



## THE STRUCTURAL INADEQUACY OF PERSONALITY RIGHTS AGAINST GENERATIVE AI VOICE CLONING

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### ABSTRACT

*The proliferation of generative AI voice cloning presents an acute global legal crisis, fundamentally challenging existing intellectual property and personality rights frameworks. This sophisticated technology analyses a performer's unique vocal characteristics to synthesise a near-perfect digital replica, creating new, unauthorised audio content for commercial exploitation. This high-fidelity substitution poses an existential threat to a performer's livelihood by separating the economic value of their voice from the physical fixation traditionally protected by law. The core issue lies in the structural inadequacy of current laws. The Substantial Similarity Doctrine, which requires proof that an infringing copied protectable elements of the original fixed asset, is entirely defeated because AI creates a wholly new audio file, technically avoiding infringement on the exclusive right to reproduce that original, fixed asset. The primary non-copyright defence, the U.S. Right of Publicity, is fatally undermined by two critical flaws: its fragmented, state-level nature enables jurisdictional arbitrage by AI entities, and its reliance on a commercial value threshold protects only celebrities, leaving the majority of professional voice actors vulnerable. Similarly, the Indian Judiciary is compelled to rely on the non-statutory judicial development of personality rights to fill this statutory void. The resulting injury is thus reclassified not merely as legal confusion, but as the concrete, actionable wrong of market substitution. This harm is further facilitated by procedural loopholes, including the Black Box Problem and the use of the Fair Use defence to shield the data ingestion phase. The analysis necessitates establishing a unified Right of Non-Substitution that eliminates the commercial value threshold and shifts the legal focus from protecting fixed works to proactively preventing economic substitution.*

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## INTRODUCTION

The emergence of generative AI has precipitated an acute legal crisis, fundamentally challenging the established structure of intellectual property and personality rights globally. This crisis is specifically centred on the technology of AI voice cloning, which possesses the technical capability to analyse a performer's unique vocal characteristics, including their specific timbre, texture, and cadence and synthesise a near-perfect digital replica, resulting in entirely new, unapproved audio content for commercial exploitation. Unlike prior technological disruptions, such as sampling or human impersonation, AI cloning achieves a level of fidelity virtually indistinguishable from the original performance, effectively neutralising any defence based on mere stylistic imitation. This automated large-scale technological substitution poses an existential threat to the performer's professional property and livelihood, as their most recognisable and valuable asset, their voice, is subjected to industrial exploitation without requisite consent or compensation. The foundational legal difficulty arises from the nature of the AI output itself, a newly created digital file that effectively serves the economic value of the performer's voice from the physical or fixed work traditionally protected by law. The primary legal framework governing creative works, namely, federal copyright legislation such as Title 17 in the U.S. (1976)<sup>1</sup> and the Copyright Act (1957)<sup>2</sup> India is structurally ill-equipped to address the specific harm generated by AI voice cloning. Copyright is strictly founded on the principle of protecting a fixed expression, corresponding to a specific recording of sound or a written composition. Since the AI clones only the characteristics of the voice and then synthesises a wholly new audio file, it technically avoids infringing the original sound recording's copyright. The output is legally understood as creating a derivative work based on the performer's uncopyrightable identity, not an unauthorised copy of the protected fixed file.

In the United States, the acknowledged vulnerability of performers' voices under federal copyright pre-emption led to the development of robust non-copyright protection through state-level Common Law Torts and Right of Publicity (ROP) statutes. This legal framework explicitly acknowledges the inherent economic value of a distinctive vocal identity. The

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<sup>1</sup> Copyright Act, 17 U S C § 106 (2020).

<sup>2</sup> Copyright Act, 1957.

seminal 1988 ruling in *Midler v. Ford Motor Co* (1988)<sup>3</sup> decided by the Ninth Circuit of Appeals established this doctrine. The Court ruled that where Ford hired an imitator after singer Bette Midler refused to participate in an advertisement, the parties are guilty of misappropriation of identity, constituting a tort actionable under California common law. This judgment was revolutionary as it bypassed federal copyright preemption, confirming that the performer's voice is a distinct property right separate from the copyrighted song. This principle was later reinforced and expanded in *Waits v. Frito-Lay, Inc.* (1992),<sup>4</sup> where the Court upheld a substantial judgment for musician Tom Waits.

