May 20, 2024

Assembly Judiciary Committee
Attn: Michael Davila
State House Annex
Trenton, NJ 08625

RE: A. 2818 - An Act concerning certain intentionally deceptive audio or visual media and elections and supplementing Title 19 of the Revised Statutes. (Suggested Amendment).

Dear Chair Park and Members of the Assembly Judiciary Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully suggest amendments to A. 2818, relating to synthetic media in elections.

CCIA is a 50-year-old not-for-profit international tech trade association that advocates for policy and market conditions that benefit innovation, the tech sector, and consumers. CCIA's members have engaged in responsible AI development, through the development and application of their own responsible AI principles, conducting academic research that promotes privacy-by-design, and the hardening of AI against motivated attackers seeking to extract training data. As currently drafted, A. 2818 risks creating confusion surrounding liability and could stifle further innovation in this emerging space.

CCIA shares the Committee’s concerns around the risks associated with the use of synthetic media, specifically as it pertains to its potential use by nefarious actors seeking to influence elections, but it is important to ensure that the enforcement mechanisms would target the appropriate actors. As currently drafted, A. 2818 would subject a “person” to financial and legal penalties but does not define what a “person” is. The lack of clarity could seemingly capture the developers of the artificial intelligence system, creating an impossible responsibility for these entities to predict how each and every individual user may use their product and risks chilling innovation. CCIA recommends that liability associated with enforcement of the proposed laws be tied to the person or entity who committed the act as opposed to the product that was used to generate the media. Therefore, we offer the following amended bill language, for the legislature’s consideration:

Adding the definition of “Creator” to both bills in order to differentiate between an individual who utilizes or deploys AI to generate synthetic media and the provider or developer of the AI.

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1 For 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.

“Creator” means any person that utilizes or deploys artificial intelligence or other digital technology to generate synthetic media. “Creator” does not include the provider or developer of any technology used in the creation of synthetic media.”

2. a. A person creator commits a [disorderly person offense] crime of the fourth degree if, within 90 days of an election in which a candidate will appear on the ballot, the person knowingly or recklessly distributes deceptive audio or visual media with the intent to deceive a voter with false information about the candidate or the election; except a second or subsequent violation of this subsection shall be a crime of the third degree.

b. (1) The provisions of subsection a. of this section shall not apply if the creator of the deceptive audio or visual media includes a disclosure stating: “This advertisement contains manipulated images or sound.”

(2) A candidate whose voice or likeness appears in deceptive audio or visual media distributed in violation of this section may bring an action for general or special damages against the person creator of that distributed the deceptive audio or visual media. The court may also award a prevailing plaintiff reasonable attorney’s fees and costs. This subsection shall not be construed to limit or preclude a plaintiff from securing or recovering any other available remedy.

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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,

Alex Spyropoulos
Regional Policy Manager, Northeast
Computer and Communications Industry Association