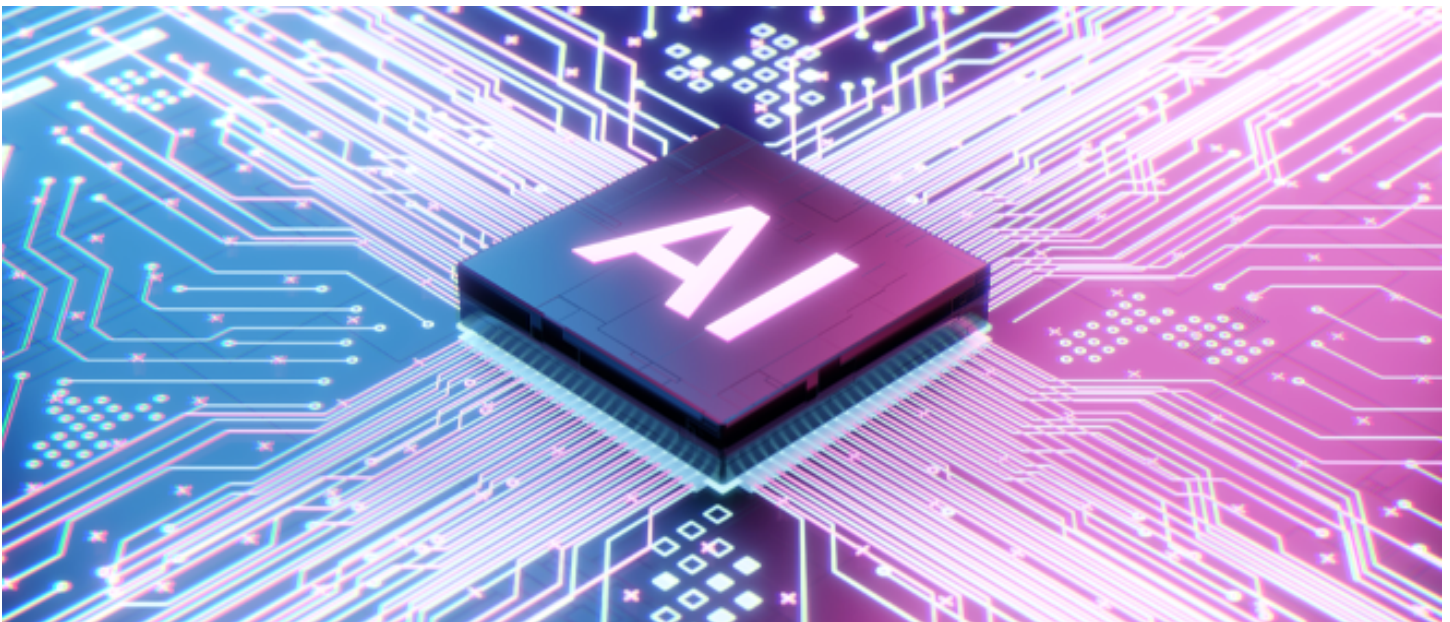



AI Law and Policy

Legal Considerations Involving Artificial Intelligence

Lovo “Voices” Opposition to Suit Over “Kitchen-Sink” Approach to Alleged AI Voice Cloning



By James Gatto on December 12, 2024

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Defendant **Lovo** has moved to dismiss an **amended complaint** alleging that the voice actor Plaintiffs’ voices were unlawfully cloned by Defendant Lovo’s AI Voice Generator. Plaintiffs allege that Lovo’s CEO stated on a podcast that: “voice cloning refers to a virtual copy of a real person’s voice. Rather than using machine learning to synthesize an original AI voice, voice cloning technology replicates an existing human voice.” Allegedly, in a little over a year, LOVO users have created over seven million voice-overs including many based on narrations allegedly “stolen” from real actors.

The amended complaint sets forth sixteen claims ranging from misuse of voice under NY state law, deceptive practices, false advertising, Unfair Competition, False Affiliation and False Advertising in Violation of Section 43 of the Lanham Act, unjust enrichment, conversion fraud, breach of contract, copyright and contributory copyright infringement.

Plaintiff Lehrman alleges that he was contacted (by a Lovo employee) via the Fiverr website to provide voice recordings for “research purposes.” Based on alleged communications assuring him that the recordings would not be used publicly but for internal research purposes only, he agreed to provide 104 recordings for \$1200. He claims he was never told this his voice would be used to train Lovo’s AI tool, that it would be cloned, licensed, and used commercially.

Plaintiff Sage received a message on the Fiverr platform (from the Lovo CEO) offering her a contract to produce and record test scripts for radio ads. Before agreeing, she asked what the voice recording would be used for and was allegedly told for test scripts for radio ads, that they will not be disclosed externally and will only be consumed internally, so it would not require rights of any sort. Ms. Sage was paid \$400 for the job by Lovo.

Plaintiffs later heard Mr. Lehrman’s voice used on a podcast but without referencing his actual name. Rather, the “speaker” was an AI bot. They later learned that a clone of Mr. Lehrman’s voice was offered via the Lovo platform under a pseudonym “Kyle Snow” and allegedly this voice was used in the podcast. Ms. Sage discovered that Lovo allegedly had been using, manipulating, and editing her voice in multiple promotional and commercial ways.

Lovo’s **motion to dismiss** colorfully alleges that Plaintiffs use a “kitchen-sink” approach to their amended complaint by adding eight causes of action and 159 paragraphs (doubling its size) to see if something will stick if they use enough verbs, adjectives, legal terms, irrelevant facts, and conclusory allegations. It further alleges that:

- with all the bluster, there are very few new relevant facts, nothing which cures the problems with the Original Complaint, and nothing that plausibly states a cause of action. Plaintiffs continue to try to tell a tale filled with pathos and the woes of artificial intelligence, and concerns about the impact of artificial intelligence on a particular industry. However, their story and concern do not relate to Lovo’s interactions with

named Plaintiffs and fails to state an actionable claim despite their desperate attempt to do so.