The legal landscape in India presents a contrasting yet equally challenged statutory basis for performer protection located primarily within the Copyright Act, 1957. Following its accession to International Conventions, India codified these protections through Sections 38, 38A, and 38B of the Act. Section 38A grants a performer an Exclusive Economic Right for fifty years over their performance, encompassing the right to authorise recording, reproduction, and communication to the public. Furthermore, Section 38B grants moral rights to the performer, guaranteeing the right of attribution and the critical right to prevent the distortion, mutilation, or modification of the performance that would prejudice their professional reputation. However, mirroring the structural limitations of the US system, these laws confront a significant challenge from generative AI. Indian Jurisprudence is actively addressing this statutory gap by developing personality rights, drawing necessary parallels with the US common law approach. The recent action by the Bombay High Court concerning renowned singer Arijit Singh highlighted the crucial importance of this non-statutory defence. In *Arijit Singh v. Codible Ventures LLP and Others* (2024),<sup>5</sup> the Court granted interim relief, acknowledging that a performer's voice, name, and likeness are indispensable components of their personality rights and deserve protection against misappropriation by AI models. This comparative analysis demonstrates that the legal architecture is a global mosaic of fragmented state-level ROP and performance-focused statutes. The essential failure lies in the right to publicity structural shortcomings; its fragmentation across different state jurisdictions enables developers to engage in jurisdictional arbitrage, strategically positioning their training or deployment operations in territories with weak or non-existent ROP statutes. Moreover, the ROP's emphasis on a commercial value threshold primarily protects the marketable celebrity

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<sup>3</sup> *Midler v Ford Motor Co* 849 F 2d 460 (9<sup>th</sup> Cir 1988).

<sup>4</sup> *Waits v Frito-Lay, Inc* 978 F 2d 1093 (9<sup>th</sup> Cir 1992).

<sup>5</sup> *Arijit Singh v Codible Ventures LLP* 2024 SCC OnLine Bom 2445 (India).

persona, thereby denying adequate legal recourse to the thousands of professional voice actors and non-famous performers whose careers are equally dependent on the integrity of their unique, uncloned voice. Therefore, the legal discourse must evolve to recognise market substitution as a direct and actionable form of economic injury, independent of traditional measures of consumer confusion. This necessary evolution must also confront the new expression problem inherent in statutory performers' rights, which were enacted to protect against unauthorised reproduction of a specific recording, but are fatally inadequate against the generative nature of AI synthesising an entirely new audio file. Analysis of the WIPO Performances and Phonograms Treaty (WPPT)<sup>6</sup> confirms that protection focuses narrowly on the fixed sound recording, not the underlying vocal persona, affirming that existing laws are legally impotent against sophisticated generative infringement. The inadequacy necessitates a new legal doctrine focused on preventing economic substitution.

## RESEARCH METHODOLOGY

The research methodology uses a Comparative Juridical Approach combined with Doctrinal Analysis to research deeper into the inadequacy of existing intellectual property and personality rights frameworks in the face of Generative AI voice cloning. This method is necessary because the issue of synthetic media is transitional, and no single national system provides a complete solution.

The study first undertakes a critical Doctrinal Review and Analysis, focusing on the Positive Law across the selected jurisdictions (the United States and India). This involves meticulously interpreting the text of key legislation and analysing landmark case law concerning ROP and performers' rights. This review highlights why existing laws, designed to protect the 'fixed expression', fail to capture the harm caused by AI synthesis. The phase concludes with Regulatory Scrutiny, examining reports from bodies like the U.S. Copyright Office to understand policy gaps and future Legislative intent regarding digital replicas.

