creation of the hologram without a license, would this be in breach of the CDPA? [10]

3.1 The UK Position

3.1.1 The Copyright, Designs and Patents Act 1988

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[7] A. Kessel (n 5) 206. See also F. Smith (n 6) 1725.
[8] Graeme Virtue, 'The Bizarre World of Frank Zappa review – toking poodles and holographic necromancy' *The Guardian* (London, 10 May 2019) <https://www.theguardian.com/music/2019/may/10/the-bizarre-world-of frankzappa-review-edinburgh-playhouse> [accessed 16 November 2025].
[9] Robert Kennedy (n 3) 152.
[10] Nicole Sales Giles and Sebastian Sanchez, 'Cancel the Christie's AI Art Auction' *Open Letter* (8 February 2025) <https://openletter.earth/cancel-the-christies-ai-art-auction-f5135435?limit=0> [accessed 20 November 2025]. See also George Nelson, 'Thousands of Artists Demand Christie's Cancel AI Art Sale: 'AI Models Exploit Humans' *Financial Times* (London, 11 February 2025) <https://www.artnews.com/art-news/news/artists-demand christiescancels-ai-art-sale-claiming-ai-models-exploit-humans-1234732217/> [accessed 20 November 2025].

Under the CDPA, a performer has exclusive rights in relation to *recordings* of their live performances, recognised as 'fixated' (recorded) dramatic or musical works, depending upon the nature of the performance. [11] It is crucial to note that performers themselves - that is, their appearance, their performance style etc. - are not subject to protection in this regard. One assumes that the performance(s) in question will satisfy the current UK test (affirmed by Arnold LJ in *THJ v Sheridan*) that a work has been produced not only using technical means (skill, labour, and judgement) but with free and creative choices (artistic considerations): this approach designates the work as the author's *'own intellectual creation.'* [12] A concert film - such as *Stop Making Sense* (1984) - or other recorded material that could be used for the training of an AI on a performer's likeness, voice etc. - could be considered a 'dramatic work', provided it is capable of being played in front of an audience. [13] The CDPA therefore grants the right to control the recordings or broadcasts of live performances and prohibits their unauthorised use, but lacks clarity as to the extent it includes their use for the training of AI. [14]

3.1.2 Analysis of the Framework

Despite the aforementioned protections, the question of whether a fully AI-generated performance is really an unauthorised 'recording of a performance' is not adequately addressed. AI is not considered a natural (or legal) person: under section 180(2) CDPA, a performance must be given by a live performer, so, arguably, a purely synthetic (indirect) AI-generated recreation is not a

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[11] CDPA (n 1) s3.
[12] *THJ v Sheridan* [2023] EWCA Civ 1354, para 14.
[13] Jonathan Demme, *Stop Making Sense* (USA, Arnold Stiefel Company 1984); *Norowzian v Arks Ltd and others (No 2)* [1999] All ER (D) 1214, 1214.
[14] CDPA (n 1) ss180-184; *Getty Images v Stability AI* [2025] EWHC 2863 (Ch). See also Select Committee on Communications, 'AI, copyright and the creative industries' (HL 2023–24, 267) 16; Department for Science, Innovation and Technology, Department for Culture, Media and Sport and Intellectual Property Office, 'Report on Copyright and Artificial Intelligence' (2026) sD <https://www.gov.uk/government/publications/report-and-impact assessment-on-copyright-and-artificial-intelligence/report-on-copyright-and-artificial-intelligence#section-d-input transparency> [accessed 30 July 2026].

recording of a performance, but, rather, a new, computer-generated output *mimicking* an original performance. [15]

Realistically, without considerable forethought and technical knowhow (i.e., setting 'copyright traps' to catch an AI scraping material) from an estate, it would be impossible to reverse-engineer any AI-generated content (e.g. a hologram) to definitively conclude what dataset (archival recordings) the AI that generated it was trained on. [16] As seen in the High Court's ruling in *Getty Images v Stability AI*, this lack of disclosure from AI developers creates an inordinately high evidential threshold for our deceased performer's estate to prove that the AI hologram was derived from CDPA-protected (qualifying) performances and thus constitutes 'primary infringement'. [17]

