CLIENT ALERTS & INSIGHTS

Tennessee Governor Signs into Law First-of-its-Kind Bill Addressing AI Misappropriation of Voices, Images, and Songs

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Beginning July 1, 2024, Tennessee musicians and artists will have an additional layer of protection for their voices and songs from generative AI cloning models and services that enable human impersonation and create unauthorized fake works in their images and voices.

Expanding Tennessee's existing Protection of Personal Rights law, Tennessee Gov. Bill Lee recently signed into law the Ensuring Likeness Voice and Image Security Act (the "**ELVIS Act**") to tackle misuse of Artificial Intelligence (AI) by, among other things, banning commercial use or public dissemination of AI-generated works using an individual's voice without such individual's consent.

This first-of-its-kind legislation in the United States follows the United States Copyright Offices 2023 guidance on registration of works created with AI-generated material and the United States Patent and Trademark Office's ("**USPTO**") guidance in February on how it will determine the patentability and ownership of AI-assisted inventions and discovery. The USPTO's guidance comes in response to President Biden's sweeping executive order on AI.

Scope and Applicability

The ELVIS Act provides that every individual has a property right and exclusive right to commercial exploitation in their name, photograph, voice, and likeness, regardless of the medium or manner in which it appears.

Specifically, the ELVIS Act adds protects for and defines voice as a "sound in a medium that is readily identifiable and attributable to a particular individual, regardless of whether the sound contains the actual voice or a simulation of the voice of an individual[.]"

An individual's exclusive right to commercially exploit their property rights will be terminated by proof of non-use for commercial purposes by an executor, assignee, heir, or devisee for a period of two years after the initial ten-year period following the individual's death.

Civil Action for Infringement

Under the ELVIS Act, any person who knowingly uses or infringes upon the use of an individual's name, photograph, voice, or likeness in any medium and in any manner directed to others for advertising, fundraising, purchase of goods, or solicitation of donations, without the individual's prior consent, is liable to a civil action.

Further, the ELVIS Act prohibits distribution, transmission, or creation of an algorithm, software, tool, or other technology, service, or device with the primary purpose or function to produce an individual's photograph, voice, or likeness without the individual's authorization.

This means if someone uses a generative AI-tool to create a song promoting their product in the voice and style of a musician or artist such as Elvis Presley, Reba McEntire, or Bruce Springsteen, or creates an AI-tool for the purpose of allowing others to do so, they could be liable for violation of the ELVIS Act.

Tennessee being the first to enact legislation to combat AI misappropriation of voices and songs comes as no surprise given that the music industry in the state supports over 61,000 jobs, contributes $5.8 billion to gross domestic product, and fills over 4,500 music venues. Nonetheless, the ELVIS Act represents an important first step toward legislation on and regulation of AI in the U.S. while promoting innovation of this evolving technology.

Continue to follow Benesch's AI Commission as we address the evolving regulatory landscape of AI, impacts of new regulations, and steps toward compliance. Stay tuned!

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