March 12, 2024

The Honorable Bill Lee, Governor of Tennessee
First Floor, State Capitol
600 Charlotte Avenue
Nashville, TN 37243

RE: HB 2091 - "AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14, Part 1 and Title 47, relative to the protection of personal rights" (Veto Request)

Dear Governor Lee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully request a veto of HB 2091. 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, HB 2091 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 surrounding use of one's likeness to avoid such confusion or diverging compliance requirements.[2]

We appreciate your consideration of our concerns with HB 2091 as further detailed below.

HB 2091's overly broad definitions and scope for liability would impact a wide range of currently acceptable and common uses of an individual's likeness.

The amended form of HB 2091 continues to include several broad definitions. For example, HB 2091 specifies that every individual "has a property right in the use of that individual's name, photograph, voice, or likeness ***in any medium in any manner***". This would apply to an incredibly wide range of instances. Similarly, "voice" is defined to include "a simulation of the voice of an individual". By adding "voice" to existing law's protection of certain forms of personal likeness, HB 2091 would go far beyond protections of use of another individual's voice, which has traditionally been limited to commercial exploitation. HB 2091 would transfer likeness rights to *any* sound simulation of any individual. It is unclear how this would impact common activities, particularly in Tennessee, such as tribute and cover bands, recorded karaoke performances, school talent shows or even homage impersonations of individuals.

HB 2091 contains equally broad provisions surrounding liability for using one's likeness, specifying that a "person is liable to a civil action if the person publishes, performs, distributes, transmits, or otherwise makes available to the public an individual's voice or likeness, with knowledge that use of the voice or likeness was not authorized by the individual." It is almost certain that a flurry of lawsuits

[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).

surrounding benign uses, such as tribute and cover bands, would flood Tennessee's courts, burdening individuals, businesses, and the state with costly litigation.

HB 2091 raises serious questions about control over personal likeness.

HB 2091 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.

Liability under HB 2091 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 HB 2091, 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. While the most recent amendments to § 6(a)(3) of HB 2091 improve the situation by limiting it to systems where the primary purpose is generation of the likeness of a particular individual, the broad distribution liability that remains in § 6(a)(2) could still be interpreted in an over-expansive matter.

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 Tennessee market rather than face the risk of liability under this unclear provision.

[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/.

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

There is an array of First Amendment-protected 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 appreciates that HB 2091 was amended to remove liability for the use of an individual's likeness under certain scenarios, including the use of a name, photograph, voice, or likeness: (i) in connection with any news, public affairs, or sports broadcast or account; (ii) for purposes of comment, criticism, scholarship, satire, or parody, and; (iii) for representations of the individual as the individual's self in an audiovisual work unless the audiovisual work containing the use is intended to create, and does create, the false impression that the work is an authentic recording in which the individual participated; (iv) the use is fleeting or incidental, or; (v) in an advertisement or commercial announcement.

However, CCIA remains concerned that additional scenarios have not been addressed under the bill's provisions, and would suggest including additional exemptions under Section 10, including: (i) 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 (ii) 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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For the above outlined reasons, CCIA respectfully requests a veto on HB 2091. We appreciate your consideration of these comments and stand ready to provide additional information.

Sincerely,

Khara Boender
State Policy Director
Computer & Communications Industry Association