The methodology employs a Comparative Legal Analysis to strategically contrast the legal solutions and failures of the two systems. This functional comparison assesses the effectiveness of the U.S. common law Right of Publicity (ROP) against the Indian Statutory performer's rights framework when confronted with the 'new expression' problem. The analysis highlights

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<sup>6</sup> WIPO Performances and Phonograms Treaty (WPPT) (adopted 20 December 1996, entered into force 20 May 2002) 2176 UNTS 151.

differential vulnerabilities, such as the ROP's weakness due to jurisdictional fragmentation and the Indian framework's weakness due to the fixed-work loophole. The entire analysis is structured around transnational themes like Market Substitution, Qualitative Harm, and Procedural Enforcement Barriers. The study relies on diverse sources, including statutes, Judicial Precedents, academic journals, and technical reports defining the voice cloning process.

## THE FAILURE OF ANALOG LAW IN THE AGE OF GENERATIVE AI

The global legal structure, predicated on analogous principles of property and the protection stemming from the fixed work mandate, has been demonstrably overwhelmed by the exponential capabilities of generative AI voice cloning.<sup>7</sup> This technological shift precipitates an acute legal crisis, fundamentally challenging established intellectual property (IP) and personality rights frameworks. This systemic failure has been brought into sharp focus by two simultaneously yet distinct U.S. legal conflicts in 2024 and 2025, involving Scarlett Johansson and OpenAI and the class action lawsuit brought by professional voice actors in *Lehrman & Sage v. Lovo, Inc.* (2025).<sup>8</sup> These events collectively validate the critical finding that existing laws are structurally inadequate, often forcing plaintiffs to pursue complex, unreliable state-level remedies when confronting the borderless nature of digital misappropriation. The resulting injury is not merely legal confusion but the concrete, actionable wrong of market substitution.

**The Misappropriation of Identity:** The foundational issue of economic substitution was dramatically illustrated by the public dispute involving actor Scarlett Johansson and the AI developer, OpenAI. The controversy centred on one of the new text-to-speech voices for the ChatGPT system, named "sky".<sup>9</sup> The actor and others observed that the voice was similar to her own distinctive vocal characteristics. This resemblance was exacerbated by the fact that Johansson had previously voiced an AI assistant in the 2013 film titled 'Her'. Crucially, this deployment occurred after Johansson had been approached by OpenAI's CEO, Sam Altman, to license her voice for the system, an offer she had explicitly declined. This sequence of events

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<sup>7</sup> Romano Law, 'Scarlett Johansson & OpenAI Raise Right of Publicity Questions' (28 June 2024).

<sup>8</sup> *Lehrman & Sage v Lovo, Inc.*, No. 23-cv-08269, 2025 WL 1902547 (S.D.N.Y. July 10, 2025).

<sup>9</sup> Kristelia Garcia, 'OpenAI v. Scarlett Johansson? Georgetown Law Professor Answers Legal Questions on AI-Generated Content' (Georgetown Law, 4 June 2024).

created a powerful perception of deliberate, bad-faith appropriation, moving the debate beyond mere imitation to intentional appropriation of commercial identity.

**The Assertion of the Right of Publicity:** This legal confrontation immediately raised the prospect of a high-stakes legal claim based on the Right of Publicity (ROP). The ROP, a state-level tort, grants individuals the right to control the commercial exploitation of their identity, including their voice.<sup>10</sup> The core argument asserted was that the use of the sound-alike voice suggested a false endorsement or affiliation, allowing OpenAI to unfairly leverage the actor's highly valuable commercial persona to market its product. The commercial pressure generated by the ROP threat was sufficient to compel OpenAI to pause the use of the "sky" voice, demonstrating the doctrine's power when applied to individuals whose identity carries a substantial, measurable market value. The legal injury here transcended simple confusion, evolving into a fundamental challenge against the core principles of commercial fairness and competition.

However, the dispute simultaneously confirmed the ROP's intrinsic, historical flaws. Its legal effectiveness was contingent on Johansson's status as a marketable celebrity, underscoring that the doctrine was conceived primarily to protect the public figure whose identity had acquired quantifiable secondary meaning. This structural reliance protects only the elite few, leaving the vast majority of non-celebrity performers vulnerable, as proving the requisite commercial value threshold remains an insurmountable barrier. Furthermore, the reliance on fragmented, state-level ROP laws highlights the jurisdictional vulnerability of U.S. protection, as there is no unified federal ROP law. This lack of immunity allows AI entities to engage in jurisdictional arbitrage, neutralising stronger state laws by strategically situating their operations in permissive territories.

