

**Protection of the human voice: analysis of the current  
framework under Belgian law facing the rise of artificial  
intelligence**

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I.	Prolegomenon .....	2
A.	Context of the need to protect the voice.....	2
1.	Giving artificial intelligence legal personality to stop this phenomenon?.....	5
2.	Deep learning and its consequences .....	6
B.	Purpose and scope of the research .....	6
II.	Theoretical foundations of voice protection.....	7
A.	Key concepts and definitions .....	7
1.	The voice.....	7
2.	The use of voice .....	8
(a)	The voice as an instrument of artistic performance .....	8
(b)	Voice as a means of communication .....	9
3.	Voice belonging .....	9
(a)	Is our voice unique? .....	10
(b)	Could the machine have a right to voice?.....	11
B.	Legal basis.....	11
C.	Evolution of voice protection under Belgian law.....	12
III.	Different means of protecting the voice.....	12
A.	Copyright sensu lato .....	12
1.	Definition.....	12
B.	Property rights .....	13
1.	Definition.....	13
2.	Elements preventing the proper application of property rights.....	15
C.	Other subjective rights of protection .....	15
1.	Related rights.....	16
D.	Unfair practices.....	17
E.	Individual's right to privacy .....	18
1.	GDPR.....	18
(a)	Definition .....	18
2.	The right to respect for privacy .....	20
(a)	Definition.....	20

(b)	Examples of situations protected by the right to privacy.....	21
(c)	Exception.....	22
F.	Recognition of the voice as a personality right: the solution to the problem? ....	22
1.	What is the right to personality?.....	22
2.	Analogy with image rights.....	24
(a)	What are image rights?.....	24
(b)	Links with a potential right to voice .....	24
(c)	How can consent be given?.....	25
(d)	What happens if authorization has not been given?.....	25
3.	Exception to the right to voice.....	26
4.	Who can benefit from this protection? .....	27
5.	Cases of justified violation of the right to voice .....	28
(a)	Right to humor .....	29
(b)	Right to information .....	29
(c)	But not everything is justified: .....	30
IV.	Challenges and outlook for the future.....	31
A.	The impact of technology and artificial intelligence on voice.....	31
B.	Adapting the legal framework to future developments .....	31
C.	Gaps in the current legal framework and recommendations for improvement .	32
V.	Conclusion.....	33

## I. Prolegomenon

### A. Context of the need to protect the voice

Nowadays, with the increasing emergence of new technologies, voice protection is becoming more and more important.

Indeed, the human voice is now being called into question, even though it is an important part of a person's personality. In the past, the human voice may have been the subject of imitation or other humorous interpretations<sup>1</sup>, but it now appears that it is sometimes used in a deceptive manner that can be detrimental to its owner.<sup>2</sup>

The context of this work arises from the significant growth in artificial intelligence (A.I.) and the current challenges posed by its still unclear framework.

Several concrete cases have led to questions and the desire to better define the protection of the human voice in Belgium, but above all to expose the adaptation and application of Belgian law to this context. The subject is a global one, however, Belgium is not the only country affected by this issue, which often undermines the very essence of an individual's personality. The American state of Tennessee, for example, reacted on January 10, 2024, with the ELVIS ('Ensuring Likeness Voice and Image Security') bill, with the aim of halting the negative effects of A.I.<sup>3</sup>

At the time of writing, this law has been passed and now protects against the use of voice and image, as well as reproduction using technology, without the authorization of the owner of the voice.<sup>4</sup>

In practical terms, the ELVIS legislation extends this misleading use to an assault punishable by 11 months' and 29 days' imprisonment and a fine of up to US\$2,500. As such, it can be seen as the first real reaction to the increased reproduction of artists' voices by A.I.

The growing need to protect voice was once again confirmed by the biggest scam of its kind, when in February 2024 an employee of a Hong Kong financial company made a payment of US\$25.6 million after receiving a call from his CFO that was made with deep fake technology.<sup>5</sup>

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<sup>1</sup> We will look at the right to humor below: p. 32.

<sup>2</sup> Art. 10, European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>3</sup> OFFICE OF THE GOVERNOR, «Tennessee First in the Nation to Address AI Impact on Music Industry», available at [www.tn.gov](http://www.tn.gov), January 10, 2024; This legislation will be monitored to see if it can serve as an example for the Belgian case.

<sup>4</sup> OFFICE OF THE GOVERNOR, «Gov. Lee Signs ELVIS Act Into Law,» available at [www.tn.gov](http://www.tn.gov), March 21, 2024.

<sup>5</sup> H. CHEN, « Finance worker pays out \$25 million after video call with deepfake “chief financial officer” », available at [www.edition.cnn.com](http://www.edition.cnn.com), February 4, 2024.

On January 10, 2024, the US government decided to take voice protection a step further by introducing the “No Artificial Intelligence Fake Replicas And Unauthorized Duplications” bill. At this stage, the bill is still far from being adopted but would further assert protection against voice cloning at federal level.<sup>6</sup>

However, the U.S. is not the only one seeking to define this issue. Notably, the EU has also taken action with its 'EU Artificial Intelligence Act', which took effect on August 1, 2024. Some of the prohibitions contained in this regulation will take effect from February 2nd, 2025, while the remaining obligations will apply from August 2.<sup>7</sup>

This regulation was introduced with the ambition of moving towards global coverage of protection as experienced by the General Data Protection Regulation (‘GDPR’).

There is, however, a nuance to this regulation. This does not seem to directly protect individuals against the harm they may suffer as a result of the services provided by A.I. Article 5 of the proposal provides an interesting indication when it states: ‘the placing on the market, the putting into service or the use of an AI system that deploys subliminal techniques beyond a person’s consciousness or purposefully manipulative or deceptive techniques, with the objective, or the effect of materially distorting the behaviour of a person or a group of persons by appreciably impairing their ability to make an informed decision, thereby causing them to take a decision that they would not have otherwise taken in a manner that causes or is reasonably likely to cause that person, another person or group of persons significant harm’<sup>8</sup>. Even so, this does not directly address the situation we wish to protect, although this potentially represents a step forward

The regulation's primary aim seems to be to regulate the people behind A.I. tools, not the users. Although the Act provides for the introduction of sanctions, it does not directly affect those who commit fraud using these tools.

A.I. is a major technological advance. We have to admit that, up until now, it has had many positive evolutionary effects in a wide range of fields.<sup>9</sup> Most notably, in the healthcare sector, where A.I. is enabling increasingly accurate diagnoses, and is now presenting itself as a possible solution to the shortage of nursing staff.<sup>10</sup> Alongside this, a host of other sectors have high expectations of A.I.'s ability to provide solutions to long-standing problems (such as education, culture, etc.).<sup>11</sup>

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<sup>6</sup> Bill «No Artificial Intelligence Fake Replicas And Unauthorized Duplications», available at [www.congress.gov](https://www.congress.gov), January 10, 2024.

<sup>7</sup> EU Artificial Intelligence Act, Art. 5(1)(a) .

<sup>8</sup> Art. 5 of the Proposal for a Regulation of the European Parliament and of the Council laying down harmonized rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts.

<sup>9</sup> A. BENSOUSSAN and D. GAZAGNE, «1. - La question de l’explicabilité », Droit des systèmes autonomes, 1st edition, Brussels, Bruylant, 2019, p. 311.

<sup>10</sup> M. BERNELIN « Intelligence artificielle en santé: la ruée vers les données personnelles », Cités, vol. 80, no. 4, 2019, p. 76; P. JOURDAIN, «Chapitre 1. - Intelligence artificielle et médecine. Rapport de synthèse », Responsabilité civile et intelligence artificielle, O. GOUT (dir.), 1st edition, Brussels, Bruylant, 2022, p. 22; A. MATHIEU-FRITZ «L’intelligence artificielle en médecine: des promesses aux usages... en passant par la conception. Commentary », Sciences sociales et santé, vol. 39, no. 2, 2021, p. 71.

<sup>11</sup> M. CHAKCHOUK « Réflexion éthique sur l’intelligence artificielle », Cités, vol. 80, no. 4, 2019, pp. 93.

However, the power of this instrument has also led to increasingly intrusive uses. In the field of music, for example, A.I. makes it possible to create music that is new from the point of view of the work itself, but which reproduces an artist's voice without the artist's authorization. This situation is becoming increasingly frequent, and the artists concerned are struggling to find effective countermeasures. One reason for this is that A.I. currently has no legal personality<sup>12</sup>, and the people behind these creations are often difficult to trace.

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In addition to seriously harming the people whose voices are 'stolen', such uses can lead to even more serious abuse. This includes certain criminal purposes<sup>14</sup>, and the potential loss of numerous jobs reliant on voice skills.

Regarding this, a significant dispute has emerged within the film industry, specifically affecting dubbing.. Dubbers, whose job it is to 'take on' the voice of a film character, can now be easily copied or even replaced by A.I. This has given rise to fears within the profession, which has been quick to try and protect itself.<sup>15</sup>

To date, dubbers have joined forces in an international collective to find solutions, and agreements have been reached in the US between actors and producers.<sup>16</sup> The agreement reached with the American union SAG-AFTRA aims to reconcile the evolution of A.I. in the artistic world while continuing to protect the interests of artists.

However, such an agreement seems to lead to the disappearance of dubbers in the long term.<sup>17</sup>

Indeed, this agreement does not pursue the aim of protecting the artistic voice professions against the increase in A.I. There can be no doubt that this protection will not solve the problem.

In response to this growing number of cases, some people are beginning to develop the idea of conferring a genuine legal personality on A.I.s when they provide services.<sup>18</sup>

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<sup>12</sup> N. MARTIAL-BRAZ, « La personnalité juridique de l'IA en question », *Intelligence artificielle*, Canal Forgues, E. ALTER and M.-O. HAMROUNI (dir.), 1st edition, Brussels, Bruylant, 2021, p. 125 ; X, « Faut-il donner une personnalité juridique aux intelligences artificielles autonomes ? Ouvrons le débat », available at [www.Lalibre.be](http://www.Lalibre.be), September 2, 2023.

<sup>13</sup> N. MARTIAL-BRAZ, « La personnalité juridique de l'IA en question », *Intelligence artificielle*, Canal Forgues, E. ALTER and M.-O. HAMROUNI (dir.), 1st edition, Brussels, Bruylant, 2021, p. 138.

<sup>14</sup> Consider the case of the fraud perpetrated in Hong Kong.

<sup>15</sup> AFP AGENCE, « 'Ne volez pas nos voix': face à l'intelligence artificielle, les doubleurs se mobilisent », available at [www.Lefigaro.fr](http://www.Lefigaro.fr), June 20, 2023.

<sup>16</sup> E. BARDINET, « Le syndicat des acteurs américain signe un accord historique autour des voix et des IA », available at [www.première.fr](http://www.première.fr), January 12, 2024.

<sup>17</sup> SAG-AFTRA, « Television animation agreement », available at [www.sagaftra.org](http://www.sagaftra.org), consulted on May 9, 2024.

