



MUSIC WITHOUT BORDERS:

Hot Legal Topics in the Music Business After the
First Quarter of the 21st Century



Avatars and AI
in the Film and
Music Industry

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» Introduction

Will we witness a digital resurrection of Elvis Presley, Marilyn Monroe, Tupac Shakur, or James Dean? Will we soon be watching new films starring them or even hearing new songs by them? What once belonged to the realm of science fiction is now, thanks to artificial intelligence (AI), advanced visualization technologies, and data-driven animation, becoming reality – manifesting in the form of avatars.

In the film and music industry, this opens up a new creative and economic playing field with enormous potential. The economic magnitude is exemplified by the show *ABBA Voyage*, which has been running since 2022 in the purpose-built ABBA Arena in London. The four band members perform as digitally “rejuvenated” avatars (so called “ABBAtars”). The show runs seven times a week and generates more than 2 million USD in weekly revenue.^[1]

Another example is the science fiction film *Mickey 17*, starring Robert Pattinson and released this year, which uses advanced digital avatar doubles to explore new forms of performance. This technology enables actors to be used permanently in licensable reproductions – even potentially beyond their death.

Given the high economic momentum and the growing significance of avatars, central legal questions arise. Questions

that this article seeks to address:

- How are avatars legally protected, and who holds the rights to them? Does copyright and trademark protection apply (see Sections II.1 and II.2)?
- To what extent must personality rights be observed (see Section II.3)?
- Do transparency obligations under the AI Act apply to avatars (see Section III.)?

The key findings in response to these questions are summarized in Section IV. The legal analysis is based on German and EU law.

» How Are Avatars Legally Protected, and Who Holds the Rights?

1) What Is an Avatar?

An avatar is a digital representation or artificially created depiction of a real or fictional person. Technically, an avatar can be composed of 3D models, motion-capture data, synthetic voice, facial and speech synthesis, as well as algorithms. It can be entirely newly created or based on real personal attributes.

In addition to avatars of real individuals, fictional and fully synthetic avatars are becoming increasingly significant. The most well-known example is the Japanese virtual singer *Hatsune Miku*, who has already completed several international concert tours.

Her YouTube channel has over 2.5 million subscribers, and she generates an estimated annual revenue in the tens of millions solely through merchandising and performances.

[2] Similar trends can be observed with virtual influencers such as *Lil Miquela*, who collaborates with global fashion brands like *Prada* or *Calvin Klein* and has millions of followers on Instagram.[3]

The entertainment industry acts not only as a driver of innovation but also as a legal testing ground for avatars. Digital identities challenge traditional protection regimes – from copyright to personality rights. Moreover, fictional avatars have already transcended the boundaries of the entertainment sector: they are increasingly used in digital advertising campaigns, banking and customer service, e-learning, gaming, or as AI-powered companions in healthcare settings.

2) Copyright

(a) Works

Is an Avatar a Copyright-Protected Work?

In Germany, an avatar enjoys copyright protection if it meets the requirements of a “work” under the German Copyright Act, i.e. if it constitutes a personal intellectual creation.^[4] Protection may be granted in particular as an “artistic work.”^[5] For complex avatars – especially those with a distinctive appearance, facial expressions, clothing, or movement patterns – this threshold is regularly exceeded.

To the extent that the avatar exhibits certain character traits, protection may go beyond a specific visual depiction and extend to the figure as a whole. While there is no case law yet in Germany specifically addressing the copyright protection of avatars, existing case law regarding comic book characters can be applied. Courts have repeatedly recognized the work character and protection of fictional characters with unique traits. For example, the German Federal Court of Justice ruled the following in a decision concerning the famous comic characters *Asterix* and *Obelix*:

“While there is no case law yet in Germany specifically addressing the copyright protection of avatars, existing case law regarding comic book characters can be applied”

“The copyright protection of the comic figures *Asterix* and *Obelix* is not limited to specific drawn representations in various postures, with consistently depicted, creatively distinctive costumes and hairstyles. Protection also extends to the underlying characters themselves. While not all fictional characters are eligible for copyright protection, *Asterix* and *Obelix* have been shaped into particularly distinctive comic personalities through a unique

combination of external features, characteristics, abilities, and typical behaviors, and they appear in the stories accordingly in characteristic ways.”^[6]

It is essential from a copyright perspective that the avatar is created by a human; otherwise, it cannot qualify as a personal intellectual creation.^[7] If an avatar is

generated solely by AI, it does not constitute a “work” under copyright law. To date, there appears to be global consensus that a copyright-protected work must originate from a human creator.[8] AI-generated works are only eligible for protection if a human has significantly directed the creative process.