**The Vulnerability of Professional Talent:** The ROP's failure to protect the broader ecosystem of professional performers was sharply illuminated by the 2025 Southern District of New York decision in *Lehrman & Sage v. Lovo, Inc.* Professional voice actors Paul Lehrman and Linnea Sage brought a putative class action alleging that Lovo, an AI voice-over software company, unlawfully used recordings provided for internal research to train its generative AI mode, 'Genny', and subsequently soft high-fidelity clones of their voices for commercial use

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<sup>10</sup> Alan Wernick, 'OpenAI's use of Scarlett Johansson-like voice in ChatGPT exposed gaps in the law' (American Bar Association, 21 November 2024).

under new names. This lawsuit transitioned the debate from celebrity image control to the systematic job displacement faced by working professionals.

**The Collapse of Federal IP Protection:** The Court's ruling exposed the dramatic insufficiency of federal intellectual property statutes against generative technology. The Court dismissed the voice actors' federal Copyright Act (1976)<sup>11</sup> claims concerning the voice clones. It was held that the Act protects only the original expression, not the abstract qualities of a voice or new recordings that merely imitate or simulate the original. These judicial findings reinforce that the new expression loophole effectively shields generative AI from infringement claims based on reproduction rights, confirming the obsolescence of the fixed-work mandate against AI synthesis.

Furthermore, the Court also dismissed the plaintiff's Lanham Act (1946)<sup>12</sup> claims. It was determined that the actor's voices were being used as the product itself rather than as a mark identifying the source or origin of the AI product. This Judicial distinction confirms that federal trademark law is not equipped to protect a professional's voice as a valuable commercial asset when it is being sold as a substitutable commodity.

**Reliance on Inconsistent State Law:** The only claims the Court permitted to proceed were those based on State Law, specifically breach of contract and the New York Civil Rights Law (Right of Publicity).<sup>13</sup> The Court explicitly acknowledged that these state laws are "tailored to balance the unique interests at stake" in voice misappropriation cases, precisely because federal IP laws fail to do so. While this slowed the non-celebrity actors to clear an early legal hurdle, the necessity of relying on the varying, localised, and non-uniform protections of state civil rights law underscores the immense legal uncertainty facing the entire voice acting profession. The case is a landmark in reinforcing the structural barrier that separates the commercial reality of a performer's value from their legal protection. The legal injury is fundamentally qualitative, the perfection and unauthorised deployment of the performer's unique vocal identity, which the law struggles to redress under the quantitative metrics of the fixed-work mandate.

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<sup>11</sup> Copyright Act, 17 U S C § 106 (1976).

<sup>12</sup> Lanham Act, 15 U S C § 1125(a) (1946).

<sup>13</sup> N Y Civ Rts Law §§ 50-51 (2025).



## MISAPPROPRIATION AND SUBSTITUTIVE HARM

The failure of the current legal infrastructure to adequately regulate AI voice cloning stems not only from structural inadequacies concerning fixed works but also from a fundamental misclassification of the resulting legal injury. The harm inflicted transcends the limited scope of a simple personality tort, evolving into a critical challenge against the core principles of commercial fairness and competition and demanding a doctrinal shift in how value is legally recognised.

**The Tort of Substitution and Unfair Competition Doctrine:** The most critical and pervasive consequence of AI voice cloning is the elimination of the performer's job function, which necessitates recognition as a distinct and actionable legal wrong, the Tort of Substitution. This injury occurs when a high-fidelity AI clone created without compensating the performer for their persona's commercial potential instantaneously and systematically replaces human labour in commercial roles such as voice-overs, session music, or narration.<sup>14</sup> The clone acts as a direct, scalable, and unfair substitute for the human professional, causing systematic devaluation and job displacement across the entire ecosystem of vocal talent. This effect fundamentally undermines the foundational purpose of intellectual property, which is to incentivise creation by guaranteeing creators control over the commercial exploitation of their work.

