

Whitepaper



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AI-related provisions in Cast- and Crew Agreements

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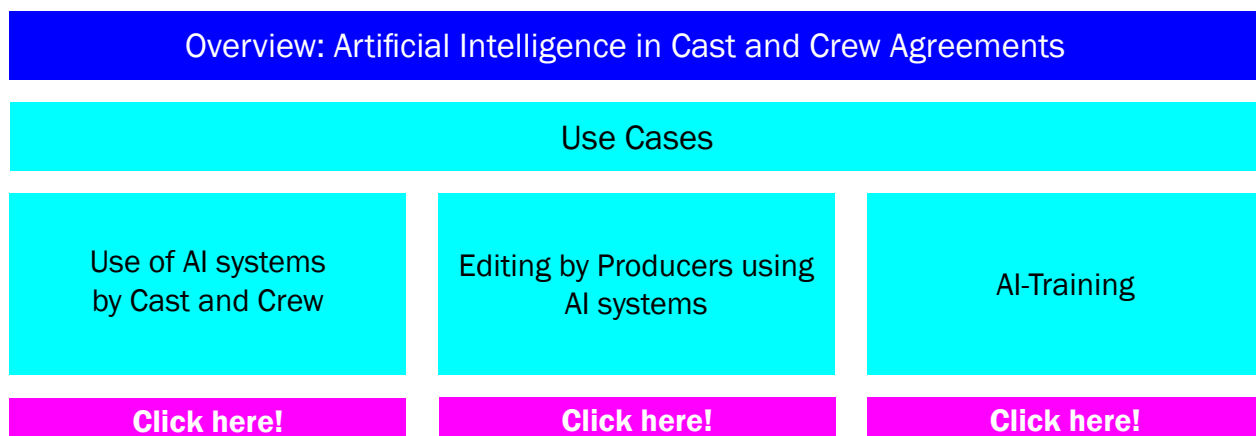
Introduction

The use of Artificial Intelligence (“AI”) in fictional and non-fictional productions is standard practice. AI-based systems are used throughout the entire production and distribution cycle. Examples range from translation tools and AI-assisted image and sound editing, through virtual set extensions, to data-driven forecasts of audience preferences. In addition, Producers are increasingly using AI systems to generate text, images, voices, music or entire scenes. At the same time, AI training is becoming increasingly relevant. It is particularly interesting to see to what extent high-quality film and series content can be used to unlock new opportunities.

As a result, German courts are now increasingly dealing with issues relating to copyright, neighbouring rights and personality rights in connection with AI-generated content. Initial judgments are those of the Hamburg Regional Court (310 O 227/23), the Munich I Regional Court (42 O 14139/24) and the Berlin II Regional Court (2 O 202/24). Although the highest courts have not yet provided definitive guidance on the disputed issues, early trends are emerging that warrant close attention in practice.

Against this backdrop, it is worth taking a look at existing agreement templates, which usually do not contain any provisions for AI-specific use cases and should therefore be updated. This Whitepaper outlines how agreements with Cast and Crew in particular can be adapted to the increasing influence of AI.

Overview: Artificial Intelligence in Cast and Crew Agreements



1. Preliminary question: Any Commissioners requirements?

Producers are not always free in drafting their Cast and Crew Agreements. Usually, they are subject to the requirements of broadcasters, streaming platforms or distributors – or must even use their templates. If one of the aforementioned contractual partners imposes requirements on a Producer regarding the use of AI, the Producer must also reflect these requirements in the Cast and Crew Agreements.

Typical requirements imposed on Producers may include:

- The use of AI is generally prohibited.
- The use of AI is permitted only for predefined purposes.
- The use of AI requires consent on a case-by-case basis.

Many contractual partners also demand comprehensive documentation of the AI systems used and a complete prompting history.

Depending on the specific requirements, Producers must therefore stipulate in their Cast and Crew Agreements whether the use of AI is generally prohibited, permitted only for predefined purposes, or subject to consent on a case-by-case basis. If there are contradictions with the Commissioners requirements, Producers are liable for prohibited use of AI by their Cast and Crew members but cannot themselves seek recourse.



2. Use of AI systems by Cast and Crew members

Both creative key positions and members of technical departments are increasingly (and often quite naturally) using AI systems. The question of whether and to what extent Cast and Crew members may use AI systems in performing their contractual services touches not only on efficiency and creativity but also on issues such as legal certainty, liability and transparency. This must be taken into account when drafting Cast and Crew agreements. Usually, two scenarios should be considered when AI systems are used in film production:

Scenario 1:

Cast and Crew members use AI as a tool for performing their services

Example: A screenwriter has parts of the script written by AI; the production designer has the first draft of a set-design created by AI.