As to actual substance, Lovo alleges that plaintiffs uploaded their voices to **Fiverr** (an online marketplace that connects freelancers with clients looking for digital and creative services and which is not a party to the suit) but didn't tell the court that the Fiverr **Terms of Service** provide copyright licenses to buyers on the Fiverr platform (like Lovo).

The terms, in part, state: "Buyer is granted all intellectual property rights, including but not limited to, copyright in the work delivered from the Seller, and the Seller waives any and all moral rights (to the extent permitted by applicable law) therein. Accordingly, the Seller expressly assigns to the Buyer the copyright in the delivered work."

The terms also address Voice Overs. It states, in part:

- For Voice Over Gigs, when the work is delivered, and subject to payment, the Buyer is purchasing basic rights (which means the Buyer is paying a one time fee allowing them to use the work forever and for non-commercial purposes). If you intend to use the Voice Over to promote a product and/or service (with the exception of paid marketing channels), you will need to purchase the Commercial Rights (Buy-Out) through Gig Extra. If you intend to use the Voice Over in radio, television and internet commercials, you will need to purchase the Full Broadcast Rights (Buy-Out) through Gig Extra.

The Voice Over and Commercial Buy-Out provisions state, in part:

- When purchasing a Voice Over Service, the Seller grants you a non-commercial, perpetual, exclusive, non-transferable, worldwide license to use the purchased Voice Over. This excludes any commercial use, including radio, television and internet commercial spots.
- By purchasing a Commercial Rights (Buy-Out)... the Seller grants you with a license to use the Voice Over for any commercial promotional and non-broadcast purposes for such period agreed with the Seller (and unless agreed otherwise – in perpetuity). Commercial, promotional and non-broadcast purposes means any business related use for the creation of, or to promote a for-profit product or service (with the

exception of paid marketing channels), such as (by way of example): explainer videos posted to company websites, social networks or email campaigns, audiobooks, podcast intros, and strictly excludes any illegal, immoral or defamatory purpose.

- By purchasing a Full Broadcast Rights (Buy-Out) ... the Seller grants you with a license for full broadcasting for such period agreed with the Seller (and unless agreed otherwise – in perpetuity). Full Broadcasting includes internet, radio, and TV “paid channels”, such as (by way of example), television commercials, radio commercials, internet radio, and music/video streaming platforms, and strictly excludes any illegal, immoral or defamatory purpose.
- By purchasing a “Commercial Use License” ... the Seller grants you a perpetual, exclusive, non-transferable, worldwide license to use the purchased delivery for Permitted Commercial Purposes. For the avoidance of doubt, the Seller retains all ownership rights. “Permitted Commercial Purposes” means any business related use, such as (by way of example) advertising, promotion, creating web pages, integration into product, software or other business related tools etc., and strictly excludes any illegal, immoral or defamatory purpose.

Obviously, there are several factual issues here, including whether any of the inducements for Plaintiffs to provide voice recordings via the Fiverr platform by Lovo employees were misleading and how the terms of the Fiverr platform apply to the facts here. Putting aside factual and procedural issues, some of the legal issues raised in Lovo’s motion to dismiss are:

- the NY state claims do not prohibit use of digital replicas or use of the recordings, and Lovo did not use Plaintiffs’ names;
- the claims for violations of the Lanham Act should be dismissed because there is no alleged trademark and there cannot be a claim for a fictitious voice
- the claim for conversion fails since voices cannot be converted, Plaintiffs never owned or possessed the cloned voices, and Plaintiffs did not allege the alteration or loss of ownership of the recordings;
- the claims related to copyright infringement fail since Lovo has a license via the

Fiverr Terms of Service, Plaintiffs did not register the copyrights prior to the Original Complaint, there is no plausible allegations of infringement, including that using recordings to train AI and create cloned voices cannot be infringing.

The issue of AI-based voice cloning has received much legal attention. In November 2023, the FTC issued guidance **Preventing the Harms of AI-enabled Voice Cloning**. The guidance highlighted some of the potential harms with voice cloning and made clear that it is prepared to use all of its tools to hold bad actors accountable, including law enforcement actions under the FTC Act, the **Telemarketing Sales Rule**, and other authorities.

In March 2024, Tennessee enacted the so-called ELVIS ACT “**Ensuring Likeness, Voice, and Image Security (ELVIS) Act of 2024**”, which broadened the existing state’s statutory right of publicity to address various AI issues. The law went into effect on July 1, 2024.

In July, 2024, the US Copyright Office issued a report entitled **Copyright and Artificial Intelligence Part 1: Digital Replicas**, which addressed the use of AI and other digital technology to realistically replicate an individual’s voice or appearance. The report provides a useful summary of the existing legal frameworks and addresses the need for new federal legislation to address identified shortcomings of the existing laws. One of the perceived issues was the patchwork of state laws on right of publicity.

As we addressed in a prior **post**, within days of the Copyright Office report, the ‘NO FAKES’ Act was introduced by a bi-partisan group of senators. The draft ‘NO FAKES’ Act proposes to establish a federal intellectual property right in one’s voice and visual likeness, echoing recommendations in the Copyright Office’s report.

We will see if the amended complaint survives the motion to dismiss. If so, we will be following this case as it moves forward. Regardless of the outcome of this case, the issue of voice cloning will not go away.

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