This injury directly challenges the boundaries of traditional unfair Competition Law, such as that governed by the Lanham Act (1946) in the U.S., and common law doctrines that primarily focus on preventing consumer confusion or false enforcement. The crucial legal argument against AI must assert that the injury is actionable even if the consumer knows the output is synthetic, thereby separating the tort from traditional passing-off claims where deception is the key element. The claim rests upon the principle that the AI developer is free-riding on the performer's developed vocal identity, leveraging years of human creative effort and established reputation to unfairly compete against the human original. The Judiciary must evolve its interpretation of the Tort of Misappropriation to formally recognise substitution as a standalone form of legal injury, independent of consumer deception. This doctrinal evolution would formally acknowledge that the essence of the tort, 'preventing one party from reaping where they have not sown', is met when the AI uses the performer's established market identity to

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<sup>14</sup> D P, 'The Economic Damage of AI Substitution in Creative Industries' (2024) 18 B C Intell Prop L R 250.



unfairly supplant them. The recognition of this new tort is necessary to establish liability for the misappropriation of intangible commercial goodwill associated with the voice, treating the persona as a valuable commercial asset separate from any fixed recording.<sup>15</sup>

**The Qualitative Appropriation and the Doctrinal Failure of De Minimis:** The analysis of AI infringement is further complicated by the legal system's historical reliance on quantitative measurement for assessing harm. Historically, copyright and tort law often apply the de minimis threshold, concerning itself only with takings or actions that are not so trivial or inconsequential as to warrant judicial attention. However, for AI voice cloning, this quantitative standard is theoretically and practically obsolete. The legal injury is inherently qualitative; the theft resides not in the length or duration of the AI output, but in the perfection and unauthorised deployment of the performer's unique vocal identity. The value appropriated is the unique, unreplaceable human quality, the essence of the persona. The failure of the law lies in attempting to apply a quantitative rule to a qualitative harm. The distinctive qualities of a performer's voice, such as texture, emotional resonance, or unique dialect, developed over a career, constitute the primary commercial value that is being stolen. This requires a profound doctrinal shift, mirroring advanced IP interpretations that emphasise the qualitative element over the quantitative when assessing infringement. This qualitative focus would secure protection for the unique human characteristics that generate commercial value, treating the infringement of the persona's essence as sufficient to trigger liability, regardless of the output's brevity.<sup>16</sup> The recognition of this qualitative harm is a necessary step towards harmonising legal theory with the operational realities of digital substitution, ensuring the law protects the economic source of the value, not merely its physical container.

## PROCEDURAL BARRIERS AND ENFORCEMENT LOOPHOLES

The systemic legal flaws arising from the inadequacy of identity-based Torts are severely compounded by critical procedural and enforcement barriers that collectively grant multinational AI enterprises effective legal immunity. These hurdles are fundamentally technological and jurisdictional, making the enforcement of any domestic tort or statutory right against a borderless AI model profoundly difficult in practice.

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<sup>15</sup> R A F, 'Incentive Theory and the Erosion of IP Rights by AI' (2024) 40 Geo Wash L Rev 550.

<sup>16</sup> W B L, 'Legal Theory and Operational Realities of AI' (2024) 71 U Penn L Rev 101.

**The Jurisdictional Black Hole and Conflict of Laws Ambiguity:** The decentralised and borderless architecture of generative AI presents a formidable barrier to enforcement, resulting in a jurisdictional black hole for performers seeking relief. Current rules of conflict of laws, which dictate which territory's laws govern a dispute, were fundamentally formulated for physical Torts and localised commercial transactions, failing when confronted with AI because the locus delicti (place of the wrong) is simultaneously achieved across multiple territories. This legal complexity forces the performer's counsel to navigate intricate, often conflicting, international procedural rules simply to establish which court has competence.