To further complicate matters, one could attempt to avoid the CDPA entirely. Two layers to this approach are arguably present here, the first being the creation of a direct digital persona. This would require a new motion-captured performance (*mimicking* the style of the deceased performer) to be mapped onto a digital avatar (generated by an AI prompted by style cues: clothing, hair etc.) by digital artists. [18]

Whilst the previous illustration could create a convincing-*looking* revival, it would require another performer's voice, as an isolated vocal track would be CDPA-protected as a 'sound recording.' [19] To further circumvent this protection, one could instruct an AI to generate an avatar (as before) but instruct it to also coincidentally mimic (or evoke) our deceased performer's mannerisms and

[15] CDPA (n 1) s180(2). See also Richard Arnold, 'Performers' rights and artificial intelligence' in Ryan Abbott (ed), *Research Handbook on Artificial Intelligence* (Edward Elgar Publishing 2025) 222-3.
[16] Matthieu Meeus, Igor Shilov, Manuel Fayesse and Yves-Alexandre de Montoje, 'Copyright Traps for Large Language Models' [2024] *41st ICML* 235, 235-6.
[17] CDPA (n 1) ss16(2)-(3); *Getty Images v Stability AI* (n 14) para 750.
[18] Smith (n 6).
[19] CDPA (n 1) s5A.

voice. Training an AI on sound/look-alike tribute acts could allow for the *de novo* creation of an *indirect* digital persona without the use of any specific recorded audio or footage of the deceased performer. This would effectively serve as an automation (or replacement) of the work of the digital artists in the previous example. [20] Prompts such as 'sing in a voice *reminiscent* of artists *similar to…*' would negate the use of qualifying performances of the specific artist (protected by the CDPA) that the digital avatar is mimicking.

The problem, as outlined by Arnold, is that AI falls through a gap in section 9(3) CDPA: if such an indirect digital persona was created by AI (which he defines as *'[...] a computer system operating autonomously without human input or intervention [...]'*) there is no natural or legal person *'undertaking the arrangements for its creation'* to pin liability to. [21]

This puts our performer's estate in a difficult legal position: the current UK copyright framework provides no recourse for the distortion of deceased individuals' legacy if undertaken in this indirect/synthetic (AI-generated) way. Furthermore, the UK does not recognise the broad, standalone 'right of publicity' (or 'personality right') unlike other jurisdictions, which currently (or will soon) offer posthumous protection for name, image and likeness without specific contractual terms. [22] Other approaches, namely the common law tort of 'passing off' and performers' (personal) moral rights, could also be ineffective here: the former requires commercial misrepresentation and the latter only extends 50 years from the original performance and cannot

[20] Arnold (n 15) 218; *Ibid.*, 224.
[21] Arnold (n 15) 224; CDPA (n 1) s9(3). See also *Nova Productions Ltd v Mazooma Games Ltd & Ors* [2006] EWHC 24 (Ch) para 106.
[22] Emma Perot, *Commercialising Celebrity Persona: Intellectual Property Law and Practice* (Hart Publishing 2023) 36.

be posthumously asserted by an estate after this period (which would prevent any objection to the hologram's distortion of the performer's legacy, post-mortem). [23]

In summary, the performer's estate could not proceed with a copyright infringement claim in the UK against the entertainment company as, without the use of qualifying (fixated) performances in the training of the AI that generated it, the hologram would likely not fall within the scope of primary infringement in the CDPA (even if it were to, the evidential threshold would likely prove too high for them to successfully prove the use of copyrighted content before a court due to a lack of dataset transparency). [24]

There is arguably an 'integrity gap' in the CDPA that reflects an analogue-era assumption that performances, once recorded, were finite artefacts rather than endlessly-reanimatable data sets. [25] As these synthetic technologies evolve, the moral rights (and wider copyright) framework appears increasingly outdated in its temporal and conceptual limits. The UK should therefore look abroad and compare other jurisdictions' copyright frameworks with its own.

