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PRIVACY, TRUST & ACCOUNTABILITY

April 15, 2022

TO: Members, Senate Public Safety Committee

**SUBJECT: SB 11 (ASHBY) ARTIFICIAL INTELLIGENCE TECHNOLOGY
OPPOSE UNLESS AMENDED – AS AMENDED APRIL 10, 2025
SCHEDULED FOR HEARING – APRIL 22, 2025**

The California Chamber of Commerce and the undersigned must **OPPOSE UNLESS AMENDED SB 11 (Ashby)** as amended on April 10, 2025, would address issues of digital replication and circumstances under which a digital replica would be deemed to be a false personation, and circumstances in which digital replication of a voice or likeness is deemed to be the voice or likeness of the person depicted for purposes of an existing law, which creates a cause of action against any person who knowingly uses a person's likeness without prior consent of that person. In doing so, however, the bill also removes the provisions establishing the rebuttable presumption when an employee's likeness or photograph appears in an advertisement or other publication. Most problematically, though perhaps unintentionally, **SB 11** requires that any person or entity selling or providing access to any AI technology that is designed to create a digital replica provide a consumer warning that "misuse" of the technology may result in civil or criminal liability of the user, which creates a significant chilling effect on entirely legitimate uses of this technology. The consumer warning mandate also carries an exceedingly high liability for businesses, especially considering vague guidelines around its application, as discussed further below.

Mandated Warning is Vague and Problematic in a Number of Ways

First, as drafted, we are unclear if the bill is intended to capture business to business activities, such as companies selling advertising services to other companies wherein the advertisement may include a digital replica. To that end, Proposed Section 22650 should be amended to expressly permit business partners / vendors to use our AI tools to generate content as well as authorize businesses to sell or develop such content for their business partners/vendors. The bill should also be amended to clarify what exactly it means by "misuse" for purposes of a consumer warning. Given the obvious chilling effect of a warning suggesting that criminal or civil liability may result from using technology to create content, this is not an area to be vague.

We are also concerned about how broadly "provides access to" would be interpreted, and whether it would arguably require warnings even for internal usage of tools. To that end, we suggest striking that language or somehow significantly limiting this to only external uses of AI technologies designed to create content involving digital replicas.

Again, one of our major concerns centers around there being no clear understanding of what constitutes "misuse" for purposes of the warning to consumers that misuse of the technology may result in civil or criminal liability for the user. We, in fact, fundamentally object to the notion that companies should be required to warn users that their use of a Generative AI product could subject them to civil or criminal liability if that use is not unlawful. Stated another way, companies would effectively be required to provide a warning that is inherently misleading, if not inaccurate. It would be far more accurate to state that any *unlawful* use would result in criminal or civil liability. Notably, other appropriate warnings around are already provided in terms of service and acceptable use policies.

That said, we are not aware of any research that suggests that users of GenAI tools are unaware that misconduct could result in liability and that such a warning would change user behavior. Even more specific warnings, such as "creating deepfakes for fraudulent purposes", are unlikely to change behavior because much of the illegal activity stems from determined bad actors who are well aware of the law.

What the bill is far more likely to do is chill protected activities. As such we strongly believe this section should be deleted in full, given the likelihood that it will only deter protected activities, not unlawful ones. We note that even in the absence of a warning, many GenAI providers already implement controls to prevent clearly illegal uses of GenAI (e.g., generation of CSAM), thereby preventing the greatest harms.

Alternatively, given the First Amendment implications discussed above, the bill should be amended both to address issues of vagueness and to be made more narrowly tailored (for example, the disclaimer provision could be more narrowly tailored to achieve the goal of the legislation, such as applying it to sites that allow use of their GAI tools for purposes that create an elevated risk that the use may be inappropriate; or, again, replacing "misuse" with "unlawful use").

SB 11 is premature given that the digital replica bill was just signed into law

Second, with respect to Section 3344 of the Civil Code, we note that AB 1836 (Bauer-Kahan, Ch. 258, Stats. 2024) was just signed into last year on digital replicas. As a general matter, we think it is premature to know whether there are gaps in the law that need to be filled with changes to that same area of the code. We think it would be prudent to allow some time to develop evidence to guide any future changes.

We are concerned that the change to subdivision (f) of Section 3344 could lead to a perverse outcome where studios could be penalized for using a digital replica if a reasonable person believes it sounds like a real person even if that similarity was completely unintentional. Once a studio is put on notice that a reasonable person would believe the digital replica sounds like a real person, we would be violating section 3344(a), which prohibits the "knowing use of another's name, voice, signature, photograph, or likeness, in any manner [...] without such person's prior consent[...]."

Take for example if a studio uses a digital replica in a production that happens to sound like an individual it has never even heard of, and that the studio was not intentionally trying to copy. That individual could claim any profits from the studio that is attributable to the digital replica.

Or take for example if a studio has evidence that it paid another actor for the right to use their voice, altered by AI, in a production. There may be no evidence that it intended to copy another actor's voice, but if the digital replica unintentionally ends up sounding like this other actor that the studio potentially does not even know of, they could still be required to pay that other actor who has a similar voice.

Yet, if an actor stars in a product and happens to have a voice similar to another individual or actor, the studio would not face these same issues.

We think that the deletion of the limited rebuttable presumption provision that applies when an employee's likeness or photograph appears in an advertisement or other publication only aggravates these issues. Again, while we feel changes to Section 2 of the bill are generally premature, at a minimum, we feel that reinsertion of the rebuttable presumption could help alleviate some of the above concerns.

For these reasons we **OPPOSE SB 11 (Ashby), UNLESS AMENDED.**

Sincerely,



Ronak Daylami
Policy Advocate
on behalf of

Association of National Advertisers, Christopher Oswald
California Chamber of Commerce, Ronak Daylami
California Hispanic Chambers of Commerce, Julian Canete
Computer & Communications Industry Association (CCIA), Aodhan Downey
Network Advertising Initiative (NAI), David LeDuc
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cc: Legislative Affairs, Office of the Governor
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