



February 26, 2024

Senate Committee on Commerce and Labor
Attn: Stephanie Ayub, Executive Secretary; Brandy Foust, Research Analyst
Room 736, Cordell Hull Building
425 Rep. John Lewis Way North
Nashville, TN 37243

RE: SB 2096 - “AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14, Part 1 and Title 47, relative to the protection of personal rights” (Oppose)

Dear Chair Bailey and Members of the Senate Committee on Commerce and Labor:

On behalf of the Computer & Communications Industry Association (CCIA), I write to raise several concerns regarding SB 2096. CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.¹ Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members.

As written, SB 2096 risks creating confusion surrounding compliance and could generate unnecessary conflicts with the pre-existing Tennessee right of publicity law. Foremost, CCIA recommends further examining how existing law might apply to the concerns SB 2096 is intended to address, and consider specific amendments as needed, to avoid such confusion or diverging compliance requirements.²

We appreciate the Committee’s consideration of our concerns with SB 2096 as further detailed below.

SB 2096 raises serious questions about control over personal likeness.

SB 2096 appears to make the personal right of publicity freely transferable and licensable, which raises serious questions about individual control and ownership of one’s own likeness. This could create scenarios in which other persons or entities could gain access to another person’s likeness in perpetuity and in any context.³ For example, the bill would allow parents to consent on behalf of minors to allow their likeness to be used. This could prevent an individual from keeping control of their likeness if their parent decided when they were younger to transfer the rights to another entity. Even if the individual originally consented, the lack of any mechanism like rights reversion to address abusive contracts is problematic.

¹ For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

² See Tenn. Code § 47-25-1103 (2021).

³ Jennifer E. Rothman, *House’s Draft AI Bill Risks Loss of Control over Our Own Voices and Likenesses*, Rothman’s Roadmap to the Right of Publicity (Jan. 24, 2024), https://rightofpublicityroadmap.com/news_commentary/houses-draft-ai-bill-risks-loss-of-control-over-our-own-voices-and-likenesses/.

Liability under SB 2096 should be limited to those who intentionally deceive or commit otherwise illegal acts.

Due to the many applications in which automated tools like artificial intelligence (AI) can be used, it is important to limit liability to instances that cause harm. It is also important to consider the different entities involved in a given AI-driven model, including the developer that builds an AI system, the deployer who applies the model to a given task and the user who ultimately utilizes the system. Each of these entities could bear responsibility for outcomes arising from the use of the AI system, depending on the circumstances, but those circumstances are important to consider.

Under SB 2096, it is unclear if the deployers of AI systems could be held liable if a user chooses to use such a system to create and disseminate content without authorization from the depicted individual.

CCIA certainly understands the importance of ensuring that content generated from AI systems is not used to further nefarious purposes, however it is impossible for the developers or deployers of such systems to predict how each and every individual may use generated audio or visual media. This places deployers of such technologies in the untenable and impossible scenario of having to predict each and every use of their product and risks chilling innovation. CCIA recommends that liability be targeted to a person or entity who committed the act, rather than tying liability to the product that allowed the media to be generated. This division of responsibility will ensure that liability lies in the most appropriate place — with the actor most capable of minimizing harm and most responsible for any harms that ensue.

CCIA suggests ensuring that other First Amendment-protected activity would not be prevented by the bill's provisions.

There is an array of uses in which digital replicas appear, and CCIA suggests that the legislation expressly make it clear that those uses do not constitute a violation of the proposed law. CCIA suggests including language to exclude the following uses of an applicable digital replica: (i) as part of a news, public affairs, or sports broadcast or report; (ii) as part of a documentary docudrama, or historical or biographical work, as a representation of the applicable individual as that individual; (iii) for purposes of comment, criticism, scholarship, satire, or parody; (iv) is used in an advertisement or commercial announcement for one of these aforementioned legitimate purposes; (v) the use is de minimis or incidental; (vi) the use is protected by the First Amendment; (vii) the claim involving an applicable digital replica is against a service provider (as defined in 17 U.S.C. § 512(k)(1)) and would be subject to the safe harbor provisions of the Digital Millennium Copyright Act, 17 U.S.C. § 512 et al., if it were a copyright infringement claim; and (viii) the claim is against the provider of a general purpose tool, such as a generative artificial intelligence service or application, used to produce the digital replica, but the provider did not direct the production of the digital replica.

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CCIA has additional concerns with the current language included in SB 2096—for example, with the broad and vague definitions and undefined terms—and would welcome the opportunity to further



discuss those. We appreciate the Committee's consideration of these comments and stand ready to provide additional information as the Legislature considers proposals related to technology policy.

Sincerely,

Khara Boender
State Policy Director
Computer & Communications Industry Association