<sup>18</sup> X, « Faut-il donner une personnalité juridique aux intelligences artificielles autonomes ? Ouvrons le débat », available at [www.Lalibre.be](http://www.Lalibre.be), September 2, 2023.

1. Giving artificial intelligence legal personality to stop this phenomenon?

Faced with these developments, and the possibility of A.I. providing artistic services, the idea of granting it legal personality has been developed.<sup>19</sup>

Granting it legal personality would enable it to be directly targeted when works are created.

Indeed, it would then be endowed with responsibility for its actions, and its users would no longer be able to hide behind a potential legal vacuum.

This question makes sense once we recognize how little importance man plays in the creation achieved by A.I. We can then see the need to recognize such a personality when the machine acts in an almost autonomous way although the request addressed to the A.I. is still a matter of human will.<sup>20</sup>

Some authors therefore defend the idea of recognizing a ‘virtual person’<sup>21</sup>.

However, it is important to bear in mind that A.I. decision-making is based on a series of algorithms and other computational factors. It therefore seems difficult to determine that it can be held responsible for decisions taken even though it has no conscience *per se*.

In Belgium, it seems unlikely that such a form of legal personality will appear any time soon.<sup>22</sup> This could lead to difficulties in respecting certain fundamentals of our law, such as the principle of equality and non-discrimination.<sup>23</sup>

Despite this, scholars have already demonstrated that Belgian positive law provides a better framework for the increasing use of A.I. in legal proceedings brought by potential victims, notably following the reform of the new Book 8 of the Civil Code concerning the right of evidence.<sup>24</sup>

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<sup>19</sup> A. BOCHON and J.-B. HUBIN, « Chapitre 3. - La nécessité de créer un nouveau régime ? Vers la reconnaissance d’une nouvelle personnalité juridique ? Rapport belge » *Responsabilité civile et intelligence artificielle*, O. GOUT (dir.), 1st edition, Brussels, Bruylant, 2022, p. 570 ; D. BOURCIER « De l’intelligence artificielle à la personne virtuelle : émergence d’une entité juridique ? », *Droit et société*, vol. 49, no. 3, 2001, p. 864.

<sup>20</sup> *Ibid.*, p. 858.

<sup>21</sup> *Ibid.*, p. 864.

<sup>22</sup> A. BOCHON and J.-B. HUBIN, « Chapitre 3. - La nécessité de créer un nouveau régime ? Vers la reconnaissance d’une nouvelle personnalité juridique ? Rapport belge » *Responsabilité civile et intelligence artificielle*, O. GOUT (dir.), 1st edition, Brussels, Bruylant, 2022, p. 573.

<sup>23</sup> Art. 10 and 11, Const. ; A. BOCHON and J.-B. HUBIN, « Chapitre 3. - La nécessité de créer un nouveau régime ? Vers la reconnaissance d’une nouvelle personnalité juridique ? Rapport belge » *Responsabilité civile et intelligence artificielle*, O. GOUT (dir.), 1st edition, Brussels, Bruylant, 2022, p. 574.

<sup>24</sup> A. BOCHON and J.-B. HUBIN, « Chapitre 3. - La nécessité de créer un nouveau régime ? Vers la reconnaissance d’une nouvelle personnalité juridique ? Rapport belge » *Responsabilité civile et intelligence artificielle*, O. GOUT (dir.), 1st edition, Brussels, Bruylant, 2022, p. 577 ; Book 8, New Belgian Civil Code.

## 2. Deep learning and its consequences

Deep learning is a complex subject based on algorithms and is one of the fields in which A.I. is able to “feed” itself with the information it gathers, enabling it to offer its users increasingly precise answers to the tasks they are asked to perform.<sup>25</sup>

This area is the central method by which voice reproductions are made to the detriment of artists and other providers of their voices.<sup>26</sup>

Deep learning works in a rather technical way. Its system mimics the characteristics of the human brain in that it evolves in line with the information it receives.

In this way, it is possible for the ‘machine’ to reproduce the voice of an artist based on a large database of sounds taken from the voice of the person being reproduced.<sup>27</sup>

As already mentioned, this tool is evolving rapidly and is having a strong impact on our research question. The development and growth of deep learning in our society is having potentially disastrous consequences for the rights associated with an individual's voice. The ownership of our voice, and of other elements that are unique to us, is therefore increasingly jeopardized by the arrival of this kind of technology.

### B. Purpose and scope of the research

Now that the context has been set out, it seems that development in this area is essential for Belgian law.

To this day, the question of how to protect the human voice is of paramount importance, yet very few contributions have addressed the subject. Although authors have repeatedly addressed the issue of personality rights, no French-language scholar has yet come up with an answer as to the scope of voice protection. In the north of the country<sup>28</sup>, however, the issue is somewhat addressed. Is the human voice protected in the event of unauthorized reproduction? Is there a right to defend against the use of our voice by A.I. or any other individual?

As we shall demonstrate, the voice is one of the elements of an individual's personality. Other legal systems, such as the Chinese one, already recognize an application of personality rights to the voice. It is often this characteristic that creates the popularity of the person concerned. A recent example of this occurred at the end of April 2023. At that time, the Internet saw the birth of a huge craze concerning a new song bringing together

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<sup>25</sup> E. CHARNIAK « Introduction au deep learning », infosup, Dunod, 2021, p. 1.

<sup>26</sup> J.-S. VAYRE « Comment décrire les technologies d'apprentissage artificiel ? Le cas des machines à prédire », *Réseaux*, vol. 211, no. 5, 2018, p. 74.

<sup>27</sup> *Ibid.*

<sup>28</sup> N. DEBRUYNE, « Privaatrechelijke bescherming van de stem in commerciële context », *TPR* 2018, afl. 3.



artists Drake and The Weeknd on a track that quickly went viral. However, the peculiarity of this song is that neither artist was involved in its creation.<sup>29</sup>

We will attempt to provide an overview of the current protection situation under Belgian law, as well as to identify, at the end of this work, the issues and behaviors to be adopted regarding the new technologies that are increasingly present in this field (notably artificial intelligence).

As the subject is broad, we will confine ourselves to Belgian law. We will return to the inapplicability of copyright in the field of voice protection.

In addition, the basics of personality law will be developed, and an analogy drawn with image right. As explained, the connection between the subject and that of A.I. will only be made at the end of the work.

The aim will also be to analyse the limits of our law in this area, and to propose modifications and/or additions to better prepare for this trend.

The title of this work has been deliberately limited the subject to the ‘human’ voice, so as not to extend it to too many situations that would be useless in our analysis.

However, this protection is not limited to singers. The voice needs to be protected in a wide range of situations, which we will attempt to cover in a global analysis of voice protection. We're thinking, for example, of dubbing artists, who are increasingly complaining about the protection afforded to their voices.

## **II. Theoretical foundations of voice protection**

### **A. Key concepts and definitions**

#### **1. The voice**

Before tackling our problem, it is important to consider the foundations and key points to be grasped. On the face of it, the title of this work may seem very accessible in terms of understanding its theme.

However, the challenge of protecting the human voice and the emergence of new, as yet unknown, advances make certain notions more complex.

When we talk about the voice, for example, it may seem like a straightforward concept. This characteristic human instrument<sup>30</sup>, the ‘acoustic medium of speech’<sup>31</sup>, is used every day to serve many purposes: communicating, creating, trading, etc. These uses represent only a tiny fraction of what the voice is regularly employed for.

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<sup>29</sup> FRANCE INFO CULTURE, « Une fausse chanson de Drake et The Weeknd générée par Intelligence artificielle inquiète l'industrie musicale », available at [www.francetvinfo.fr](http://www.francetvinfo.fr), April 19, 2023.

<sup>30</sup> When we speak of an instrument, we're not just referring to the more popular definition of “musical instrument”, but rather to an instrument, such as a scalpel, that the surgeon uses to perform surgery ; C. FERVEUR and P. ATTIGUI « Origines de la voix, voix des origines : éléments de réflexion pour une métapsychologie de la phonation. Champ psychosomatique », 48, 2007, p.23.

<sup>31</sup> G. CORNUT, « La voix. » Presses Universitaires de France, 2009, p. 1.

From a more scientific point of view, and for the sake of completeness, the voice is defined as follows: 'The voice, in the everyday lexicon, is above all the ability or faculty of emitting sounds. This voice is often characterized by volume, mode of articulation (hoarse, vulgar, dry), timbre (a "white voice" is precisely a voice without timbre, inexpressive or without resonance), or by physical states (breathless, tired, broken) and moral states (friendly, shy, firm, quiet)'<sup>32</sup>

## 2. The use of voice

The voice can be used for a variety of purposes. For the purposes of this research, we propose the following categorization:

### (a) The voice as an instrument of artistic performance

When we think of the use of the voice for artistic performance, the prime example is singing. As we shall discuss in greater detail below, the various scholarly analyses always emphasize the protection of the work created by singing.

This is where a word of caution is for the reader. When we talk about the voice as an instrument of artistic performance, it is the protection of the voice that we are interested in, not the creation that results from this use of it

We will not consider the situation where copyright comes into play if the work created is fixed on a medium. For example, in the case of an artist who performs vocals on another artist's song, he or she nonetheless holds neighboring rights on this creation.

However, it is not his voice that is protected by this mechanism, but his personal interpretation.<sup>33</sup>

Our research focuses in greater detail on the protection of the voice itself. The case of doublers, hired for their vocal characteristics and not for the work they produce, is the prime example we will study.

Several months ago, in an interview with RTBF, Brigitte Lecordier spoke about the likely disappearance of the dubbing profession in the face of the power of A.I..<sup>34</sup>

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<sup>32</sup> H. PARRET, « Chapitre 1. La voix humaine », *La voix et son temps*, H. PARRET, Louvain-la-Neuve, De Boeck Supérieur, 2002, p. 24.

<sup>33</sup> M. SALADIN, « « Play it again, Sam»: La reprise », *La Reprise dans les musiques populaires*, Volume 1, 7 : 1, 2010, p.8.

<sup>34</sup> M. STROILI « Brigitte Lecordier, la voix de Son Goku : "On se bat pour que l'intelligence artificielle soit légiférée" », available at RTBF.be, March 4, 2024.

(b) Voice as a means of communication

We can also consider that the voice is primarily a tool enabling communication between individuals in the various situations they encounter on a daily basis.<sup>35</sup>

The protection of the human voice, which is the aim of our research, does not only concern the cases mentioned above. In everyday life, we frequently use our voice for purposes for which it is essential to know the extent of existing protection. Until now, however, this has not necessarily been the case. We are thinking, for example, of telephone conversations and other recordings, ...

Technological advances now make it possible to copy the characteristics of individuals in circumstances other than artistic performance. As a result, these situations seem highly sensitive in terms of protection.<sup>36</sup> Most of these cases will be discussed below, in order to determine the scope of voice protection.<sup>37</sup>

3. Voice belonging

Despite the advances that have been made, notably through the emergence of A.I., the question of how to identify the ownership of the voice to an individual has often been raised.<sup>38</sup>

A case that made headlines about 10 years ago was the “Cahuzac” case, a scandal in which Jérôme Cahuzac, then Minister Delegate in charge of the Budget, was accused of tax fraud and money laundering after information was revealed by Mediapart.<sup>39</sup> In the context of this affair, a recording revealed a voice attributed to him, but which he denied belonging to.<sup>40</sup> It was therefore essential to be able to recognize him as the owner of this voice.<sup>41</sup>

How to know whom a voice belongs to?