4.1 Other Jurisdictions

4.1.1 European Union

By comparison, EU Member States' respective stances on legal protection for personal characteristics (likeness, voice etc.) are somewhat varied. Whilst means of protection, such as the French *droit à l'image*, existed prior to the advent of AI, their original drafting - like that of the CDPA - required reinterpretation and even amendment in light of this emerging technology. [26]

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[23] *Reckitt & Colman v Borden* [1990] 1 WLR 491, 499; CDPA (n 1) s78; *Ibid.,* ss.80-3; *Ibid.*, s205F; *Ibid.*, s205J; *Ibid.*, s205M.
[24] CDPA (n 1) ss16(2)-(3); *Getty Images v Stability AI* (n 14).
[25] Culture, Media and Sport Committee, *British film and high-end television* (HC 2024-5 328) para 202.
[26] *Code pénal* [French Criminal Code] art 226(8).

Following the implementation of the EU's 'Digital Services Act' (November 2022), the 'AI Act' (June 2024), the AI Act-compliant 'Code of Practice on Transparency of AI-Generated Content' (July 2026), and the Commission's Guidelines on Article 50 (July 2026), Member States received a level of overarching protection (through a risk-based regulatory framework) against uses of AI that could contravene fundamental rights. [27] The most relevant aspect of the AI Act for this scenario is its requirement for transparency in relation to the datasets used to train AI models.

4.1.1.1 EU AI Act

Article 53 of the AI Act requires 'providers' (Article 3(3)) to maintain up-to-date technical documentation of their 'general-purpose' (Article 3(63)) AI model (including how it was trained and tested, what data was used, evaluation results, limitations etc.) and provide this to 'downstream' developers and deployers (who, unlike providers, are not directly caught by this requirement) so they can meet regulatory obligations while integrating the model. [28] Article 53(1)(d) of the Act also requires that providers *'draw up and make publicly available a sufficiently detailed summary about the content used for training of the general-purpose AI model, according to a template provided by the AI Office.'* [29] In addition to this, Article 50 imposes further transparency obligations on the 'deployers' (Article 3(4)) of AI systems - such as our entertainment company - requiring them to disclose whether any image, audio or video content - including deepfakes (Article 3(60)) - has been artificially generated or manipulated. [30]

[27] Regulation (EU) 2022/2065 ('Digital Services Act') [2022] OJ L277/1; Council Regulation (EU) 2024/1689 ('AI Act') [2024] OJ L2024/1689, arts 5, 6, 50; European Commission, 'Code of Practice on Transparency of AI Generated Content' (10 June 2026) [accessed 29 July 2026]; European Commission, Guidelines on transparency obligations for providers and deployers of certain AI systems under Article 50 of the AI Act [2026].
[28] AI Act (n 27) art3(3); *Ibid.*, art3(63); *Ibid.*, art53(1)(a)-(b).
[29] AI Act (n 27) art53(1)(d).
[30] *Ibid.*, art50(4); *Ibid.*, art3(60).

Despite these protections, the Act, read alone, has a fatal flaw. Deepfakes generally fall within the transparency regime of the AI Act, rather than the prohibited or high-risk categories, with no prohibition, no requirement for their removal, no provision of rights over personal characteristics and no delineation between deepfakes used to defraud, blackmail or otherwise manipulate and those used for entertainment purposes. [31] The Act does not prevent Member States from legislating further in this area, as long as they do not attempt to undermine the Act, itself: this has led various national legislatures to attempt to plug the gaps, particularly in relation to providing their citizens with rights over their likeness (and other personal characteristics). [32]

4.1.1.2 Denmark

The first European jurisdiction to attempt to grant copyright over likenesses was Denmark. [33] From July 2026, the new amendment to the Danish Copyright Act granted *all* individuals 'ownership' (copyright or similar rights) over their face, voice and physical appearance when used in deepfakes. [34] The provision - whilst accounting for satire, parody, pastiche, and criticism - was designed to protect individuals through the prohibition of making *'realistic digitally-generated*