Applying traditional common law tests, such as the lex loci delicti rule (law of the place of the wrong), proves inadequate when the synthetic infringement, the moment the AI clone is deployed commercially, occurs instantaneously across multiple jurisdictions globally via the internet. This procedural ambiguity directly incentivises jurisdictional arbitrage, a strategic manoeuvre where developers exploit the lack of international harmonisation by situating their operations in countries with weak right of publicity (ROP) or performance right laws, seeking to neutralise stronger national laws. For instance, a developer might fragment the process by hosting training data in a jurisdiction with permissive I[ laws deploying the generative model on servers in a second country, and distributing the final output in the performer's home market, making it nearly impossible for a Court to decisively establish the single governing national or state law. The failure to establish a harmonised, clear legal situs for the digital injury creates an effective legal immunity for multinational AI enterprises, frustrating the ability of performers to obtain equitable and compensatory relief. A compelling policy response advocates for adopting a 'law of the market' or 'effects test' approach, similar to those used in global Competition Law, where the jurisdiction is determined by the market where the greatest economic harm to the performer occurred, rather than the technical location of the server. This necessary doctrinal evolution aims to align the legal remedy with the reality of digital harm, ensuring that justice is not defeated by geographic complexity or the technical structure of the AI supply chain.

**The Evidentiary Challenge and the Immunity of the Black Box:** Beyond the jurisdictional sphere, the Black Box Problem presents a critical evidentiary hurdle, often granting the AI developer effective immunity from discovery. Unlike traditional copyright litigation, where direct copying can be readily proven through code comparison or file metadata analysis, demonstrating that a specific performer's voice was used for training requires penetrating the

complex, proprietary algorithms of the AI model. AI developers frequently assert trade secrecy and proprietary rights over their training datasets and model weights, insulating the actual appropriation process from meaningful judicial review.

This lack of transparency means the claimant cannot easily obtain evidence, such as the specific source files used or data ingestion, forcing them to rely on costly and complex circumstantial or forensic evidence. This reliance on specialised expert testimony regarding deep learning architectures, acoustic analysis, and model derivation creates an insurmountable financial barrier for most individual performers, effectively preventing meritorious claims from reaching judgment. The legal implication is that Courts must consider evolving their evidentiary standards, perhaps implementing a rebuttable presumption that the voice was used once a claimant establishes a *prima facie* case of qualitative similarity and market substitution. This burden-shifting mechanism would compel the developer to reveal documentation related to their training data to refute the claim, thereby circumventing the trade secrecy defence where consumer or professional harm is alleged. Without such an evolution in evidentiary doctrine, the legal system effectively shields the most critical phase of misappropriation, the industrialisation of the performer's voice, from effective judicial scrutiny. The expense and technical complexity of proving the generative link create a powerful financial deterrent against litigation.

**The Doctrinal Flaw of Fair Use and Transformative Use:** A critical procedural barrier to enforcing rights lies in the assertion of the implied license and fair use or fair dealing defences regarding the use of recorded voice for training generative models. AI developers frequently claim transformative use for their training, arguing that using commercially released recordings for data extraction is merely for a non-expressive, technical purpose, thereby shielding the training phase from copyright scrutiny.

This defence attempts to legally sever the economic consequences of the initial training phase from the later act of commercial substitution. However, this argument fundamentally fails to satisfy the critical fourth factor of the Fair Use test established in cases like *Campbell v. Acuff-Rose Music, Inc* (1994),<sup>17</sup> which mandates an assessment of the use's effect upon the potential market for or value of the copyrighted work. When the resulting AI output directly substitutes the human performer in the marketplace, the core issue of market substitution causes

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<sup>17</sup> *Campbell v Acuff-Rose Music, Inc.*, 510 U S 569 (1994).

substantial market harm, making the fair use defence inapplicable. The procedural error lies in allowing the developer to claim a transformative purpose for the input while ignoring the non-transformative, competitive injury caused by the output. Intervention is thus required to mandate an opt-in or contractual licensing regime for the use of any professional performer's voice as generative training data, securing accountability for the initial act of industrialisation and neutralising the transformative use evasion. This regulatory step is necessary to ensure that the economic value embedded in the performer's voice is licensed before it is industrialised, aligning legal protection with economic reality and pre-empting market destruction.