The most common method is voice recognition using biometrics.<sup>42</sup> Although the quality of the audio may depend on a number of factors when making such recordings, it is possible to reshape the soundtrack in order to enhance and isolate the voice of the person concerned.<sup>43</sup> After performing a computerized comparison of the frequency of the audio tape with the person's voice<sup>44</sup>, the person is asked to recite a certain number of words,

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<sup>35</sup> Y. ORMEZZANO, « Le guide de la voix », Odile Jacob, 2000, p. 4 ; C. CHEVET, « La voix de synthèse : de la communication de masse à l'interaction homme-machine, Dialogue avec le monde », Communication & langages, 193, 2017, p. 63.

<sup>36</sup> D. CARDON, « Intelligence artificielle », *Culture numérique*, Paris, Presses de Sciences Po, 2019, p. 386.

<sup>37</sup> See Chapter 2 of this Research.

<sup>38</sup> J. GALLOIS, « Affaire Cahuzac : quand le droit de la peine est au centre d'un procès », available at [www.dalloz-actualite.fr](http://www.dalloz-actualite.fr), June 1st, 2018 ; J. KAHN, « Parole de locuteur : performance et confiance en identification biométrique vocale », Autre [cs.OH], Université d'Avignon, 2011, p. 24.

<sup>39</sup> F. ARFI, « Cahuzac: l'aveu enregistré », Mediapart, available at [www.mediapart.fr](http://www.mediapart.fr), December 5, 2012.

<sup>40</sup> F. COSNAY, « Cahuzac : Mediapart publie un enregistrement », Europe1, available at [www.europe1.fr](http://www.europe1.fr), December 5, 2012.

<sup>41</sup> C. RASTELLO, « Affaire Cahuzac : comment identifier une voix ? », L'OBS, available at [www.nouvelobs.com](http://www.nouvelobs.com), December 6, 2012.

<sup>42</sup> C. NAUDIN, « Chapitre V. Avenir et biométrie. », *Identités criminelles*, Presses Universitaires de France, Paris cedex 14, 2015, p.281.

<sup>43</sup> C. RASTELLO, « Affaire Cahuzac : comment identifier une voix ? », L'OBS, available at [www.nouvelobs.com](http://www.nouvelobs.com), December 6, 2012.

<sup>44</sup> *Ibid.*

which are then compared.<sup>45</sup> This precision method makes it possible, for example, to distinguish the performance of an imitator from that of the artist being imitated.<sup>46</sup> Although the process is becoming increasingly precise, it is never possible to state with certainty that the voice belongs to a specific person.<sup>47</sup>

What's more, the growth of A.I. is both a help and a hindrance to technological evolution.<sup>48</sup> A.I. can reproduce a person's voice identically, and this may well call such processes into question.<sup>49</sup>

(a) Is our voice unique?

We wish to highlight the protection of the human voice.

But is our voice unique enough to be recognized as a “universal” possession?

Astonishing as it may seem when you think of the demographics of our planet, our voice is a characteristic that is as unique to us as our fingerprints, for example.<sup>50</sup>

Many factors, including physiological<sup>51</sup> and medical<sup>52</sup> factors, influence vocal characteristics, making each voice unique.<sup>53</sup>

However, there's another complex element to what's been said here. Our voice, although unique to us, develops and changes over the course of our lives. This adds a further difficulty when it comes to linking the voice to the individual.

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<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> D. ANDLER, « Chapitre 10. L'intelligence artificielle et le bien. », *Intelligence artificielle, intelligence humaine : la double énigme*, Paris, Gallimard, 2023, p.329. ; D. ANDLER, « Chapitre 1. L'intelligence artificielle survolée : de la vision au repli stratégique », *Intelligence artificielle, intelligence humaine : la double énigme*, Paris, Gallimard, 2023, p.21. ; D. ANDLER, « Chapitre 9. L'intelligence artificielle rêvée. », *Intelligence artificielle, intelligence humaine : la double énigme*, Paris, Gallimard, 2023, p. 315. ; FRANCE INFO CULTURE, « Une fausse chanson de Drake et The Weeknd générée par Intelligence artificielle inquiète l'industrie musicale », available at [francetvinfo.fr](http://francetvinfo.fr), April 19, 2023.

<sup>49</sup> D. TEYSSOU, « L'intelligence artificielle face à la désinformation : problème autant que solution ? », *I2D - Information, données & documents*, 1, 2022, p. 67. ; D. FRAU-MEIGS, « Chapitre 2. Les mécanismes de la malinformation : publicité, viralité, automaticité. », *Faut-il avoir peur des fake news*, Paris, La Documentation française, 2019, p. 57.

<sup>50</sup> Some even refer to them as « voiceprints », see : J. KAHN, « Parole de locuteur : performance et confiance en identification biométrique vocale », Autre [cs.OH], Université d'Avignon, 2011, p. 17 ; C. NAUDIN « Chapitre V. Avenir et biométrie », *Identités criminelles*, Paris cedex 14, Presses Universitaires de France, 2015, p. 281.

<sup>51</sup> These include posture, age, gender, jaw shape, etc. Think of Freddie Mercury's teeth, which he never dared to have operated on for fear of altering his voice.

<sup>52</sup> People with certain illnesses, ... It's generally common to identify people who have been smoking for several years as having a hoarser voice.

<sup>53</sup> C. NAUDIN, « Chapitre V. Avenir et biométrie. », *Identités criminelles*, Paris cedex 14, Presses Universitaires de France., 2015, p.281.

(b) Could the machine have a right to voice?

Having analyzed the possibility of attributing personality to machines, particularly in the case of artistic performances, it might be interesting to consider the possibility of the machine itself having a right to voice in the works it creates.

As such, it is appropriate to analyze this idea by analogy. In our research, we develop the possibility of recognizing a right to a voice for any individual from the moment that this voice can be attributed to him or her.

As we've said, each person's voice is unique, and it's possible to determine exactly where it belongs.

As a result, a right to the voice could be attributed to the machine itself, if we assume that the A.I. is used simply for the purpose of original artistic creation, and that this A.I. also uses its technology to create a voice that cannot be attributed to anyone else.

## **B. Legal basis**

Now that we've provided the nuances essential to understanding the subject, it's important to understand the legal bases we'll be looking at in the course of this research.

Let's face it, there's a real legislative gap when it comes to protecting the voice.

As we know, the voice itself cannot be protected by copyright *s.l.*, and does not yet have its own recognized regime, as is the case for image right.<sup>54</sup>

Nevertheless, there are several alternative mechanisms that can be used to protect the voice.

In this sense, an analogy can be drawn with image right. This is what we will discuss below.

In addition, the possibility of invoking a property right over the personality element concerned is sometimes defended.<sup>55</sup> If we go back to the example given regarding the situation of dubbing artists, ownership of the work created is generally held by the producer himself, except in cases where contracts have been concluded between them regarding property rights.<sup>56</sup>

Alongside this, the voice can be considered personal data.<sup>57</sup> We'll therefore look at the General Data Protection Regulation (GDPR).<sup>58</sup>

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<sup>54</sup> M. ISGOUR, « Introduction », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 17.

<sup>55</sup> M. ISGOUR, « I. - Le droit de propriété », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 20 ; Comm. Bruxelles, September 11, 1974, J.T., 1975, p. 136. ; Comm. Bruxelles (1 re ch.), December 16, 1884, J.T., 1884, col. 151.

<sup>56</sup> A. BERENBOOM, « Chapitre 5. - La circulation des oeuvres. Les contrats », *Le nouveau droit d'auteur*, 5th edition, Brussels, Larcier, 2022, p. 309.

<sup>57</sup> P. KARPIEL, « La voix est non seulement une donnée personnelle, mais également sensible », available at [www.Linkedin.com](https://www.linkedin.com), consulted on December 16, 2023.

<sup>58</sup> Regulation EU 2016/679 of the European Parliament and of the Council of April 27, 2016.

The central point of our research will be to determine whether we can recognize the existence of a *sui generis* personality right concerning the voice, enabling it to better protect individuals in the face of all the issues we encounter in our society.<sup>59</sup>

When we think of the use of the voice without the consent of the individual to whom it belongs, we link this directly to the right to privacy. In Belgian law, this notion is enshrined in Article 8 of the European Convention on Human Rights.<sup>60</sup>

### C. Evolution of voice protection under Belgian law

The protection of the human voice has remained largely unexplored in Belgian law.

As mentioned above, there is no system of protection as we know it for image right, and French-speaking doctrine is virtually non-existent.<sup>61</sup>

However, the protection of the human voice is a subject that needs to be addressed more and more, particularly when we consider the number of situations involving the use of the voice, and the extent to which this subject has been brought to the forefront with the appearance of voice counterfeiting in our society.<sup>62</sup>

## III. Different means of protecting the voice

Now that the essential concepts have been developed, we arrive at the core of our research: voice protection.

### A. Copyright *sensu lato*

#### 1. Definition<sup>63</sup>

Copyright *sensu lato* is governed by the Code of Economic Law.<sup>64</sup> Its main purpose is to protect a creative work.<sup>65</sup>

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<sup>59</sup> D. FRAU-MEIGS, « Chapitre 2. Les mécanismes de la malinformation : publicité, viralité, automaticité. », *Faut-il avoir peur des fake news*, Paris, La Documentation française, 2019, p. 57.

<sup>60</sup> Art. 8, European Convention for the Protection of Human Rights and Fundamental Freedoms; Art. 7 and 8, Charter of Fundamental Rights of the European Union; Art. 16 (1) Treaty on the Functioning of the European Union.

<sup>61</sup> M. ISGOUR, « VIII. - La nature juridique du droit à l'image : droit de la personnalité ? », *Le droit à l'image*, 2<sup>nd</sup> edition, Brussels, Larcier, 2014, p. 88-95.

<sup>62</sup> N. DEBRUYNE, « Privaatrechelijke bescherming van de stem in commerciële context », *TPR* 2018, afl. 3, p.3.

<sup>63</sup> A. BERENBOOM, « Le nouveau droit d'auteur », 5th edition, Brussels, Larcier, 2022, p. 18.

<sup>64</sup> Economic Law Code of February 28, 2013 (Belgian Official Gazette, March 29, 2013).

<sup>65</sup> A. PUTTEMANS, « Droit économique et droit de la propriété intellectuelle », Presses universitaires de Bruxelles, 2<sup>nd</sup> Volume, 8<sup>th</sup> edition, 2022-2023, p. 133.

This notion of “work” has been the subject of debate but has finally been defined by the Court of Justice of the European Union as requiring the meeting of two conditions: **originality** and **formatting**.<sup>66</sup>

In the context of our research topic, one might think that the solution to voice protection lies in the famous subject of copyright.

