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Industry Association**
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TECHNET
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March 23, 2026

Senate Labor and Technology Committee
Hawaii State Capitol
415 S Beretania St.
Honolulu, HI 96813

RE: HB 2137 – “Relating to Artificial Intelligence” (Oppose Unless Amend)

Dear Chair Elefante, Vice-Chair Lamosoa, and Members of the Senate Labor and Technology Committee:

On behalf of the Computer & Communications Industry Association (CCIA) and TechNet, I write to raise several concerns regarding HB 2137 in advance of the March 23, 2026 hearing. CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.¹ Proposed regulations on the intrastate provision of digital services can have a significant, nationwide impact on CCIA members.

Responsible businesses understand the potential for misuse of ‘digital imitations’ and support robust legal protections and frameworks that balance innovation with the safeguarding of personal rights. Unfortunately, this bill does not provide the right approach. While 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 CCIA help address the issues we have with the bill, and we urge the Committee to adopt them.

The bill’s broad scope and vague definitions would create compliance uncertainty and stifle legitimate expression.

HB 2137 broadly defines “digital imitation” as “AI-generated or computer-synthesized depiction, audio, or video that realistically appears to portray an actual individual’s voice, face, likeness, or performance.” It defines “realistic” as “so lifelike that a reasonable person would believe that a depiction, audio, or video that appears to portray an actual individual’s voice, face, likeness, or performance is authentic.” This definition sweeps in far more than misleading replications, and could capture mere similarity. Our proposed amendments, including refining

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.cciagnet.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/>.

the ambiguous language of “realistically appears to portray” to “is derived from or based upon identifying characteristics of an actual, particular individual, and that portrays that,” could help mitigate these concerns. Without further specificity under this definition, it 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.

HB 2137 would make it unlawful for “any person to knowingly publish a realistic digital imitation of an identifiable individual without that individual’s consent if the imitation” is “used in connection with a commercial transaction or advertisement;” “causes legally cognizable harm;” or “is used to commit fraud, defamation, harassment, or other unlawful acts.” It is not clear what constitutes being “used in connection with,” which may be interpreted broadly; “legally cognizable harm” may be expansive under Hawaiian law; “commercial transaction” is undefined; and “advertisement” is broadly defined as “a message published in any medium that aids, promotes, or assists, directly or indirectly, a product, service, or commercial transaction,” which could capture many common activities for users and businesses online.

An intermediary, like an online service, should only be liable for “publishing” a third-party user’s “digital imitation” if it has *actual knowledge* of a specific instance of a specific digital imitation. To obtain such knowledge, a court order or a sufficiently detailed notice from the individual depicted in the digital imitation or their authorized representative should be required. Under such a notice-and-takedown framework, if an online service promptly removes the digital imitation identified in a notice or reasonably believes that the content qualifies for an exception or otherwise does not meet the definition of digital imitation, there should be a safe harbor and they should not be liable for hosting that third-party content. 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 free speech. The potential remedy of “injunctive relief, including an order to remove or cease distribution of the realistic digital imitation,” does not appropriately limit any takedown obligation to a particular instance, and may be read to provide an ongoing “staydown” obligation, which would require expensive and invasive monitoring.

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

Any liability should be targeted to the individual(s) who committed intentionally or knowingly deceptive acts using a ‘digital imitation,’ rather than tying liability to a product or service that allowed the media to be generated or served as a means for the digital imitation 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 are protected while also holding bad actors accountable for the most high-risk, and likely most harmful, scenarios. As written, the bill may place intermediaries like AI model developers or system deployers in an untenable position, as they could be held liable if a user utilizes their tool to “display, present, or release” unauthorized content featuring another individual—even if done without the service provider’s knowledge or against their terms of service.

Digital services also do not know every nuance of every piece of content users post on their services. While HB 2137 has some narrow exemptions for certain 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 to avoid liability for uses the operator could not possibly detect at the time of creation. Policymakers should hold accountable bad actors who maliciously 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 locate, let alone remove, such harmful content. The responsibility and liability for allegedly offending content should lie with the party that intentionally and knowingly posted the content.

Among other recommendations in the attached amendments, replacing “legally recognizable harm” with “causes a reputational injury, financial loss, emotional distress, or the misappropriation of identity for commercial gain” would help limit the actionable causes of harm to those that can be proven.

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

HB 2137 permits users to bring legal action against persons that have been accused of violating new regulations. The bill would enable not only statutory damages of \$50,000 per violation, but also actual damages, including for reputational injury and emotional distress; punitive damages, where malice is proven; and reasonable attorney’s fees and court costs. By creating a new private right of action, the measure would open the doors of Hawaii’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 Hawaii, 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

On Behalf of:
Robert Boykin, TechNet

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/>.