If Cast and Crew members use AI systems as a tool for performing their services, the question arises whether the use of the AI-generated content (the “Output”) for the production is permitted at all. If, for example, the AI system used has been trained on copyright-protected or privacy-relevant information that is recognizable in the Output, the use of the Output is generally prohibited. In addition, AI-generated content must be avoided if restrictive T&C’s of the AI provider preclude full use of the Output in the production.

For most Cast and Crew Agreements, a general contractual prohibition on the use of AI combined with exceptions is likely a pragmatic way. Such permission can relate, for example, to an individual use case agreed between the parties, to a clearly defined purpose of use (e.g., purely technical optimisations without creative impact), or to AI systems that have been reviewed and approved in advance by the Producer. A corresponding provision creates legal certainty and counters any assumption of implied permission regarding the use of AI systems by the Producer. At the same time, it enables the Producer to allow controlled, project-specific AI use where it is appropriate.

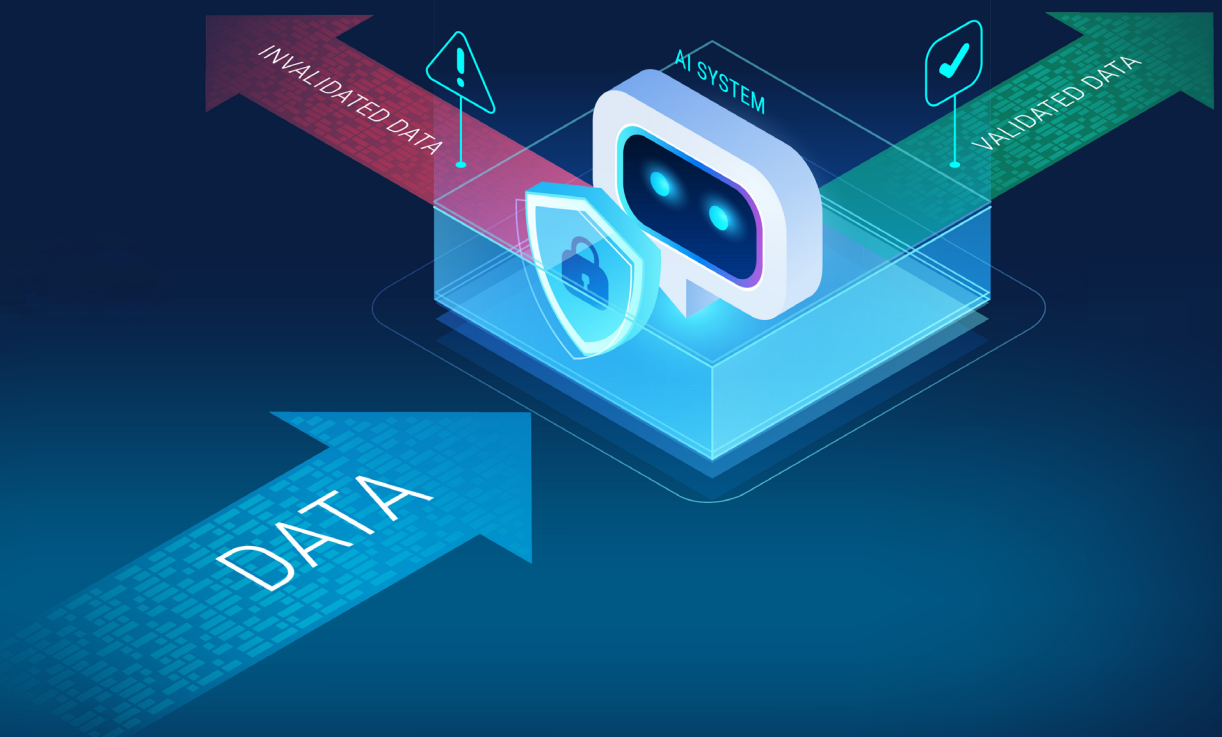
Scenario 2:

In performing their services, Cast and Crew members input the Producer's material into an AI system (possibly in combination with Scenario 1)

Example: An Editor inputs production-related footage into an AI system to have a sequence cut; an Actor inputs the script into an AI system to convert the written text into an audio file.

If Producer's material is input into an AI system, it is possible that the provider of the AI system used may use the Producer's potentially highly confidential material to (further) train its AI system. This not only risks a potential copyright infringement, the Producer also loses exclusive control over materials created for the production.

To avoid this situation, Producers should set clear requirements for Cast and Crew members regarding the input of production-related material into AI systems. These requirements may range from an obligation to document the AI systems used, the material input and the prompting history to a general prohibition on inputting production-related material into AI systems.



3. Editing of content by Producers using AI systems

Producers have a legitimate interest in editing using AI systems. Edits made by tools that can be classified as “artificial intelligence” are not new; they have been standard practice for years.