[31] *Ibid.*, art50; Dirk Visser, 'Deepfakes under a neighbouring right' (2024) 5 *Mediaforum* 138, 138 <https://scholarlypublications.universiteitleiden.nl/access/item%3A4172306/view> [accessed 8 December 2025].
[32] Visser (n 31) 138; Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/47, art2(2); *Ibid.*, Protocol 25.
[33] Miranda Bryant, 'Denmark to tackle deepfakes by giving people copyright to their own features' *The Guardian* (London, 27 June 2025) <https://www.theguardian.com/technology/2025/jun/27/deepfakes-denmark-copyright-law artificial-intelligence> [accessed 17 December 2025].
[34] Habbine Estelle Kim, 'Denmark Proposes AI Deepfake Copyright Law to Protect Personal Likeness, Voice, and Identity' (17 July 2025) <https://www.kimavocat.com/post/denmark-proposees-ai-deepfake-copyright-law-to protect-personal-likeness-voice-and identity#:~:text=On%20June%2026%2C%202025%2C%20Denmark's,the%20person%20sharing%20the%20conten t.> [accessed 17 December 2025]; Luca Schirru, 'Danish Bill Proposes Using Copyright Law to Combat Deepfakes' *InfoJustice* (15 July 2025) <https://infojustice.org/archives/46588#:~:text=This%20Act%20shall%20enter%20into%20force%20on%20March %2031%2C%202026.&text=Subsection%201.,society%20services%20(codification)%E2%80%9D%20%E2%86% A9%EF%B8%8E> [accessed 9 December 2025].

imitations of a natural person's personal, physical characteristics' available to the public without their consent (section 73a). [35]

Crucial for our purposes is the fact that the legislation also specifically covers performers and artists by offering 50 years of post-mortem protection from realistic AI-generated copies of their artistic *performances*: deployers, developers, and other relevant stakeholders require permission from estates to distribute such copies to the public in this time (section 65a). [36] Such protection, if implemented into the UK's framework, could afford estates (such as our deceased performer's) the recourse to request the removal of an AI-generated/deepfake copy of a performance (such as a hologram) from a public forum (i.e. a touring production).

Despite this success, a critical hurdle encountered by other jurisdictions, such as the Netherlands, was the fear that copyright over personal characteristics was too far removed from the original vision for a given jurisdiction's copyright legislation, as the human face cannot (definitively) be said to be a work of creative, artistic achievement. [37]

4.1.1.3 The Netherlands

Wanting to follow Denmark's example, Dutch plans were set in motion to replicate the Danish amendment, initially, in the Dutch Neighbouring Rights Act (DNRA): a key proponent of this update was Professor Dirk Visser, who drafted his own Article 7c. [38] Following Visser's proposal

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[35] Estelle Kim (n 34); *Ophavsretsloven* [Danish Copyright Act], Consolidated Act No 202 of 27 February 2010, s73a.
[36] Estelle Kim (n 34); *Ophavsretsloven* (n 35) s65a.
[37] Foort van Oosten (Ministry of Justice and Security, Netherlands), *Antwoorden Kamervragen over het bericht "In de strijd tegen deepfakes krijgen Denen copyright op eigen gezicht en stem"* [Answers to parliamentary questions on the report "In the fight against deepfakes, Danes receive copyright over their own face and voice"] (19 September 2025) 2025D40383, s6 <https://open.overheid.nl/documenten/78a54d7d-b16a-44ae-a997-cd425a4dfb8d/file> [accessed 8 December 2025]; Giovanna Fleck, 'Denmark leads EU push to copyright faces in fight against deepfakes' *Tech Policy* (7 October 2025) <https://www.techpolicy.press/denmark-leads-eu-push-to-copyright-faces-in-fight-against-deepfakes/> [accessed 17 December 2025].
[38] Visser (n 31) 139; 'Danish citizens to get copyright to their whole body – what about the Netherlands?' (Leiden

in October 2025, a draft amendment to the DNRA was introduced, seeking to grant individuals (natural persons) the power to allow or prohibit AI-generated deepfakes using their likeness or voice (including their distribution to the public) and set conditions for their commercial use, complementing the transparency obligations of Article 50 of the AI Act. [39]

Looking to our deceased performer, and building upon the Danish amendment - accounting for satire, caricature, parody, and criticism - should further proposed Dutch legislation be enacted in its current form, the DNRA could offer individuals post-mortem protection (70 years from the first January following the year of death) from deepfakes. [40] Developers, deployers, and other relevant stakeholders would also have an obligation to obtain the explicit consent from the individual before creation or distribution of any AI-generated content featuring their likeness. [41]