However, we would like to remind the reader that this subject is intended to focus on the protection of the voice itself. Since the voice alone does not meet the criteria for recognition as a work, we must admit that copyright *sensu lato* does not apply to it<sup>67</sup>, particularly in the example used to illustrate our introduction. The case of dubbing artists, considered as performers, does not meet the conditions required for the recognition of related rights.<sup>68</sup>

The latter, hired for the particularity of their voice, is the best example of the copyright exception in our case, and it has been repeatedly recognized that the criterion of originality is not met in such a situation.

If we continue with the case of dubbers, they are considered to be excluded from copyright protection because of their “secondary” role in the creation of the work. It is therefore not possible for them to invoke the existence of such protection.<sup>69</sup>

There are, however, certain cases in which we could recognize that voice is taken into account when considering the application of copyright, but this is not directly applicable to our research subject, and we'll come back to this briefly below.

Generally speaking, recognizing the existence of copyright in a person's voice would be meaningless, as it would be tantamount to doing the same for other instruments used in artistic performances.

## **B. Property rights<sup>70</sup>**

In addition to what has already been developed, can we claim property rights over our voice?

### **1. Definition**

Since September 1, 2022, the right of property has been defined as follows in article 3.50 of the new Civil Code: “The right of property directly confers on the owner the right to use, enjoy and dispose of what is the object of his right. The owner has full prerogatives, subject to restrictions imposed by laws, regulations or the rights of third parties”<sup>71</sup>

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<sup>66</sup> ECJ, December 1, 2011, Painer, C-145/10, points 87 to 89; July 29, 2019, Funke Medien NRW, C-469/17, points 19 and 20; ECJ, November 13, 2018, Levola Hengelo, C-310/17; A. PUTTEMANS, « Droit économique et droit de la propriété intellectuelle », Presses universitaires de Bruxelles, 2<sup>nd</sup> Volume, 8<sup>th</sup> edition, 2022-2023, p. 134.

<sup>67</sup> A. BERENBOOM, « Chapitre 2. - Les bénéficiaires de la protection », *Le nouveau droit d'auteur*, 5<sup>th</sup> edition, Brussels, Larcier, 2022, p. 67.

<sup>68</sup> F. BRISON, « Het naburig recht van de uitvoerende kunstenaar », Brussels, Larcier, 2001, p. 327.

<sup>69</sup> Art. XI. 205 §1(5), Code of Economic Law; A. BERENBOOM, « Chapitre 6. - Les oeuvres nées de la technique » *Le nouveau droit d'auteur*, 5<sup>th</sup> edition, Brussels, Larcier, 2022, p. 393 ; F. BRISON, « Het naburig recht van de uitvoerende kunstenaar », Brussels, Larcier, 2001, p. 214.

<sup>70</sup> M. ISGOUR, « VIII. - La nature juridique du droit à l'image : droit de la personnalité ? », *Le droit à l'image*, 2<sup>nd</sup> edition, Brussels, Larcier, 2014, p. 19.

<sup>71</sup> Art. 3.50, Civil code ; Art. 544, former Belgian Civil Code.

Based on this definition, it is interesting to analyze whether we can consider a person's voice to be their property.

However, we are now trying to determine whether we can recognize the existence of a property right in their favor concerning their voice.

In this sense, it seems that the doctrine has, on several occasions, affirmed the possibility of recognizing a property right concerning the attributes of an individual's personality.<sup>72</sup> We are thinking, for example, of their names in these cases, but will determine below that the voice is an integral part of the elements of their personality and can therefore be assimilated to these situations.

In such cases, several assumptions are made, including that the property right relates to the individual as such, and that this right is violated when one of the attributes of the individual's personality is used without prior authorization from the "owner".<sup>73</sup>

There are, however, some challenges to this idea, when it is argued that personality rights cannot be considered as patrimonial rights.<sup>74</sup>

For its part, the ELVIS Act referred to above, concerning the recent response of the American state of Tennessee to the development of A.I., states that every person has a property right in his or her voice.<sup>75</sup>

It should be borne in mind that the development of the idea of recognizing the existence of a property right mainly took place at a time when personality rights were not yet the subject of theory.

We therefore believe that the right to the voice could more easily be defended using this most recent mechanism, which we will develop below.<sup>76</sup>

On the basis of this provision in article 3.50 of the new Civil Code, it would appear interesting to be able to protect the voice on the basis of the components of the property right (*usus, fructus, abusus*). Recognition of this possibility would enable any individual to take legal action using the remedies available in this field in the event of violation of his or her ownership of the voice.<sup>77</sup>

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<sup>72</sup> E. GULDIX, « De persoonlijkheidsrechten, de persoonlijke levenssfeer en het privéleven in hun onderling verband », doctoral thesis, Brussels, VUB, 1986, p.84.

<sup>73</sup> Brussels court, December 16, 1884, *J.T.* 1884, col. 1511

<sup>74</sup> E. GULDIX en A. WYLLEMAN, « De positie en de handhaving van persoonlijkheidsrechten in het Belgisch privaatrecht », TPR 1999, p.1591-1599.

<sup>75</sup> OFFICE OF THE GOVERNOR, « Tennessee First in the Nation to Address AI Impact on Music Industry », available at [www.tn.gov](http://www.tn.gov), January 10, 2024

<sup>76</sup> *Ibid.*

<sup>77</sup> E. GULDIX, « De persoonlijkheidsrechten, de persoonlijke levenssfeer en het privéleven in hun onderling verband », doctoral thesis, Brussels, VUB, 1986, p. 85.



## 2. Elements preventing the proper application of property rights

The property right, however positive it may be for the person wishing to protect his or her voice, is nevertheless characterized by certain elements that are inapplicable to individuals.

Indeed, the principle of being able to freely dispose of the triptych that makes it up (*usus, fructus, abusus*)<sup>78</sup> is impossible when applied to a person. In the case of an individual's own attributes, of which the voice is an integral part, this would make it possible, for example, to sell one's voice.<sup>79</sup>

The concept of property rights over the attributes of an individual's personality makes the legal situation very complicated to define, as it places the beneficiary of the right as being at the same time the object over which the right is exercised. The “object” covered by the right of ownership in such a case is the individual himself, when at the same time he is the holder of the right. If we were to popularize this situation, it would be the same as if an immovable asset were itself the owner of its property right. This is, of course, impossible.

Finally, the aim of this work is to outline the possibilities by which an individual can guarantee the protection of his or her voice. In the present context of property rights, it may be noted that these are not the most effective when it comes to reproduction carried out without the owner's consent.<sup>80</sup> This case has already been well developed in practice, notably during the Second World War, when a photograph of a Norman house was used as a postcard without the owner's consent.<sup>81</sup>

### C. Other subjective rights of protection

If we continue to use the example given above to make our analysis easier to understand, these performers can also invoke other rights in order to obtain recognition of the ownership of their voice.

Among these, we have already mentioned dubbing artists and their right to name recognition when lending their voices to audiovisual productions.<sup>82</sup> If this right is not respected, performers have recourse.<sup>83</sup> It is accepted that this must be mentioned ‘in accordance with the honest practices of the profession’<sup>84</sup>.

Performers cannot, however, prevent all use of their artistic performances.

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<sup>78</sup> P. LECOCQ, « Section 1 - Etendue de la propriété en général », *Manuel de droit des biens* – 1st Tome, 1st edition, Brussels, Larcier, 2012, p. 236.

<sup>79</sup> Cass. April 7, 1888, Pas. I, 166.

<sup>80</sup> E. GULDIX, « De persoonlijkheidsrechten, de persoonlijke levenssfeer en het privéleven in hun onderling verband », doctoral thesis, Brussels, VUB, 1986, p. 85.

<sup>81</sup> In such a case, the right of ownership of the property was not considered to have been violated.

<sup>82</sup> Art. XI. 204 al. 3, Code of Economic Law.

<sup>83</sup> F. BRISON, « Het naburig recht van de uitvoerende kunstenaar », p. 379.

<sup>84</sup> Art. XI. 204, al. 3, Code of Economic Law ; C. DECLERCK, « Morele auteursrechten », *Personenrecht 2001-2008*, E. GULDIX, TPR 2009, (937) p. 941.

The case par excellence is that of criticism or parody, which is covered by the Code of Economic Law.<sup>85</sup>

In these circumstances, which we will discuss below, the performer cannot oppose the use of his or her voice.<sup>86</sup>

### 1. Related rights<sup>87</sup>

As already stated above, the voice itself is not directly protected by copyright *sensu lato*. A large body of case law has already demonstrated its inapplicability.<sup>88</sup>

Alongside this right, we know that performers can sometimes avail themselves of related rights to protect the execution of a performance.<sup>89</sup>

Neighboring rights are an auxiliary category of protection designed to protect artistic performances performed on a work that could benefit from copyright.<sup>90</sup> These were already defined in the Rome Convention as: ‘actors, singers, musicians, dancers and other persons who represent, sing, recite, declaim, play or otherwise perform literary and artistic works’<sup>91</sup>.

The most famous example concerned a performer who had recorded her voice reading everyday words. When she became aware that these recordings had been used for commercial purposes, she brought an action based on the related rights she claimed to own.

However, the case in question proved her wrong. It's true that a personal imprint on the work is necessary for it to be considered original, but this must go further than a mere word reading. There must be a truly original performance that characterizes the property of its author.<sup>92</sup> This original performance could not be deduced from recordings made with a neutral voice and intonation for the “technical” purpose of artificially recreating phrases later on.<sup>93</sup>

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<sup>85</sup> Art. XI. 217, Code of Economic Law.

<sup>86</sup> Art. XI. 217, 9° Code of Economic Law.

<sup>87</sup> F. de VISSCHER et B. MICHAUX, « Précis du droit d'auteur et des droits voisins », A&M, 2000/3, p. 356 ; F. BRISON *et al.* « 1. - Actualités législatives en droit d'auteur », Droit de la propriété intellectuelle, N. BERTHOLD (dir.), 1st edition, Brussels, Larcier, 2019, p. 9-50.

<sup>88</sup> See below. In particular Trib. Gand (arr. Gand) December 11, 2014, A/13/01511.

<sup>89</sup> F. de FISSCHER and B. MICHAUX, « « Précis du droit d'auteur et des droits voisins », A&M, 2000/3, p. 261 and 263.

<sup>90</sup> D. KAESMACHER, « Droits intellectuels », Rép. not., T. II, *Les biens*, Book 5, Brussels, Larcier, 2013, n° 327.

<sup>91</sup> Article 3, a) of the Rome Convention.

<sup>92</sup> F. de FISSCHER and B. MICHAUX, « « Précis du droit d'auteur et des droits voisins », A&M, 2000/3, p. 265.

<sup>93</sup> Trib. Gand (arr. Gand) December 11, 2014, A/13/01511.