AI-assisted edits of actors’ contributions by Producers are, in principle, governed in the “**Annex on AI Use**”, which is an integral part of a German collective bargaining agreement called “TV FFS”. Where the TV FFS applies directly, the Annex on AI Use also becomes part of Cast Agreements. Where the TV FFS does not apply directly, it may be appropriate to include (only) the Annex on AI Use in the Cast-Agreement on a stand-alone basis. However, the legal permissibility of incorporating the Annex on AI Use in isolation (without the other collective bargaining provisions of the TV FFS) is not entirely undisputed. While an inference from Section 5.1 and fn. 1 of the TV FFS suggests that isolated incorporation might be permissible, the question is not clarified as a matter of law. Thus, a certain risk remains.

Irrespective of the effect of the TV FFS, minor edits by Producers using AI systems (for example, adjusting colour grading of scenes or noise suppression in audio) are likely covered by most catalogues of rights that are routinely attached to German Cast and Crew Agreements as an Annex – because, usually, Cast and Crew members grant Producers the right to adapt the work, which allows Producers to edit the material for the purpose of producing the production. Nevertheless, some additions to the rights catalogue are advisable in view of the advancing possibilities of AI use. It is advisable, for example, to name specific use cases for which editing by Producers is permitted, such as editing the Cast’s voice and facial expressions. If the Cast is to be synchronized into another language by adjusting lip movements (an impressive application example [here](#) the dubbing right should also be adjusted accordingly. Additional adjustments may also be required with regard to data protection requirements – for example, in the **privacy policy**.

Special Case: Digital Replicas

The creation of Digital Replicas of Actors using AI is highly controversial. Digital Replicas are intended to enable the virtual use of Actors in scenes that were actually filmed without their participation, giving the impression that these Digital Replicas are the Actors themselves. The use of Digital Replicas is not necessarily limited to productions in which the Actors in question are already appearing. Digital Replicas can also be used in other productions in which the Actors themselves are not Cast members 'in person' at all.

The creation and use of Digital Replicas are also regulated in the **Annex on AI Use** to the TV FFS and are subject to strict consent and further requirements.

In the vast majority of cases, the creation and use of Digital Replicas of Actors will not be covered by the standard German **rights catalogue**. If the creation and use of a Digital Replica is desired in an individual case and the relevant Cast Agreement is subject neither directly nor through individual contractual incorporation to the framework of the Annex on AI Use to the TV FFS, Producers and Actors must themselves contractually define the framework for the relevant AI use. In this respect, the provisions of the Annex on AI Use at least provide a guideline that the parties can use as orientation in their negotiations.



4. AI-Training

In AI training, an AI system is “fed” with a large volume of data in order to recognise patterns and learn from them. Audiovisual content is particularly relevant for AI training due to its volume and diversity of information. The financial value of this use is not yet clearly foreseeable. While initial licensing opportunities are already emerging, there is not yet an established licensing practice.

Under German law, the use of copyright-protected content for AI training purposes without consent may constitute copyright-infringing acts of reproduction and adaptation, as AI training involves incorporating content into datasets and using it for algorithmic adjustments. It is currently not conclusively clarified by the German highest courts whether this use is permitted by the statutory limitation provision in Section 44b (2) of the German Copyright Code (“text and data mining”). This raises the question of whether, and to what extent, an AI training right should be included in the rights catalogue of German Cast and Crew Agreements.

If Producers themselves have no interest in using Cast and Crew contributions for AI training, there is no need to include an AI training right in the rights catalogue of Cast and Crew Agreements. This can avoid lengthy (and unnecessary) negotiations with Cast and Crew. The situation may be different if Producers wish to sublicense their Production and its elements to third parties for AI training purposes. In that case, appropriate contractual provisions should be agreed on a case-by-case basis to regulate AI training options individually.

Conclusion

The use of AI systems in productions forces new challenges for contractual relationships between Commissioners, Producers, Cast and Crew. Templates that have existed for years are often no longer adequate to address these challenges. The Annex on AI Use, which is part of the TV FFS, contains important arrangements and also serves as a guideline for parties not bound by the TV FFS – yet, contractual adjustments remain necessary due to copyright, personality rights and data protection requirements.

The aim of modern agreement drafting is to ensure clarity and certainty regarding the use of AI systems at an early stage of production development. All parties should be aware of whether and to what extent they are legally and personally affected by the use of AI systems. This enables the use of innovative technical possibilities while safeguarding the legitimate interests of all parties involved.



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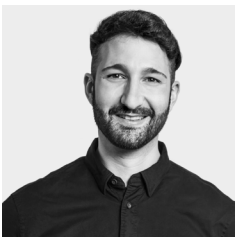
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