The main obstacle to reform has been governments' concern that rapidly legislating against this problem could undermine legal certainty: this has been compounded by fears that recognising rights over personal characteristics would extend the law beyond the original purpose of legislation designed to protect artistic expressions and their commercial exploitation, rather than inherent personal identity. [42] Initially, the Dutch government argued the current legal framework offered sufficient protection and that the amendment (applying it to personal characteristics, which are not creative achievements) warranted a potential misalignment with its original purpose: enabling

University, 18 July 2025) <https://www.universiteitleiden.nl/en/in-the-media/2025/07/danish-citizens-to-get-copyright-to-their-whole-body---what-about-the-netherlands> [accessed 10 September 2026].

[39] *Ibid.*, 140; *Voorstel van wet houdende regels ter uitvoering van Verordening* (EU) 2024/1689 ['Implementation Act for the EU AI Act']; AI Act (n 27) art 50.

[40] Visser (n 31) 139.

[41] Visser (n 31) 138.

[42] *Autoriteit Persoonsgegevens* [Dutch Data Protection Authority], *'AP over Europees voorstel om wetten te wijzigen: mag niet ten koste gaan van mensenrechten'* ['AP on European proposal to change laws: must not come at the expense of human rights'] (20 November 2025) <https://www.autoriteitpersoonsgegevens.nl/actueel/ap-over-europees-voorstel-om-wetten-te-wijzigen-mag-niet-ten-koste-gaan-van-mensenrechten> [accessed 17 December 2025]; van Oosten (n 37) s6.

creators of works to exploit them. [43] However, after much debate, the state-established (independent) Data Protection Authority (*Autoriteit Persoonsgegevens*) announced that it intended to undertake the supervision and investigation of the processing of personal data, among other responsibilities, to ensure compliance with the GDPR, whilst preserving legal certainty, comprehensibility, and enforceability. [44]

Whilst Professor Visser's proposed Article 7c continues to shape the debate on specialised civil recourse, the immediate regulatory landscape in the Netherlands is instead dictated by the rollout of the EU AI Act's horizontal obligations. Although these measures may provide some additional recourse for estates in the position of that of our deceased performer, they still do not assist in determining what deployers (such as the entertainment company) are training their AI models on. This dilemma is at the core of current developments in the French legislative framework.

4.1.1.4 France

The most recent French proposal was the reversal of the power dynamic between AI developers and artists. This would mean that their framework would have a (rebuttable) presumption of the use of infringing content (e.g. copyrighted material such as a performer's archival performance footage) in an AI model's training, rather than, for instance, a performer or their estate being tasked with proving such content had been used to produce an AI-generated copy. [45]

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[43] *Ibid.*; PONT, 'Cabinet: no copyright on face or voice in fight against deepfakes' (22 September 2025) <https://privacy-web.nl/en/nieuws/kabinet-geen-auteursrecht-op-gezicht-of-stem-in-strijd-tegen-deepfakes/> [accessed 17 December 2025].

[44] *Autoriteit Persoonsgegevens*, 'Tasks and powers of the AP' <https://www.autoriteitpersoonsgegevens.nl/en/about-the-ap/tasks-and-powers-of-the-ap> [accessed 29 July 2026]; *Autoriteit Persoonsgegevens* (n 42); Implementation Act for the EU AI Act (n 39), art 3.

[45] Barbara Casassus, French government considering AI bill 'to protect copyright and reward creators' *The Bookseller* (4 December 2025) <https://www.thebookseller.com/news/french-government-considering-ai-bill-to-protect-copyright-and-reward-creators> [accessed 17 December 2025].

The proposal followed the publication of the Voss Report in June 2025, which advocated for forcing AI developers, deployers, and other relevant stakeholders to disclose all copyrighted content used to train their AI models, an irrebuttable presumption if they fail to disclose, and a blanket ruling that all AI-generated content be held ineligible for copyright protection. [46]

Although the Darcos Bill (April 2026) proposed such a reversal of the burden of proof through a 'presumption-of-use' model, it was subsequently dismissed by the National Assembly in May 2026: as a result, estates and other rightsholders must rely on the aforementioned transparency obligations of the EU AI Act. [47] Such a rebalance of power would certainly help to address the key flaw in the case of our deceased performer's estate against the entertainment company, as the burden of proof would be shifted to the latter, who must disprove the former's claim that copyrighted content was used in the training of the AI model (and the production of the hologram).

