



April 1, 2025

Senate Judiciary Committee
Attn: Grace Gibney
Montana Capitol Building
1301 E 6th Ave.
Helena, MT 59601

RE: HB 513 – “Revise laws related to use of name, voice, and likeness of individuals and penalties for unauthorized use” (Oppose unless Amend)

Dear Chair Usher and Members of the Senate Judiciary Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to raise several concerns regarding HB 513 in advance of the Senate Judiciary Committee hearing on April 1, 2025. 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 can have a significant impact on CCIA members.

Responsible businesses understand the potential for misuse of ‘digital depictions’ and ‘digital voice replicas’ and are committed to advocating for robust legal protections and frameworks that balance innovation with the safeguarding of personal rights. Unfortunately, this bill does not provide the right approach. While HB 513 is well-intended, it raises serious concerns about free expression and conflicts with federal law. Legal experts have detailed the constitutional concerns posed by similar legislation.² The amendments proposed by TechNet help mitigate the issues we have with the bill and we urge the Committee to adopt those amendments.

Liability should be limited to those who *intentionally* or *knowingly* violate an individual’s intellectual property rights.

HB 513 broadly defines “likeness” as “an actual or simulated physical depiction or representation, digital depiction or representation, or other form of depiction or representation of an individual, regardless of the means of creation, that is readily identifiable as the individual by virtue of the individual’s face, outward appearance, or other distinguishing characteristic, or other information displayed in connection with the readily identifiable characteristics of the individual.” Without further specificity under this definition, vague and undefined language like “readily identifiable” and “distinguishing characteristic” could apply to a broad swath of use cases that are easily distinguishable and could unnecessarily chill other expressive uses given the bill’s enforcement provisions, as discussed below.

An online service should only be liable for hosting or publicly sharing a digital depiction or digital voice replica if it has *actual knowledge* of a specific instance of a specific digital

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 Re:Create, *Constitutional Concerns with NO FAKES and Similar Acts* (Aug 20, 2024), <https://www.recreatecoalition.org/constitutional-concerns-with-no-fakes-and-similar-acts/>.

depiction or digital voice replica. To obtain such knowledge, a court order or a sufficiently detailed notice from the individual depicted in the digital depiction or digital voice replica or their authorized representative should be required. Under such a framework, if an online service promptly removes the digital depiction or digital voice replica identified in the notice or reasonably believes that the content qualifies for an exception or otherwise does not meet the definition of digital depiction or digital voice replica, it should not be liable for hosting that third-party content. The TechNet amendment adds to Section 1 (4)(a) of the bill which adds language that makes it clear that a person who unintentionally posts a “digital depiction” that is “readily identifiable” or has “distinguishing characteristics” is not liable under this act. Allowing online services to make good faith determinations about whether content meets the statutory definition will help limit the misuse of this bill to silence legitimate First Amendment-protected speech.

Liability should be targeted to the individual(s) who committed *intentionally or knowingly* deceptive acts using a ‘digital depiction’ or ‘digital voice replica,’ rather than tying liability to a product or service that allowed the media to be generated or served as a means for the digital depiction or digital voice replica to be shared. This division of responsibility would ensure that liability lies in the most appropriate place — with the actor most capable of mitigating harm and responsible for any harm that ensues. It will ensure that other expressive uses — like those protected by the First Amendment — are protected while also holding bad actors accountable for the most high-risk, and likely most harmful, scenarios. As written, the bill may place AI model developers or system deployers in an untenable position, as they could be held liable if a user utilizes their tool to create, distribute, or make unauthorized content featuring another individual—even if done without the service provider’s knowledge or against their terms of service. TechNet’s proposed amendments with the additions of “with actual and specific knowledge”, “sole”, and “unauthorized” in Section 1(2)(a) address this concern and provide a solution without compromising the spirit of the legislation.

Digital services also do not know every nuance of every piece of content users post on their services. While HB 513 excludes from liability uses protected by the First Amendment, such as parody or news reporting, a service provider cannot generally determine if output will be used in an excluded manner or not, especially at the time of generation and without the context in which it is used. This will create a chilling effect, resulting in such tools not being made available at all in order to avoid liability for uses the operator could not possibly detect at the time of creation. Legislation should hold accountable bad actors who exploit a person’s likeness without permission, ensuring that liability falls on them rather than intermediaries who lack knowledge or intent, especially when certain digital services may find it difficult or impossible to remove such harmful content. The responsibility and liability for removing allegedly offending content should lie with the party that knowingly posted the content.

CCIA believes that the TechNet proposed amendments address these concerns and will help mitigate the concerns we have with the bill.



The private right of action would result in the proliferation of frivolous lawsuits and questionable claims, and exorbitant statutory damages.

HB 513 permits users to bring legal action against persons that have been accused of violating new regulations. The bill would enable damages of the greater of actual damages or statutory damages of \$50,000 per violation of subsection 2(a), and \$5,000 each for subsection (2)(b) or (2)(c), plus profits, with punitive damages and reasonable attorney fees also available, with no limit stated. By creating a new private right of action, the measure would open the doors of Montana's courthouses to plaintiffs advancing frivolous claims with little evidence of actual injury. As lawsuits prove extremely costly and time-intensive, it is foreseeable that these costs would be passed on to individuals in Montana, disproportionately impacting smaller businesses and startups across the state.³

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CCIA acknowledges the significance of this policy issue and agrees that there is potential for misuse across various sectors. We welcome the opportunity to collaborate on refining the language of this proposal to further establish a framework that our members can adhere to while ensuring strong protections are in place.

Respectfully submitted,

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Computer & Communications Industry Association

³ Trevor Wagener, *State Regulation of Content Moderation Would Create Enormous Legal Costs for Platforms*, Broadband Breakfast (Mar. 23, 2021), <https://broadbandbreakfast.com/trevor-wagener-state-regulation-of-content-moderation-would-create-enormous-legal-costs-for-platforms/>.