Who Holds the Copyright in the Avatar, and What Is the Scope of Protection?

Under German law, the copyright generally belongs to the person who created the work.[9] In the case of avatars, this is typically the designer or animator, or the creative team. If the avatar is the result of a collaborative effort, co-authorship applies, and the team members are jointly entitled to exploit the rights, unless otherwise agreed.[10]

If the avatar qualifies as a copyright-protected work, the creator holds both moral rights[11] and exploitation rights[12]. Without the creator’s consent, third parties may not reproduce, publicly display, modify, or otherwise use the avatar. The scope of protection may cover not only the avatar’s static visual features (e.g. design, clothing, visual identity), but also its characteristic movements, poses, animated sequences, or audiovisual performance.

As mentioned above, case law concerning the protection of comic characters can also be applied to determine the scope of protection for avatars. Modifications or adaptations of a work (like an avatar) may only be published or exploited with the author’s permission. If a new work is created and maintains a sufficient distance from the original, it is not considered an adaptation or transformation.[13]

To assess whether a work is merely an adaptation, case law requires a comparison between the original and the new work. The decisive factor is the extent to which original, creative elements have been adopted. Ultimately, the decision is based on an overall impression of both works, taking into account all adopted creative features in their entirety.[4]

(b) Neighbouring (Related) Rights

In addition to copyright protection, avatars may also fall under neighbouring (related) rights, particularly when they digitally replicate or reconstruct real performances.

If an avatar is based on an acting, singing, or dancing performance – such as through motion capture or voice capturing – that performance may be protected under related rights. For example, if an actor’s facial expressions or a singer’s voice performance is digitally incorporated into an avatar (e.g. Andy Serkis as *Gollum* in *The Lord of the Rings*, or Zoë Saldña as *Neytiri* in *Avatar*), this constitutes the use of a performance, which can require a license.[15]

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In addition to performers' rights, producers may also acquire related rights. For instance, if the voice of a deceased actor or singer is reconstructed using AI and performed as an avatar, this may constitute a new recording and create an independent related right for the film or phonogram producer.^[16]

3) Is Trademark Protection Available?

Avatars can obtain trademark protection in various forms. An avatar's name can be registered as a word mark. In addition, visual elements of the avatar – such as its face, outfit, or silhouette – may be protected as a figurative mark or even a 3D mark. It is also conceivable to protect characteristic positions or movement patterns as position or motion marks, or signature sounds as sound marks.

The goods and services for which a mark is registered are typically those that are directly marketed by the avatar (or the underlying business entity) or are otherwise related to its field of activity. Well-known avatars acting as virtual influencers (e.g. *Lil Miquela* or *Noonnoouri*) have secured trademark protection for cosmetics, clothing, advertising, and entertainment services, among others.

Trademark infringement claims may arise when a sign identical or similar to a registered trademark is used for identical or similar goods or services, creating a likelihood of confusion.^[17] In the context of avatars, such confusion might occur, for instance, if a third party uses a similar avatar (in terms of design, name, or movement) in a game, music video, or commercial.

The scope of protection depends on the distinctiveness of the mark. For very well-known virtual characters (e.g., *Super Mario*, *Pokémon*), protection can extend even to dissimilar goods and services, if the used sign takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark.^[18]

4) To What Extent Must Personality Rights Be Observed?

For avatars depicting real individuals, personality rights must be taken into account. These rights are relevant both during the creation of the avatar (rights clearance) and in its later use (licensing). In contrast, purely fictional avatars are not protected by

personality rights, as they do not represent real people. Their protection falls solely under intellectual property law (see above).

In Germany, the general right of personality protects an individual's right to human dignity, personal development, control over their likeness and character image, spoken word, and safeguards against reputational harm, false representation, or invasion of privacy.[19] Although not codified in statute, the right is consistently derived from the German Constitution through case law.[20] The right to one's own image is expressly regulated in a special statute.[21] The general personality right also includes the right to one's voice[22], which is particularly relevant in the context of voice cloning.[23]

Given the comprehensive scope of protection, a thorough rights clearance is required when creating avatars of real persons. Personality rights in Germany are technology-neutral. This means that not only photographs or film footage, but also digital reproductions, such as computer-generated avatars, fall under protection if they clearly depict or recreate a real person. The decisive factor is recognizability, not the medium used. Thus, an avatar that mimics a real person's face, body, or voice can violate the general personality right.

According to the German Federal Court of Justice, personality rights include economic interests in the commercial exploitation of one's likeness – even post mortem. The commercial aspects of personality rights remain in force after death, for as long as the deceased's non-material interests still merit protection.