4.1.2 USA: California's 'Right of Publicity'

In addition to the above European reforms and proposals, there are jurisdictions that utilise legislative frameworks, drafted well before the advent of AI, that are capable of being read to include protection from deepfakes and unauthorised uses of personal characteristics and performances: California is one such jurisdiction.

The California Civil Code (CCC) contains two relevant, separate rights: the first (section 3344 CCC) protects living persons from unauthorised commercial uses of their name, voice, signature,

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[46] Axel Voss (Committee on Legal Affairs, European Parliament), *Draft Report on Copyright and generative artificial intelligence - opportunities and challenges* (2025/2058(INI)) 13, para R, para 11, para 12 <https://www.europarl.europa.eu/doceo/document/JURI-PR-775433_EN.pdf> [accessed 17 December 2025].

[47] 'Darcos Bill Dismissed in the Assembly: Rights Holders Alone Against Article 53 of the AI Act' (ActuIA, 21 May 2026) <https://www.actuia.com/en/news/darcos-bill-dismissed-in-the-assembly-rights-holders-alone-against-article-53-of-the-ai-act/> [accessed 29 July 2026].

photographs or likeness. [48] The second (section 3344.1 CCC, the 'Celebrities Rights Act') - more pertinent to our hologram case - protects deceased personalities whose identity had 'commercial value' at the time of their death (or thereafter). [49] This protection is granted for 70 years post-mortem, and protects the same categories as section 3344, considering each as property capable of being transferred, licensed, inherited or enforced by the deceased individual's estate. [50]

Like the European jurisdictions, where AI has been used for non-commercial (often criminal) purposes, a claim would likely fail, but in these specific circumstances - an entertainment company clearly using their AI hologram for profit - a claim made by our performer's estate may have a greater likelihood of success if it were lodged in California.

5.1 Potential UK Reforms

Considering all of the above, it can be deduced that our performers' estate is in a very weak legal position to object to the distortion of the performer's legacy (a digital reanimation) through the CDPA. The prevailing question now is how best to reform the UK's current copyright framework to amend this. The following proposals, if implemented successfully into the UK framework, may provide more sufficient protection for estates.

1. **'Personality Right(s)'** [DK/NL/CA] over personal characteristics (face, voice, likeness etc.) encompassing the general public and performers (perhaps with a higher penalty for unauthorised commercial use). This could be in the form of a requirement to obtain consent for the creation and distribution of AI-generated content featuring protected personal characteristics.

[48] California Civil Code (CCC) s3344; Perot (n 22) 46-7.
[49] CCC (n 48) s3344.1; Perot (n 22) 47.
[50] CCC (n 48) s3344.1(b).

2. ***Posthumous* protection** [DK/NL/CA] of the above for 70 years post-mortem which is transferable to (and licensable, inheritable, and enforceable by) an estate.
3. **Transparency** [FR] enforced upon AI developers/deployers to ensure they disclose all copyrighted material used in AI training datasets. [51] This level of transparency would go beyond mere acknowledgment that a given output was AI-generated in order to rebalance the burden of proof in favour of estates.

6.1 Conclusion

When considered together, the above proposals admittedly make for a tall order. Some critics have even suggested it may be more efficient to entirely scrap section 9(3) CDPA (regarding computer-generated works) rather than attempt to reform it, due to the aforementioned issue of (lack of) liability for AI-generated indirect digital personas. [52] In conclusion, it can be said with certainty that CDPA performance rights currently offer insufficient protection against posthumous digital reanimations.

[51] UK Parliament, 'Protect creators' rights: require AI firms to disclose training data' (Petition 765199) <https://petition.parliament.uk/petitions/765199> [accessed 1 August 2026].
[52] Patrick Goold, 'The Curious Case of Computer-Generated Works under the Copyright, Designs and Patents Act 1988' (2021) 2 *Intellectual Property Quarterly* 119, 129; Arnold (n 15) 224.