In addition, there is another important limit to the protection of related rights: the notion of “complementary” artist.<sup>94</sup> When an artist is considered to fall into this category, he or she will not be able to claim protection for the performance he or she makes.<sup>95</sup>

If we refer to the fairly dense literature on the subject, we can see that this notion seems to include dubbing artists.<sup>96</sup>

Also, this notion of performance obviously only concerns the artistic work itself.<sup>97</sup> It is the latter that is the very object of protection. It cannot therefore be considered that the person performing the work is the object of protection. The use of one's voice in the artistic performance can therefore potentially be protected by other means, such as one's personality rights.<sup>98</sup>

Under these circumstances, we can very clearly deduce that it is not possible to protect the voice through related rights, even if this voice is used as part of an artistic performance. The same applies to performers, who are considered to be complementary artists. This right is primarily designed to protect the artistic performance itself, not the voice, therefore it is not because the individual is the owner of his or her voice that he or she can directly claim protection of any related rights.

#### **D. Unfair practices**

When the voice is considered a commercial good and is used in business-to-business relations, it is possible that this voice contributes to an unfair commercial practice recognized as prohibited under the Code of Economic Law.<sup>99</sup> The natural person owning the voice in question must therefore meet the conditions to qualify as a “business”.<sup>100</sup>

Unfair commercial practice is defined in article VI. 104 of the Code of Economic Law as follows: ‘Any act contrary to honest market practices by which an enterprise harms or may harm the professional interests of one or more other enterprises is prohibited’<sup>101</sup>.

Although rarely seen in practice, cases linking voice to unfair commercial practices could most often be encountered in the case of voice imitations. Such practices are prohibited when they fall within one of the cases listed in article VI. 104/1 of the Code of Economic Law.<sup>102</sup> The problem with such practices is that they can lead to customers no longer being able to distinguish between the two companies concerned.<sup>103</sup> In the case of voice protection, the two companies could be two singers, one of whom imitates the other in order to sell songs pretending to be him.

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<sup>94</sup> F. de FISSCHER and B. MICHAUX, « Précis du droit d'auteur et des droits voisins », A&M, 2000/3, p. 264.

<sup>95</sup> Art. XI.205, Code of economic law.

<sup>96</sup> F. de FISSCHER and B. MICHAUX, « Précis du droit d'auteur et des droits voisins », A&M, 2000/3, p. 264 ; A. BERENBOOM, « Chapitre 9. - Les artistes interprètes et exécutants », *Le nouveau droit d'auteur*, 5th edition, Brussels, Larcier, 2022, p. 480.

<sup>97</sup> Art. XI.205, Code of economic law.

<sup>98</sup> F. de FISSCHER and B. MICHAUX, « Précis du droit d'auteur et des droits voisins », A&M, 2000/3, p. 266.

<sup>99</sup> Art. 104/1, Code of economic law.

<sup>100</sup> *Ibid.*, Art. I. 1, 1°.

<sup>101</sup> *Ibid.*, Art. VI. 104.

<sup>102</sup> *Ibid.*, Art. VI. 104/1.

<sup>103</sup> Trib. Brussels, September 2, 2016, 1. *I.R.D.I.*, 2017, p.73-79

This is a very interesting subject, but given the limitations of this work, it will be the subject of another study.

## E. Individual's right to privacy

### 1. GDPR<sup>104</sup>

#### (a) Definition

The General Data Protection Regulation (GDPR) is a European Regulation that came into force in 2018 and frames the protection of personal data in Europe.<sup>105</sup> This regulation applies to both the private and public spheres<sup>106</sup> we discussed above concerning the voice recognition method using biometrics.<sup>107</sup> As we have seen, this compares the disputed voice with a database of different sounds recorded by the person believed to be the owner of the voice. This database containing a very large number of voice recordings is a very good example subject to RGD compliance. Biometric data is, moreover, detailed in this regulation.<sup>108</sup>

There are a series of important notions regarding the RGD.<sup>109</sup>

These include personal data and its processing.<sup>110</sup> But also the principles of “data controller” and “data processor” when dealing with the actors of this Regulation.<sup>111</sup>

As can already be seen from the name of the Regulation, its aim is to guarantee the protection of personal data, understood as information that can be linked to an “identified or identifiable natural person”<sup>112</sup>. The GDPR therefore focuses on the processing of such data in relation to individuals.<sup>113</sup>

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<sup>104</sup> C. PONSART and N. MICHAIL, « Le RGD : état des lieux du règlement central du droit européen de la protection et de la libre circulation des données personnelles », C.D.E., 2021/3, p. 725-823.

<sup>105</sup> EU Regulation 2016/679 of the European Parliament and of the Council of April 27, 2016.

<sup>106</sup> Art. 2, EU Regulation 2016/679 of the European Parliament and of the Council of April 27, 2016; C. AUGHUET *et al.* « Chapitre 2 - Les caractères des droits de la personnalité », Tome I – Les personnes., 1<sup>st</sup> and 2<sup>nd</sup> Volumes, 1<sup>st</sup> edition, Brussels, Bruylant, 2015, p. 141.

<sup>107</sup> As developed in Chapter 1 of this work.

<sup>108</sup> Art.4, 14) and Art. 9, EU Regulation 2016/679 of the European Parliament and of the Council of April 27, 2016.

<sup>109</sup> C. PONSART and N. MICHAIL, « Le RGD : état des lieux du règlement central du droit européen de la protection et de la libre circulation des données personnelles », C.D.E., 2021/3, p. 732.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

<sup>112</sup> Art. 4, 1), Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals regarding the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

<sup>113</sup> Art. 2 et 3, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC; C. PONSART and N. MICHAIL, « Le RGD : état des lieux du règlement central du droit européen de la protection et de la libre circulation des données personnelles », C.D.E., 2021/3, p. 732

The Regulation defines «processing» of personal data as ‘any operation or set of operations which is performed upon personal data or sets of personal data, whether by automatic means, such as collection, recording, (...) or otherwise making available, alignment or combination, restriction, erasure or destruction’<sup>114</sup>.

As mentioned above, for an individual to benefit from the protection afforded to his or her personal data, he or she must be identifiable, or at the very least identifiable. In most cases, a person will be considered identified when it is possible to associate him or her with his or her surname and/or first name.<sup>115</sup> The notion of “identifiable” comes into play when the identity of the person is not directly indicated, but the identifying elements can be associated with the person indirectly (for example, the IP address of the device belonging to the person).<sup>116</sup>

In the case of the voice, the individual could take advantage of the GDPR on the grounds that it constitutes personal data that can be attributed to him or her.<sup>117</sup>

As this work must remain focused on the protection of the voice, our development on the subject of the GDPR will be limited to these essential notions even though the Regulation is much broader.

Determining the lawfulness of a recording is a task given to the judge to guarantee respect for every individual's right to privacy.<sup>118</sup> But this is not the judge's only task.<sup>119</sup>

Indeed, as in the case of moral rights and personality rights, the judge may have to weigh up the two rights invoked before him or her, depending on the case in question.<sup>120</sup> In the case of the right to privacy, for example, this may sometimes conflict with other fundamental rights that are nonetheless on an equal footing.<sup>121</sup>

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<sup>114</sup> Art. 4, 2), Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals regarding the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

<sup>115</sup> C. PONSART and N. MICHAIL, « Le RGPD : état des lieux du règlement central du droit européen de la protection et de la libre circulation des données personnelles », C.D.E., 2021/3, p. 740.

<sup>116</sup> *Ibid.*

<sup>117</sup> As stated above, it's not difficult to attribute ownership of the voice, which is unique to each individual.

<sup>118</sup> Cour. eur. D.H., Société Prisma Presse c. France, July 1st, 2003 ; Cour eur. D.H., Hachette Filipacchi Associés (ICI PARIS), June 14, 2007, § 40; Cour eur. D.H., Von Hannover (n°2), February 7, 2012, §103.

<sup>119</sup> M. ISGOUR, « VII. - Seconde dérogation : le droit à l'information », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 171.

<sup>120</sup> Gand, January 5, 2009, A.M., 2009, p. 413. ; M. ISGOUR, « VII. - Seconde dérogation : le droit à l'information », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 172.

<sup>121</sup> M. ISGOUR, « VII. - Seconde dérogation : le droit à l'information », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 171.

## 2. The right to respect for privacy

With regard to another means of protecting the voice of individuals, the respect for privacy also seems to provide a remedy.

As in the case of related rights, case law regularly confirms or refutes the possibility of invoking these various rights.<sup>122</sup> In the case of the respect for the right to privacy, case law has repeatedly shown itself to be quite favorable.<sup>123</sup> In this field, the voice is one of the most important instruments for communicating information that is part of an individual's private life and which, once published, may violate their intimacy and, above all, their respect for privacy.<sup>124</sup>

Among these, we can cite the case of an interview in which a person was filmed and recorded without his knowledge by a television channel. The interviewee answered a few questions put by the journalists. However, the interviewee categorically refused to allow the recordings to be broadcast.<sup>125</sup>

Despite this, the channel concerned went ahead with the broadcast. The person concerned, recognizable not only by his voice (his face having been blurred on the screen) but also by the visibility of his place of residence, decided to lodge an appeal. It was therefore considered that the journalist had violated his right to privacy by proceeding in this way.<sup>126</sup>

### (a) Definition

At first glance, the right to privacy seems to be a rather complex concept to define. The scope of protection of this right is very broad indeed and is not limited to any particular framework.<sup>127</sup> Moreover, it is a fundamental right enshrined in a series of laws. We can find this in Article 22 of the Belgian Constitution.<sup>128</sup> For its part, European law also provides material for this notion in several sources. These include Article 8 of the European Convention on Human Rights, Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, and Article 16(1) of the Treaty on the Functioning of the European Union.<sup>129</sup>

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<sup>122</sup> Anvers, March 26, 2007, *N.J.W.*, 2007, p. 801, obs. E. BREWAEYS.

<sup>123</sup> Cour eur. D.H., Pretty, April 24, 2002, in *Rev. trim.dr.h.*, 2003, 71, note O. de Schutter ; B., DOCQUIR, « Le droit de la vie privée », Brussels, Larcier, 2008, p. 10.

<sup>124</sup> L. DIERICKX, « Het recht op afbeelding », Antwerp, Intersentia, 2005, p. 18.

<sup>125</sup> RVDJ June 16, 2016, V/Vier en Karen & De Coster, available at [rvdj.be/node/448](http://rvdj.be/node/448) ; N. DEBRUYNE « Privaatrechtelijke bescherming van de stem in commerciële context », *TPR* 2018, afl. 3.

<sup>126</sup> *Ibid.*

<sup>127</sup> C. AUGHUET and al. « Chapitre 2 - Les caractères des droits de la personnalité », Tome I – Les personnes., 1<sup>st</sup> and 2<sup>nd</sup> Volumes, 1<sup>st</sup> edition, Brussels, Bruylant, 2015, p. 145.

<sup>128</sup> Art. 22, Const ; J.-C. LARDINOIS and B. MOUFFE, « Chapitre 1 - Droits de la personnalité : vie privée, droit à l'image, droit au nom... » *Droit des artistes*, 1st edition, Brussels, Larcier, 2021, p. 44.

<sup>129</sup> Art. 8, of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Art. 7 and 8 of the Charter of Fundamental Rights of the European Union; Art. 16 (1) of the Treaty on the Functioning of the European Union.