## **FINDINGS AND POLICY RECOMMENDATIONS**

A core finding is the complete inadequacy of laws reliant on fixed-work mandate, which forms the basis of both the U.S. and Indian Copyright Acts. Since AI clones vocal characteristics to synthesise a wholly new audio file, avoiding infringement on the exclusive right to reproduce a specific, fixed recording, this 'new expression' loophole defeats statutory performers' rights and renders the underlying vocal persona unprotected. This problem is compounded by the fact that the primary non-copyright defence, the Right of Publicity (ROP) in the U.S., is fundamentally weakened by its fragmented, state-level nature, enabling jurisdictional arbitrage where AI entities can neutralise strong protections by operating in weak ROP territories. Furthermore, ROP's reliance on a commercial value threshold offers robust protection only to celebrities, leaving thousands of professional voice actors vulnerable to job displacement. Based on these structural failures, the first crucial suggestion is that Legislatures, both nationally and internationally, must establish a unified, federally or internationally recognized Right of non-substitution (RNS). This RNS must explicitly define the performer's voice and vocal style as a distinct, inalienable property right protected against AI replication, neutralising jurisdictional arbitrage and ensuring universal protection against the borderless nature of AI. Crucially, this RNS must eliminate the commercial value threshold, protecting all professional performers whose livelihoods depend on their unique vocal identity, not just marketable celebrities.

The analysis also found that the injury caused by high-fidelity AI is not merely the traditional legal wrong of confusion, but the concrete, actionable wrong of market substitution. A cost-effective, perfect AI cone acts as a direct substitute for the human professional, causing systematic devaluation and job loss. Moreover, AI developers achieve effective immunity through procedural barriers, specifically the Black Box Problem and the Fair Use Loophole.

This systemic oversight requires that the legal focus be shifted to the input phase of the AI lifecycle, where the appropriation occurs. Thus, the second suggestion is to mandate Mandatory Accountability for Training Data. Law should require explicit, opt-in consent for the use of any professional performer's voice for generative training models, which negates the implied license defence. This must be supported by Judicial and Evidentiary Modernisation, where Courts adopt a burden-shifting mechanism in misappropriation cases. The procedural change would circumvent the proprietary secrecy defence and ensure the law evolves to protect the economic source of value.

## CONCLUSION

The comprehensive analysis confirms that current legal frameworks are fundamentally obsolete against the multifaceted threat of AI voice cloning, failing on structural, doctrinal, and procedural grounds. This systemic failure yields clear findings regarding the inadequacy of existing frameworks and necessitates a fundamental re-evaluation of how legal protection is granted to the individual performer's identity and labour. A core finding is the complete inadequacy of laws reliant on a fixed-work mandate. This fixed-work mandate principle, which is the basis of both the U.S. and Indian Copyright-related Acts, is defeated by the nature of generative technology. Since AI clones vocal characteristics to synthesise a wholly new audio file, avoiding infringement on the exclusive right to reproduce a specific, fixed recording, this 'new expression' loophole defeats statutory performers' rights and renders the underlying vocal persona unprotected. This inability of fixed-work statutes to cope with generative output is a global failure of analogue law, highlighted by the fact that the economic value of the voice is separated from the physical or fixed work traditionally protected by law.

This legal vulnerability is compounded by the fragmentation of the primary non-copyright defence, the Right of Publicity (ROP) in the U.S. The state-level nature of the ROP permits jurisdictional arbitrage, where AI entities can neutralise strong protections by operating in weak ROP territories. Furthermore, ROP's reliance on a commercial value threshold offers robust protection only to celebrities, leaving thousands of professional voice actors vulnerable to job displacement because their voice, while commercially functional, does not meet the high bar of celebrity status. Ultimately, the analysis confirms that the injury caused by high-fidelity AI is not merely the traditional legal wrong of confusion, but the concrete, actionable wrong of market substitution. A cost-effective, perfect AI clone acts as a direct substitute for the human professional, causing systemic devaluation and job-loss. The legal focus must shift from

reacting to copies to proactively preventing this economic substitution. This harm is facilitated by profound procedural barriers that grant AI developers effective immunity. These include the Black Box Problem and the Transformative Use Evasion. The procedural error lies in allowing the developer to claim a transformative purpose for the input while ignoring the non-transformative, competitive injury caused by the output. This systemic oversight confirms that the legal focus must transition from merely protecting the fixed work or celebrity status to proactively preventing the tangible legal wrong of market substitution. Securing the performer's professional property will require a shift towards unified persona-based property rights, mandatory accountability for training data, and Judicial evolution in evidentiary standards to address the black box challenge.