



March 13, 2024

Illinois State Senate
State Capitol
Springfield, IL 62706

RE: SB 3325, to amend the Right of Publicity Act (Oppose)

Dear Senator:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose SB 3325. 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 3325 risks creating confusion surrounding compliance and could generate unnecessary adverse impacts to existing creative and expressive uses in addition to chilling innovation.

We appreciate your consideration of our concerns with SB 3325 as further detailed below.

SB 3325's overly broad definitions would impact a wide range of currently acceptable and common uses of an individual's likeness.

SB 3325 includes several broad definitions. For example, SB 3325's definition of "identity" would greatly expand existing law to include "any attribute of an individual that occurs in any medium, that is readily identifiable and attributable to a particular individual, regardless of whether the attribute contains the actual attribute of an individual, *a simulation of the attribute of an individual*, or is created through the use of artificial intelligence...". This would apply to an incredibly wide range of instances. SB 3325 would go far beyond protections of use of another individual's "identity" by transferring likeness rights to *any* simulation of an attribute of any individual. It is unclear how this would impact common activities, such as tribute and cover bands, recorded karaoke performances, school talent shows or even homage impersonations of individuals.

Liability under SB 3325 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

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>.

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.

SB 3325 extends liability for any person who “materially contributes to, induces, or otherwise facilitates” a violation under SB 3325 to include “distributing, transmitting, or otherwise making available an algorithm, software, tool, or other technology, service, or device the primary purpose or function of which is to produce the identity of particular, identified individuals”. While this provision appears limited to instances in which the tool or software is intended to specifically produce another individual’s likeness, it is unclear if the deployers of AI systems more broadly 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. Otherwise, it is possible that AI firms will choose not to serve the Illinois market rather than face the risk of liability under this unclear provision.

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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We appreciate your consideration of these comments and stand ready to provide additional information.

Sincerely,

Jordan Rodell
State Policy Manager
Computer & Communications Industry Association