The right to privacy, although difficult to define, is essential if we are to protect the private lives of individuals from any violation of their rights, as well as to grant them subsidiary protection of the personality (as we shall discuss below).<sup>130</sup>

However, it can sometimes be difficult to distinguish the application of a violation of the image right from that of the right to privacy.

Furthermore, legal precedents have repeatedly shown that the use of a person's voice is authorized in certain situations, thereby ruling out the possibility of invoking a violation of the right to privacy.<sup>131</sup> If we take the example of dubbing actors in the film industry, it would be very difficult (if not impossible) to imagine that they could invoke a violation of the right to privacy in the event of a challenge to the use of their voices in a film they have recorded.

(b) Examples of situations protected by the right to privacy

It is sometimes recognized that the right to privacy exists all the same, even though it concerns a situation linked to the individual's public sphere. For example, an employee could invoke this right to privacy if he learns that the calls he makes from his employer's offices are being recorded without his knowledge.<sup>132</sup>

With regard to privacy in the context of voice protection, infringements may concern the context or content of the disputed recording.<sup>133</sup>

The context may be private, protected by the right to privacy when the information disseminated relates to purely private aspects of the individual and has been collected in the individual's private context. For example, planting microphones in an employer's home because you suspect that he is about to sell the company could be considered an infringement of his right to privacy. Although the information concerns the public, the context in which it is gathered is private.

A violation relating to the content of the information occurs if the recording disseminates information relating to a person's private life. The focus here is on the actual content of the information in question. For example, a student is interviewed as part of a survey about his views on the organization of his university. He or she is willing to take part, provided that it is not possible to identify him or her when the recording is played on the radio. If the radio program publishes the recording without respecting the condition given by the student, the recording infringes the student's right to privacy with regard to the content of the information broadcast.

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<sup>130</sup> B. MOUFFE, « Le droit à l'image », Waterloo, Kluwer, 2013, p. 89.

<sup>131</sup> Trib. Brussels, September 30, 2010, AM 2011, (336) 339.

<sup>132</sup> In the same way : Civ. Verviers (4e ch.) September 5, 2023, 21/1051/A, A&M, 2023/1, p. 116 ; Cour trav. Liège (ch. 3-A), 02/08/2022, *J.T.T.*, 2023/3, p. 35.

<sup>133</sup> N. DEBRUYNE « Privaatrechtelijke bescherming van de stem in commerciële context », *TPR* 2018, afl. 3, p.1131.

## (c) Exception

Despite the contextual and content-related infringements we have discussed, there are certain exceptions where it is recognized that it is permissible to use a recording without the permission of the person recorded.<sup>134</sup>

When we have daily phone conversations, it's accepted that we can record them without the consent of the person we're communicating with.<sup>135</sup> Indeed, it is not uncommon for people to use recorded telephone conversations as evidence in court.<sup>136</sup>

However, there are certain limits to this ability to record any telephone conversation. For example, it is forbidden to record a discussion with a famous person for the purpose of broadcasting the recording in an advertisement.<sup>137</sup>

**F. Recognition of the voice as a personality right: the solution to the problem?**

## 1. What is the right to personality?

Personality rights are a fairly complex concept which can nevertheless be illustrated, in the case of the voice, by case law which has highlighted this concept.<sup>138</sup>

At present, there is no legal definition of personality rights, but doctrine has taken on the task of defining them: *'Personality rights can be defined as a group of subjective rights which every person, by the mere fact of his existence, enjoys to protect his individuality, his physical, psychic and moral integrity, against the attacks of third parties: right to life, right to control of the body, right to privacy, right to image, to honor, to name...'*<sup>139</sup>

The very basis of personality rights therefore comes essentially from case law and doctrine.<sup>140</sup>

In the famous "Rocco Granata" case of January 19, 2001, a producer authorized a retailer to use a Rocco Granata song for advertising purposes. In addition, an agreement between the producer and the retailer stipulated that the singer would make a new recording of the song to promote the product concerned. The problem arose when Rocco Granata

<sup>134</sup> Art. 90ter à 90decies, C.I.C.R.

<sup>135</sup> Exception to art. 90ter à 90decies, C.I.C.R. ; Cass. January 8, 2014, Arr.Cass. 2014.

<sup>136</sup> This is particularly true in divorce cases, where it is permissible to provide evidence by means of a "detective's report". In such cases, the recording is authorized even if it is made without the spouse's knowledge, as long as it is made incidentally or without provocation or home invasion.

<sup>137</sup> B. MOUFFE, « Section Ire. - Les droits de la personnalité », *Le droit de la publicité*, 4th edition, Brussels, Bruylant, 2013, p. 529.

<sup>138</sup> Trib. Brussels (24e ch.), January 19, 2001, A&M, 2002/5, p. 450.

<sup>139</sup> C. AUGHUET *and al.* « Chapitre 2 - Les caractères des droits de la personnalité », *Tome I – Les personnes.*, 1st and 2nd Volumes, 1st edition, Brussels, Bruylant, 2015, p. 137.

<sup>140</sup> C. AUGHUET *and al.* « Chapitre 2 - Les caractères des droits de la personnalité », *Tome I – Les personnes.*, 1st and 2nd Volumes, 1st edition, Brussels, Bruylant, 2015, p. 138 ; J.-C. LARDINOIS et B. MOUFFE, « Chapitre 1 - Droits de la personnalité : vie privée, droit à l'image, droit au nom... » *Droit des artistes*, 1st edition, Brussels, Larcier, 2021, p. 43 ; E. VERJANS, « Buitencontractuele aansprakelijkheid voor schending van persoonlijkheidsrechten », R.W., 2013-2014/14, p. 522 ; Y.-H., LELEU « Section 1 - Généralités », *Droit des personnes et des familles*, 4th edition, Brussels, Larcier, 2020, p. 117.



refused to allow his song to be used for advertising purposes. Despite this refusal, the producer decided to make an artificial recording by copying Rocco Granata's voice. In response, Granata decided to take legal action against the producer.<sup>141</sup>

In this case, the judge acknowledged the originality of the work, noting that the producer held the copyright to the song, but also introduced the notion of personality rights in a case where the artist's voice had been “stolen”.<sup>142</sup>

This case is important in that it introduces a certain novelty: the recognition of the violation of a personality right, and more specifically that of an infringement of the right to voice.<sup>143</sup>

This case law is not the only one to have highlighted the existence of a personality right.<sup>144</sup>

We can therefore say that, in terms of protecting the human voice, its association with personality rights has a doctrinal basis. It seems essential that the human voice should be protected by a subjective right that we might describe as a “right to voice”<sup>145</sup>. This seems to us to be the best solution for our research subject.

If it is indeed a good solution to our problem, this “right to voice”, if it is to be generally recognized, should have the same force of recognition as other personality rights, notably the right to image. The latter, an integral part of personality rights, applies to all individuals without exception.<sup>146</sup> This universal aspect needs to be recognized for the right to voice, so that a wider range of cases can be covered.<sup>147</sup> We will later return to the comparison between image rights and the right to voice as a fully-fledged personality right.

Indeed, although it is recognized that every individual today has personality rights, there is as yet no right to voice as such.

Recognition of the right to voice as a personality right would enable individuals to protect their right against unauthorized use, and also to authorize its use in certain circumstances.<sup>148</sup> Even today, however, personality rights remain rather vague, and their scope has never been clearly defined.<sup>149</sup> For this reason, we found it important to address the protection of the human voice as part of personality rights.

As mentioned above, the voice, like fingerprints, is a characteristic that is unique to each individual.<sup>150</sup> From a personality point of view, it enables them to express their

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<sup>141</sup> Trib. Brussels (24e ch.), January 19, 2001, A&M, 2002/5, p. 450.

<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

<sup>144</sup> Comp. Gand, April 26, 1973, R. W., 1973-1974, col. 480, obs. L. GALAUDE; J.-L., RENCHON. (ed.), « Les droits de la personnalité », Brussels, Bruylant, 2009, p. 245.

<sup>145</sup> By analogy with what we know, such as image right.

<sup>146</sup> M. ISGOUR, « VIII. - La nature juridique du droit à l'image : droit de la personnalité ? », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 90.

<sup>147</sup> C. AUGHUET *and al.* « Chapitre 2 - Les caractères des droits de la personnalité », *Tome I – Les personnes.*, 1st and 2nd Volumes, 1st edition, Brussels, Bruylant, 2015, p. 139.

<sup>148</sup> N. DEBRUYNE, « Privaatrechelijke bescherming van de stem in commerciële context », *TPR* 2018, afl. 3, p. 1160.

<sup>149</sup> M. ISGOUR « VIII. - La nature juridique du droit à l'image : droit de la personnalité ? », *Le droit à l'image*, 2e édition, Brussels, Larcier, 2014, p. 89.

<sup>150</sup> See Chapter 1 of this work, « Notre voix est-elle unique ? », p. 10.

individuality. For example, when we hear a song on the radio, we are able to recognize the singer even when we don't know the song, based solely on the characteristics of the voice we hear.

## 2. Analogy with image rights

In order to better link this notion of right to voice to personality rights, it is necessary to address the concept of image rights, which are fully recognized as a personality right enjoyed by every individual.<sup>151</sup>

### (a) What are image rights?

In reading the various doctrinal definitions of the right to image, we can easily identify the analogous aspect of this right to that of the voice. 'The right to one's image is the right of an individual to control the reproduction of features that identify him or her. The consecration of this right, classified as a personal right, is inseparable from the advent of photography at the end of the 19th century, which multiplied the possibilities for the press to take and reproduce images. Even today, the evolution of image right is influenced by the development of new technologies, such as mobile cameras and drones, which increase people's permanent exposure to image sensors.'<sup>152</sup>

The right to one's image, as is the case today for the right to voice, derives from progressive technological developments that have made it essential to protect 'features that allow individuals to be identified'.<sup>153</sup>

### (b) Links with a potential right to voice

On closer analysis, this definition of the right to image is intended to recognize a protection that could also be applied in the case of the voice, since voice and image have in common the fact that they are elements that allow individuals to be singularly recognized.<sup>154</sup> We are thinking, for example, of audiovisual productions in which people can use their right to image have their presence removed, thereby at the same time eliminating their voice.

However, although these two characteristics are linked, they only represents a large minority of situations.<sup>155</sup>

Overall, the right to an image, although clearly recognized as a personality right in its own right, requires certain essential features that the right to voice almost never has: 'the representation of the individual must be made in a visual and figurative form'.<sup>156</sup>

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<sup>151</sup> T. GARE and A. RAYNAUD, « Chapitre 1. La personnalité juridique des personnes physiques. », *Droit des personnes et de la famille*, T. GARE et A. RAYNAUD (Dir) Paris, Ellipses, 2022, p. 30.

<sup>152</sup> F. JONGEN and A. STROWEL, « Section 3. - Droit à l'image », *Droit des médias et de la communication*, 1st edition, Brussels, Larcier, 2017, p. 413.