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These rights pass to the heirs, who may exercise them in accordance with the expressed or presumed wishes of the deceased.[24] There is no fixed duration for postmortem personality rights. However, case law generally assumes a protection period of 10 years after death, which may be extended if the deceased's reputation remains especially worthy of protection.

Accordingly, any use of a real person's physical attributes – where they are recognizable – is, in principle, impermissible without the consent of the rights holder. Exceptions may apply under freedom of expression or artistic freedom, but commercial exploitation is in principle not covered by such exceptions.

» What Transparency Obligations Apply to AI Avatars Under the AI Act?

The European Union's Artificial Intelligence Act (AI Act)[25] introduces transparency obligations for AI systems, which also apply to avatars if they are wholly or partly generated or operated by AI.

According to Article 50(4) of the AI Act, which takes effect on 2 August 2026[26], deployers of AI systems that generate or manipulate image, audio, or video content in the form of a deepfake must disclose that the content was artificially created or altered. [27] The purpose of this provision is to strengthen public trust[28] in AI and prevent the spread of convincingly realistic disinformation.

A “deepfake” refers to AI-generated or manipulated image, audio, or video content that resembles real people, objects, places, institutions, or events, and would appear falsely to a person as being authentic or truthful.[29]

The information about the deepfake must be clearly and unambiguously disclosed to the individuals concerned no later than the first interaction or exposure.[30] A “deployer” means a natural or legal person, public authority, agency or other body using an AI system under its authority, except where the AI system is used in the course of a personal non-professional activity.[31]

For AI avatars, the practically significant question is how to determine whether the deepfake content “resembles” a real person and would be perceived as authentic or truthful by the viewer. Some interpretations suggest that this is the case, if an average, reasonably informed user of a comparable media service could, upon a cursory viewing, assume that the content is authentic.[32]

The transparency provision requires that the disclosure of artificially generated or manipulated content must be made in a “clear” and “unambiguous” manner.[33] However, the law does not prescribe a specific form of disclosure. This could take the form of a label such as “Made with AI”. [34] A visual symbol may also be acceptable instead of text, if it is sufficiently clear. In general, the disclosure is expected to be presented in direct visual and auditory connection with the relevant media content. [35] For avatars appearing on screens, the disclosure would typically need to be placed above, below, to the side of, or directly within the image itself.

However, the AI Act includes a specific exemption relevant to the entertainment industry. If the content is part of an obviously artistic, creative, satirical, fictional,

or analogous work or program, the transparency obligation is limited to making the presence of such generated or manipulated content known in a manner that does not impair the presentation or enjoyment of the work.[36] For example, if an avatar is used in a film, other audiovisual production, or stage performance, it is generally sufficient to include a note in the credits or elsewhere. However, this exemption does in principle not apply, if avatars are used to market products or promote merchandise in videos.

Violations of the AI Act's transparency requirements can result in severe penalties. Fines of up to 15 million euros or 3% of the violator's total worldwide annual turnover from the previous financial year may be imposed.[37]

» Conclusion

Avatars represent not only a technological but also an economic paradigm shift in the entertainment industry. Whether as digital representations of real artists, fully synthetic characters, or brand-defining personalities, they offer a wide range of monetization opportunities – such as licensing of their appearance, voice, or performance; merchandising; sponsorships; brand partnerships; live performances; or cross-media exploitation in film, music, gaming, and advertising.

Avatars can be profitable assets. However it is legally essential that protection rights – especially copyright, trademark and personality rights – are clarified early and unambiguously. Only then can avatars be securely licensed and commercially exploited.

Avatars may be protected under copyright law as personal intellectual creations and can be licensed accordingly. In addition, related rights may apply, particularly when digitally reproducing performances of real artists.

Beyond copyright, trademark law offers further protection to market avatars effectively, e.g. for their name, appearance, or characteristic movements. This protection enables strategic licensing and commercial control of virtual identities.

For avatars based on real individuals, personality rights are central. These rights protect physical traits, voice, and identity, even posthumously. Usage is only permissible with the express consent of the individuals concerned or their heirs. This is especially

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relevant for commercial purposes such as advertising or AI-generated reproductions of deceased persons.

The use of avatars must comply with the transparency obligations introduced by the EU AI Act. Starting in August 2026, AI-generated or manipulated content (“deepfakes”) is subject to disclosure requirements across the EU. This includes AI avatars that resemble real people and might falsely appear authentic to viewers. Clear indications – e.g. labels like “Made with AI” – are required. However, the entertainment industry benefits from certain exemptions designed to preserve artistic expression, such as allowing disclosures in end credits.

