VOICE PROTECTION IN THE DEEP FAKE ERA

In recent months, several music tracks created through the use of artificial intelligence (AI) have been spreading on social media. Among these songs have been particularly popular the ones, both covers and unreleased, in which the singing is performed in the voice and style of established artists.

One of the first tracks which created uproar was a song produced by David Guetta, played during one of his concerts but never released, in which a sentence is spelled by Eminem's voice. The French producer explained that he used an AI programme to write the phrase in the rapper's style and another AI programme to record it with his voice.

A track with parts sung by Drake's voice and The Weekend's voice was equally controversial, partly due to the intervention of Universal Music (UMG). Although The Weekend's singing could be improved, Drake's was quite plausible, to such an extent that UMG itself intervened by putting pressure on Digital Service Providers (DSPs) to remove the song in question from their platforms.

This type of tracks is known as "Audio Deep Fake". The technology behind their creation is an AI that makes it possible to produce audio *files* in which the chosen voice reads phrases or sings musical texts without the participation of the individual to whom the voice belongs in the recording. The "cloning" of the voice is made possible by training the AI on recordings in which the voice to be replicated is present. The clearer and more numerous the audio files provided for training, the more likely the generated output will be. Audio Deep Fakes can be created either from an existing recording, *i.e.*, the AI essentially applies a filter to another individual's voice, or from a written input*, i.e.*, the AI creates the audio without an existing sound file*.

Although this technology is still under development and requires training over many hours of recordings, the possibility of exactly replicating an individual's voice raises legal issues that had never been addressed in a timely manner until now. Indeed, in the past, there was no instrument that could recreate a given human voice as accurately as artificial intelligence can. The only way in which an individual's voice could be replicated was through the work of imitators, who for the most part carried out a clearly parody-like performance aimed at entertaining the public without the imitation being carried out with the precise intention of leading the public to believe that the voice heard actually belonged to the imitated character.

The only case known to Italian caselaw in which an imitator lent his voice to create confusion in the audience was in the famous case of Branduardi and others v Industrie Buitoni Perugina (IBP) decided by the Court of Rome in 1993. In the case in question, IBP, not having reached an agreement with the singer-songwriter, had used as the background of an advertising campaign a song with a melody almost identical to Branduardi's song "*Colori*" and in which the "*way of singing and spelling out the lyrics*" recalled the latter's characteristic vocal style. Although the Court had nevertheless noted "*differences in timbre*", it established that "*the manner of*

singing and the vocal timbre, [appeared] *very similar to Branduardi's own*". The Court therefore found not only the integration of the case of plagiarism-infringement due to the obvious similarities between the two songs, but also the infringement of the exclusive right to exploit the character's fame, emphasising that, with regard to the term "fame", this must be understood as "*the characterising way of being of the distinctive elements of the name and image*". The Court, therefore, included in the present case the manner of singing in one of the distinctive elements of the singe's identity and, consequently, protected it through the institution of the right to image.

In the Italian legal system, there is no real right granting protection to the voice, but Article 10 of the Civil Code guarantees the protection of the image. The latter, through an extensive interpretation that jurisprudence and doctrine have adopted over time, can be understood as the protection of all those characteristic traits that make a subject recognisable, and this is possible not only through his physical features, but also through his voice.

The initial resistance of doctrine and jurisprudence to the recognition of a protection of the voice through the provisions relating to the right to the image was dictated by the impossibility of bringing the voice within the notion of image and by the considered insufficient capacity of the voice to identify itself. However, such an approach would cause an unjustified legal vacuum especially when an individual's voice is identifiable by the public, as it may be in the case of a singer. Now more than ever, in fact, the increase in music listening thanks to the numerous DSPs and the constant contact with artists thanks to new media allows the public to immediately trace the voice back to a specific individual.

With regard to the protection guaranteed by Article 10 of the Civil Code, relating to the image but, as emphasised, extendable to all those features that make a certain individual recognisable and define his identity and personality, the Italian legal system guarantees the interested party and likewise his parents, spouse and children to have recourse to injunctions and actions for damages in cases where the publication or exhibition of his image outside the cases established by law causes prejudice to his decorum or reputation. Articles 96 and 97 of Law 633/1941, the Copyright Law (Lda), also establish the cases in which an individual's image, always understood in a broad sense, may be lawfully used. Specifically, according to Art. 96 of the Lda, "*the portrait of a person*" may not be exhibited, reproduced or commercialised without the person's consent; however, consent is not required if the reproduction of the image is justified by fame or public office covered, or in the other cases stipulated in detail in Art. 97 Lda (the need for justice or the police, scientific, didactic or cultural purposes, or public events), unless "*the exhibition or commercialisation would be detrimental to the honour, reputation or even decorum of the person portrayed*".

Therefore, with reference to the case of the "cloning" of an individual's voice and its use within a piece of music, Italian law requires the prior consent of the person to whom that voice belongs, especially in the case of a singer, whose voice certainly constitutes a distinctive and characterising element of his or her identity.

In addition to the protection guaranteed by the Civil Code and the Lda, the voice can be protected as personal data under the General Data Protection Regulation (GDPR). In this regard, in 2022, the Authority for the Protection of Personal Data had opened an investigation against a company that had made available to the public an application that allowed written texts to be reproduced by means of Audio Deep Fake in order to verify "*potential risks that could arise from the misuse of personal data, such as voice*". In fact, personal data is information that identifies or makes identifiable, directly or indirectly, a natural person and which, under *privacy* legislation, requires the express consent of the data subject to be used.

One perspective to consider regarding the possibility for artists to exploit the AI of Audio Deep Fake is the opportunity to make "official" AI tools available to the public, *i.e.* accessible on their websites against the payment of a fee. By doing so, the artist's voice could be legitimately licensed and, through the sale of subscriptions or paid features, its use would be adequately compensated. This mode would not only allow artists to fully exploit the economic potential of this tool, earning money from musical creations in which their voice is used and creating a closer contact with the public, but would also allow them to keep the creations produced through artificial intelligence under control, as they are produced directly on their website. With this in mind, it can be expected that in the future, there will no longer be a need to identify which compositions were made directly by the artist and which through the use of artificial intelligence, but instead, which were made through the "official" AI tools and which were not.

In any case, it is necessary to emphasise that the use of audio deep fakes in the world of music offers artists approaches to creativity that were unimaginable until recently. These tools, in fact, would not only allow the imitation of the voice of well-known singers, enabling - for example - virtual collaborations between past and present and already deceased artists, but would also allow the experimentation of new sounds. Audio Deep Fake, in fact, could also be used to create new, unique and customised voices depending on the song composed.

This new technology would not, therefore, mark the end of the music industry and the complete replacement of artists and producers, as is often predicted, but, on the contrary, would allow talented artists to become even more productive and creative, while users without any artistic insight would only be able to produce low quality imitations of already known sounds.

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