<sup>153</sup> *Ibid.*

<sup>154</sup> F. JONGEN and A. STROWEL, « Section 3. - Droit à l'image » *Droit des médias et de la communication*, 1e édition, Bruxelles, Larcier, 2017, p. 416.

<sup>155</sup> M. ISGOUR, « Le droit à l'image », 2th edition, Brussels, Larcier, 2014, p. 60.

<sup>156</sup> *Ibid.*, p. 150.

This leads us to the next step in this work, namely the need for a right to voice, which, although inspired by what already exists for the right to image would provide a real framework for specific cases involving the voice alone. If we look at the various *sui generis* rights that make up personality rights, it would be logical to see a right to voice also included.<sup>157</sup>

As we have already seen in the case of the interview where the person was “blurred” but remained recognizable by his voice, if we do not recognize the existence of this subjective right, it would be easy to circumvent the rights of individuals.<sup>158</sup> In such a case, a personality right enabling the voice to be represented on the one hand, and the image on the other, would have the effect of providing optimum protection by means of two rights which, in our view, are often complementary.

On the basis of this reasoning, every individual is in a position to protect the use of his or her voice against someone else using it without his or her prior authorization.<sup>159</sup> As this right belongs exclusively to the individual, it is up to him or her to prohibit or authorize the use of his or her voice by a third party.<sup>160</sup>

(c) How can consent be given?

There are no formalities that must be complied with before a person can be considered to have authorized the use of his or her voice. Authorization may well be given implicitly, but it must be unequivocal, i.e. there must be no doubt about it.<sup>161</sup>

In the example of the dubbing artist, we've touched on several times in our work, this person will be deemed to have given implicit authorization when he or she signs a contract with the film producer to lend his or her voice. This authorization will only be valid in the circumstances of the film that this person is dubbing. In other words, it will not be possible for the producer to use the voice for all future films without the voice holder's authorization.<sup>162</sup>

When authorization has not been formally given, it is always possible for the individual<sup>163</sup> to take action to prohibit a third party from using his or her voice (there are certain exceptions, which we will discuss below).<sup>164</sup>

(d) What happens if authorization has not been given?

The existence of a personality right in such circumstances enables the owner of the voice to assert his or her right to voice. As already developed above, this right ‘implies an independent cause of action, distinct from the ordinary law of extra-contractual liability. The owner can therefore act against any violation of the right and should not have to worry

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<sup>157</sup> C. AUGHUET *and al.* « Chapitre 2 - Les caractères des droits de la personnalité », Tome I – Les personnes., 1st and 2nd Volumes, 1st edition, Brussels, Bruylant, 2015, p. 137.

<sup>158</sup> RVDJ June 16, 2016, V/Vier en Karen & De Coster, [rvdj.be/node/448](http://rvdj.be/node/448).

<sup>159</sup> C. AUGHUET *and al.* « Chapitre 2 - Les caractères des droits de la personnalité », Tome I – Les personnes., 1st and 2nd Volumes, 1st edition, Brussels, Bruylant, 2015, p. 139.

<sup>160</sup> *Ibid.*

<sup>161</sup> J.-L., RENCHON. (ed.), « Les droits de la personnalité », Brussels, Bruylant, 2009, p. 241.

<sup>162</sup> Art. XI.204, Code of economic law.

<sup>163</sup> In fact, she is the only one to be able to invoke her right to voice, as this right is exclusive to her.

<sup>164</sup> C. AUGHUET *et al.* « Chapitre 2 - Les caractères des droits de la personnalité », Tome I – Les personnes., 1st and 2nd Volumes, 1st edition, Brussels, Bruylant, 2015, p. 139.

about the consequences of such a violation. Consequently, the owner can act against any violation of the right and does not have to prove fault, damage and the causal link between the two. Moreover, for there to be a tort, no intention to offend or injure is required.<sup>165</sup>

In such a situation, the injured party could be awarded damages or reparation in kind where applicable.<sup>166</sup>

However, you don't necessarily have to be in a situation like that of the doubler. If someone records our voice but does not communicate it to the public, we can still invoke our right to our voice. Thanks to this right, it is possible for the person concerned to prevent the person in possession of the recording from keeping it.

### 3. Exception to the right to voice

As discussed above, copyright and right to voice must be distinguished from one another. The former requires a certain formatting and respect for the criterion of originality, which is not the case, for example, with a dubbing artist who recites everyday words.<sup>167</sup>

On the other hand, the right to voice does not claim to protect a work, but rather the voice of the person concerned. The message conveyed by the voice does not fall within the scope of this right. In this situation, an individual wishing to protect the content he or she recites will have to turn to the protection afforded by copyright *s.l.*<sup>168</sup>

The right to voice therefore protects only the individual's voice.<sup>169</sup>

It is essential to distinguish between the different notions we have developed in the course of this work. The right to personality would then include subjective rights such as the right to one's image, the right to voice or the right to one's name, but these notions do not protect the same cases.<sup>170</sup> Remember that the voice is a vector for the transfer of information, creativity, emotions, etc., but these elements are not components of the voice.

There are only a very small number of situations in which it might be exceptional to admit the application of right to voice beyond the use of the voice. Think of jazz or gospel, for example. In these musical genres, at the height of their popularity in the 20th century, it is common practice to use the voice as a musical instrument to release sounds devoid of any creative meaning. This technique can be attributed the original character required of

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<sup>165</sup> N. DEBRUYNE, « Privaatrechelijke bescherming van de stem in commerciële context », *TPR* 2018, afl. 3, p. 1160-1161 ; L. DIERICKX, « het recht op afbeelding », p. 84.

<sup>166</sup> J.-L., RENCHON. (ed.), « Les droits de la personnalité », Brussels, Bruylant, 2009, p. 225.

<sup>167</sup> Trib. Gand (arr. Gand) 11 décembre 2014, A/13/01511.

<sup>168</sup> *Ibid.*

<sup>169</sup> E. GULDIX, « Recht op stem », *overzicht van rechtspraak (2001-2008)*, E. GULDIX, P. DE HERT and A. WYLLEMAN, *TPR* 2009, (769) p. 918.

<sup>170</sup> C. AUGHUET *and al.* « Chapitre 2 - Les caractères des droits de la personnalité », *Tome I – Les personnes.*, 1st and 2nd Volumes, 1st edition, Brussels, Bruylant, 2015, p. 145.

works protected by copyright *s.l.* In such cases, it is the people's voices that characterize these sounds.

Once again, we can compare this kind of situation to that of dubbers reciting everyday words. Once again, it is the particularity of the voice that characterizes this situation, triggering its protection by the right to voice.<sup>171</sup>

The application of right to voice to this musical technique has also been advocated by certain authors.<sup>172</sup>

#### 4. Who can benefit from this protection?

To be able to claim the right to voice, we must be able to identify our voice as belonging to the element at issue in the conflict.

How do you determine if a voice belongs to you? This brings us back to Chapter 1 of this work, when we explained how to go about proving that a voice does indeed belong to an individual.<sup>173</sup> Leaving aside the issue of A.I. tools, to which we'll return below, it's essential to have such proof to be able to recognize that the voice being used or held belongs to us. It goes without saying that it would be impossible to use the protection of the right to voice in situations where it would be impossible to recognize the individual's voice.<sup>174</sup>

Let's imagine a concrete situation: television broadcasters are present at a festival to report on the event. The mere fact of being present at the recorded event would not be enough to invoke a right to voice, on the pretext that we might hypothetically recognize our own among the crowd.

This is why we see daily reports in which individuals who do not wish to be broadcast publicly have their voices distorted, made higher or lower pitched. This makes it impossible to recognize the voice, and thus to respect the right to voice.<sup>175</sup>

This makes it particularly difficult to protect the dubbing artist if his or her voice is artificially distorted by the producer.<sup>176</sup> This increases the importance of written agreements between the doubler and the producer, to guarantee recognition of the ownership of this subsequently transformed doubler's voice.<sup>177</sup>

As you will have understood by now, the element of recognition is essential for the application of the right to voice.

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<sup>171</sup> J.-L., RENCHON. (ed.), « Les droits de la personnalité », Brussels, Bruylant, 2009, p. 245.

<sup>172</sup> N. DEBRUYNE, « Privaatrechelijke bescherming van de stem in commerciële context », *TPR* 2018, afl. 3, p. 1162.

<sup>173</sup> See chapter 1 of this work, « L'appartenance d'une voix », p. 9.

<sup>174</sup> J. GALLOIS, « Affaire Cahuzac : quand le droit de la peine est au centre d'un procès », available at [www.dalloz-actualite.fr](http://www.dalloz-actualite.fr), June 1st, 2018.

<sup>175</sup> J.-L., RENCHON. (ed.), « Les droits de la personnalité », Brussels, Bruylant, 2009, p. 245.; Trib. Gand (arr. Gand) December 11, 2014, A/13/01511.

<sup>176</sup> Think of cartoons, where the voice is often made more artificial, such as the various Transformers films, where the machines are endowed with highly modified voices.

<sup>177</sup> A. BERENBOOM, « Chapitre 5. - La circulation des oeuvres. Les contrats », *Le nouveau droit d'auteur*, 5th edition, Brussels, Larcier, 2022, p. 309.

Of course, this recognition must be objective. It would be all too easy to assume that the person claiming a right to voice can, on his or her own, recognize that he or she is the owner. Above all, third parties must be able to recognize the voice associated with the person claiming possession of it. This is also how it is done in the case of image rights.<sup>178</sup>

#### 5. Cases of justified violation of the right to voice<sup>179</sup>

When there is a violation of the right to voice, it is necessary to analyse whether the context does not create a sufficiently well-founded reason to recognize the legitimacy of this violation. In certain exceptional cases to the regime we have detailed, we could admit that it is justified not to respect the rules normally foreseen by the right to voice.<sup>180</sup>

By analogy, we find the possibility of using a photograph in which certain people can be seen, as long as these people are only secondary to the objective of the photograph<sup>181</sup>, as far as the material protected by image right is concerned.<sup>182</sup> When the voice is not the central element of the recording, it is not necessary to respect the right to voice. The example of a festival crowd has already been discussed above.

Other concepts recognized at European level also recognize the possibility of derogating from the application of the right to voice in certain cases.<sup>183</sup>

In particular, Article 10 of the European Convention on Human Rights provides a framework for certain situations.<sup>184</sup> Generally speaking, these articles are intended to defend freedom of expression. Within it, this notion allows certain concepts relevant to our research to exist. We'll be focusing on the **right to humor** and the **right to information**.<sup>185</sup>

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<sup>178</sup> M. ISGOUR, « Le droit à l'image », p. 147.

<sup>179</sup> We could also think of what we find in image right: for example, the presumption of prior authorization for public figures due to their popularity; J.-C. LARDINOIS and B. MOUFFE, « Chapitre 1 - Droits de la personnalité : vie privée, droit à l'image, droit au nom... » *Droit des artistes*, 1st edition, Brussels, Larcier, 2021, p. 49 ; B. DUBUISSON *and al.* « § 3. - Responsabilité de la presse en cas d'atteinte aux droits de la personnalité : droit au respect de la vie privée, droit à l'image et droits intellectuels », *La responsabilité civile*, 1st edition, Brussels, Larcier, 2009, p. 988-989.