In sum, avatars are legally complex but economically highly attractive. Those who design, protect, and commercialize them lawfully can develop scalable, brandable digital personalities with long-term economic potential. Successful examples like ABBA Voyage and virtual influencers demonstrate that avatars are not merely a technological novelty – they can become sustainable, monetizable intellectual property.

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- [1] "ABBA Voyage Is Making \$2 Million a Week With an Avatar Band", Bloomberg, 5 September 2023, see <https://www.bloomberg.com/news/newsletters/2023-09-04/-abba-voyage-tour-makes-2-million-a-week-with-an-avatar-band>.
- [2] See https://en.wikipedia.org/wiki/Hatsune_Miku.
- [3] See <https://en.wikipedia.org/wiki/Miquela>.
- [4] Section 2 (2) Act on Copyright and Related Rights ("Urheberrechtsgesetz").
- [5] Section 2 (1) No. 4 Act on Copyright and Related Rights ("Urheberrechtsgesetz").
- [6] Federal Court of Justice, BGH, GRUR 1994, 206 (207).
- [7] Section 2 (2) Act on Copyright and Related Rights ("Urheberrechtsgesetz").
- [8] Cf. US Copyright Office, Report on Copyright and Artificial Intelligence, 2024/2025, see <https://www.copyright.gov/ai/>.
- [9] Section 7 Act on Copyright and Related Rights ("Urheberrechtsgesetz").
- [10] Section 8 Act on Copyright and Related Rights ("Urheberrechtsgesetz").
- [11] Section 12-14 Act on Copyright and Related Rights ("Urheberrechtsgesetz").
- [12] Section 15 Act on Copyright and Related Rights ("Urheberrechtsgesetz").
- [13] Section 23 (1) Act on Copyright and Related Rights ("Urheberrechtsgesetz").
- [14] Federal Court of Justice, BGH, NJW-RR 2004, 1629 (1631).
- [15] Section 77 et seqq. Act on Copyright and Related Rights ("Urheberrechtsgesetz").
- [16] Section 94 Act on Copyright and Related Rights ("Urheberrechtsgesetz").
- [17] Section 14 (2) Act on the Protection of Trade Marks and other Signs ("Markengesetz"); Article 9 (2) Regulation (EU) 2017/1001 of 14 June 2017 on the European Union trade mark.
- [18] Section 14 (2) No. 3 Nr. 3 Act on the Protection of Trade Marks and other Signs ("Markengesetz").
- [19] Wenzel, *Das Recht der Wort- und Bildberichtserstattung*, Handbuch des Äußerungsrechts, 6th Edition 2018, pp. 183 et seqq.
- [20] Article 1 (1) in conjunction with Article 2 (1) German Basic Law („Grundgesetz“); permanent case law since judgement of the Federal Court of Justice of 2 April 1957 (BGH, NJW 1957, 1146).
- [21] Section 22 and 23 Act on Copyright in Works of Fine Arts and Photography („Gesetz betreffend das Urheber-recht an Werken der bildenden Künste und der Photographie“).

- [22] *Schierholz, in: Götting/Schertz/Seitz, Handbuch Persönlichkeitsrecht, 2nd Edition 2019, § 16, para. 20 et seqq.*
- [23] *Siehe dazu Ellenberg, Persönlichkeits- und Urheberrechte beim Voicecloning, RDi 2024, 599.*
- [24] *Federal Court of Justice, BGH, NJW 2000, 2195.*
- [25] *Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), OJ L, 2024/1689, 12.7.2024.*
- [26] *Article 113 AI Act.*
- [27] *Article 50 (4) clause 1 AI Act.*
- [28] *Article 1 (1) AI Act.*
- [29] *Article 3 No. 60 AI Act.*
- [30] *Article 50 (5) AI Act.*
- [31] *Article 3 No. 4 AI Act.*
- [32] *Kumkar/Griesel, Transparenzpflichten für Deepfakes und synthetische Medieninhalte in der KI-VO, KIR 2024, 117 (120).*
- [33] *Article 50 (5) AI Act.*
- [34] *For example, it is used by Meta to label AI-generated content, see <https://about.fb.com/news/2024/04/metasp-approach-to-labeling-ai-generated-content-and-manipulated-media/>.*
- [35] *Kumkar/Griesel, Transparenzpflichten für Deepfakes und synthetische Medieninhalte in der KI-VO, KIR 2024, 117 (122).*
- [36] *Article 50 (4) clause 2 AI Act.*
- [37] *Article 99 (4)(g) AI Act.*