



**April 9, 2024**

Assembly Committee on Privacy and Consumer Protection  
Room 162, Legislative Office Building  
1020 N Street  
Sacramento, CA 95814

**RE: AB 1836, “Intellectual property: use of likeness: digital replica”  
(Oppose)**

Dear Chair Bauer-Kahan and Members of the Assembly Committee on Privacy and Consumer Protection:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose AB 1836. CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.<sup>1</sup> Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members.

CCIA understands California lawmakers and residents’ rightful concerns about how a “digital replica” might be used in violation of an individual’s intellectual property rights. However, AB 1836 would depart significantly from California’s long-established right of publicity statute under §3344.1, which would likely infringe upon First Amendment-protected expressive uses.

We appreciate the opportunity to further expand on concerns associated with the provisions of AB 1836.

**AB 1836’s definition of “digital replica” should be more-narrowly defined.**

AB 1836 defines “digital replica” as “a simulation of the voice or likeness” of an individual that is “readily identifiable” as the individual and is created using digital technology. Without further specificity under this definition, “readily identifiable” could apply to a broad swath of use cases and could unnecessarily chill other expressive uses given the bill’s enforcement provisions. CCIA suggests narrowing this definition in § 3411.2 (a)(2)(A):

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<sup>1</sup> 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.cciagnet.org/members>.

*For purposes of this clause, “digital replica” means a highly realistic simulation of the voice or likeness of an individual that is readily identifiable as the individual and is created using digital technology.*

**Liability under AB 1836 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.

AB 1836 would establish that any person who “produces, distributes, or makes available the digital replica of a deceased personality in an audiovisual work or sound recording, in any manner related to the work performed by the deceased personality while living” could be liable for up to \$10,000 or actual damages suffered by the depicted person or the person controlling the rights. Because this liability extends to any person that “distributes” or “makes available” such a digital replica, 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 intentionally deceptive acts using a digital replica, rather than tying liability to the product that allowed the media to be generated, or served as a means for the digital replica to be shared. 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. It will also ensure that other expressive uses are protected while holding bad actors accountable for the most high-risk and, likely most harmful, scenarios.

**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 allow for other First-Amendment covered expressive uses associated with digital replicas to be exempted for liability. This will help ensure that current California right of publicity law extends to digital replicas without risking violations of the First Amendment.

To that end, 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) if a digital replica 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.

Respectfully submitted,



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On behalf of:  
Ronak Daylami, California Chamber of Commerce (CalChamber)