<sup>180</sup> B. MOUFFE, « Chapitre 2 - Humour, « norme de la vie sociale ». Historique d'une impunité particulière », *Le droit à l'humour*, 1st edition, Brussels, Larcier, 2011, p. 47 ; M. ISGOUR, « VII. - Seconde dérogation : le droit à l'information », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 172.

<sup>181</sup> M. ISGOUR, « Chapitre II. - Le titulaire du droit à l'image », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 97 ; B. MOUFFE, « Section Ire. - Les droits de la personnalité », *Le droit de la publicité*, 4th edition, Brussels, Bruylant, 2013, p. 528.

<sup>182</sup> M. ISGOUR, « Chapitre II. - Le titulaire du droit à l'image », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 97.

<sup>183</sup> Art. 10, European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>184</sup> Art. 8, European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>185</sup> B. MOUFFE, « Chapitre 1 - L'humour, un mode spécifique d'expression », *Le droit à l'humour*, 1st edition, Brussels, Larcier, 2011, p. 29 and 375 ; M. ISGOUR, « VII. - Seconde dérogation : le droit à l'information », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 171.

(a) Right to humor

Article 10 of the European Convention on Human Rights, to which we have just referred, defends the existence of a right to humor.<sup>186</sup>

If we apply this to the case of the right to voice, we note that it allows us to recognize the possibility of the existence of certain situations in which the right to voice is not applicable.<sup>187</sup> In this way, we could imagine the case of parodies, in which it is recognized that a person's voice can be used for purely humorous purposes without the person's prior authorization.<sup>188</sup>

It goes without saying that parody must not exceed the limits of the recognized right to humor<sup>189</sup>, i.e. there must be no intention to produce negative effects such as verbal violence or defamation.<sup>190</sup> It is the use for prejudicial purposes that is frequently sanctioned by case law.<sup>191</sup>

(b) Right to information<sup>192</sup>

Alongside this objective of protecting humor, Article 10 of the European Convention on Human Rights also pursues the aim of protecting essential information.<sup>193</sup>

In such situations, it is generally recognized as legitimate that less importance should be attached to respect for the right to voice.<sup>194</sup> The public interest may then, in certain cases, be given primacy. To do this, it is necessary to determine whether the information transmitted is indeed in the public interest, over and above the right to privacy normally accorded to every individual.<sup>195</sup>

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<sup>186</sup> Art. 10, the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>187</sup> B. MOUFFE, « Chapitre 1 - L'humour, un mode spécifique d'expression », *Le droit à l'humour*, 1st edition, Brussels, Larcier, 2011, p. 29.

<sup>188</sup> This is the case, already discussed, of personalities who need to be more tolerant because of the status they hold : Cour Eur. DH, Handyside, 7 décembre 1976, Série A, n° 24, pp. 22-24, §§ 48-50 ; B. MOUFFE, « Chapitre 2 - Humour, « norme de la vie sociale ». Historique d'une impunité particulière », *Le droit à l'humour*, 1st edition, Brussels, Larcier, 2011, p. 47.

<sup>189</sup> Affaire Z.B. c. France, no 46883/15, September 2, 2021; Registry of the European Court of Human Rights, « Guide sur l'article 10 de la Convention européenne des droits de l'homme : liberté d'expression », August 31, 2022, p.103.

<sup>190</sup> *Ibid.* ; J.-C. LARDINOIS and B. MOUFFE, « Chapitre 1 - Droits de la personnalité : vie privée, droit à l'image, droit au nom... » Droit des artistes, 1st edition, Brussels, Larcier, 2021, p. 57-58.

<sup>191</sup> Affaire Z.B. c. France, no 46883/15, September 2, 2021.

<sup>192</sup> Cour eur. D.H., arrêt Österreichischer Rundfunk c. Austria, May 25, 2004, and Cour eur. D.H., arrêt Verlagsgruppe News GmbH c. Austria (n° 2), December 14, 2006, §§ 29 and 40 ; Cour eur. D.H., arrêt Von Hannover (n° 2), February 7, 2012, § 103 ; Cass. (1 re ch. fl.), April 27, 2007, R.T.D.F., 2008, p. 779 ; Cour eur. DH, arrêt Lingens, July 8, 1986, Série A, n° 103, p. 26, § 42 ; Cour eur. DH, arrêt Oberschlick, May 23, 1991, Série A, n° 204, pp. 25-26, §§ 58-59.

<sup>193</sup> Art. 10, the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>194</sup> M. ISGOUR, « VII. - Seconde dérogation : le droit à l'information », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 172 ; B. DUBUISSON et al. « § 3. - Responsabilité de la presse en cas d'atteinte aux droits de la personnalité : droit au respect de la vie privée, droit à l'image et droits intellectuels », *La responsabilité civile*, 1st edition, Brussels, Larcier, 2009, p. 985.

<sup>195</sup> M. ISGOUR, « VII. - Seconde dérogation : le droit à l'information », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 172.

Here again, as in the case of the right to humor, this matter is covered by a large body of case law.<sup>196</sup>

(c) But not everything is justified:

Obviously, the various exceptions described above are not absolute. There are therefore limits to them, as the Court has reminded us on several occasions.<sup>197</sup>

For example, the Court of Justice of the European Union ruled against a person who had made a telephone recording without the knowledge of a member of staff at an embassy. This recording, which was intended to be humorous, ultimately led to the dismissal of the employee concerned.<sup>198</sup>

In this type of situation, the judge must weigh up the effects on the person concerned. In this case, such a recording, which had a negative impact on the person of the dismissed employee and could not be justified by any protection whatsoever, therefore constitutes an exception to the right to humor.

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<sup>196</sup> Cour eur. D.H., *Österreichischer Rundfunk c. Austria*, May 25, 2004 ; Cour eur. D.H., *Verlagsgruppe News GmbH c. Austria* (n° 2), December 14, 2006, §§ 29 and 40 ; Cour eur. D.H., *Von Hannover* (n° 2), February 7, 2012, § 103. ; Cass. (1 re ch. fl.), April 27, 2007, R.T.D.F., 2008, p. 779.

<sup>197</sup> Brussels June 14, 2016, 2012/AR/2115 and 2012/AR/2116.

<sup>198</sup> N. DEBRUYNE, « Commerciële exploitatie van demenselijke afbeelding, naam en stem », Doctoral thesis, KU Leuven, January 2021, p. 180.



## **IV. Challenges and outlook for the future**

### **A. The impact of technology and artificial intelligence on voice**

As we have seen, most voice rights are based on the idea of voice recognition, and generally on technical means of attributing the voice to its owner.

The methods used in the first part of this article were designed to provide reliability and certainty as to the person to whom the voice belongs.

The emergence of new technologies, and A.I. in particular, has brought about a real upheaval in our research subject.

On the one hand, it creates the possibility of copying a person's voice identically, making it imperative to recognize a subjective right to the voice. On the other hand, this technology will sow more and more doubt about the ownership of voices and the effectiveness of the methods used to determine their owners.

If the Cahuzac affair had taken place at the present time, the procedural difference would have been the existence of doubts as to the attribution of the vote to the Minister.

In situations where it is sometimes certain that the voice in concern is associated with its owner, it is now legitimate to question this by claiming that this voice is in fact the result of an A.I.

### **B. Adapting the legal framework to future developments**

Given this situation, it is crucial that our system, which is already deficient in terms of its lack of a concrete legal framework for voice protection, adapts and develops a better framework.

There is no doubt about it, we are only at the beginning of a new paradigm, and if we do not act at the start of this evolution, it will be impossible (or at least difficult) to catch up with the technologies that are evolving every day.

However, we find it difficult to envisage the emergence of specific legislation such as that implemented by the State of Tennessee in its new ELVIS law. Such an approach, while innovative and intended to protect artists, does not really seem to protect against abuse.

Indeed, in situations of voice “theft”, it is almost always impossible to trace the perpetrators. In such cases, the introduction of financial or criminal sanctions has no effect in the face of mass distribution, particularly via the Internet.

In other parts of the world, voice protection against A.I. has already been effectively protected.

Chinese law, for example, adopts a similar approach to the one we have advocated in this research. It considers the right to voice to be an integral part of an individual's personality rights. Its protection is ensured by analogy with what is applicable for the protection of the right to voice. The only difference with Belgian law is that image right, and personality

rights in general, are codified in the Chinese Civil Code. Article 1023, applicable to image right, therefore applies *mutadis mutandis* to the voice when it is affected.<sup>199</sup>

### **C. Gaps in the current legal framework and recommendations for improvement**

At present, it is unthinkable that the human voice, an essential element of personality, should not enjoy a genuine framework recognized and developed by scholars and the legislator.

As we have seen throughout this research, some scholars advocate the possibility of protecting the human voice through a subjective right to voice, which could be classified as a personality right in the same way as, for example, the right to one's image.

The courts, for their part, have also been at work for many years, repeatedly recognizing the voice as an element of an individual's personality.

The real gap in the current legal framework is therefore the absence of a truly recognized framework. We have therefore attempted to provide an overview of the current situation in order to better understand how every individual's voice can be protected.

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<sup>199</sup> Chinese civil Code (2020), Art. 1023.

## **V. Conclusion**

To answer the question asked by our research subject, the human voice, as an element inherent to a person's personality, is currently not fully recognized in Belgian law.

In our development, we have tried to understand the shortcomings of our system, but above all to propose a solution to the Belgian framework in order to truly protect the voice.

To this end, we have identified a series of mechanisms that could be applied to the voice. As we suspected, copyright *s.l.* and related rights appeared inapplicable in view of their application criteria, and other possibilities such as property rights appeared almost impossible to imagine applying.

However, it seems absolutely crucial that a right to voice be considered among the other personality rights, as has already been the case for several years, notably for the right to one's image.<sup>200</sup>

In addition to protecting the voice as an element of the individual's personality, the existence of a right to voice would also enable broader protection of the latter, as situations of violation of the right to voice generally involve the violation of other rights.

In fact, it can happen that a situation not only violates the right to voice, but also the right to privacy.<sup>201</sup> In this way, the individual can protect not only his or her right to privacy, but also his or her right to voice, by invoking only this subjective right to voice protection.

Even so, we recognize that technological developments can make it difficult to recognize voices and attribute ownership to individuals. But this point, while it may raise questions about the methods used to recognize voices, only serves to justify once again the need for an effective solution to protect the increasingly vulnerable public.

It is this solution, the recognition of the existence of a right to voice integrating other personality rights, which has therefore been the subject of development within the framework of this research, and which seems to us to be the most optimal.

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<sup>200</sup> M. ISGOUR, « Introduction », *Le droit à l'image*, 2nd edition, Brussels, Larcier, 2014, p. 17-18 ; Brussels, December 26, 1888, *Pas.*, 1889, II, p. 94.

<sup>201</sup> RVDJ June 16, 2016, V/Vier en Karen & De Coster, [rvdj.be/node/448](http://rvdj.be/node/448).