

1 AN ACT relating to commercial rights to the use of names, voices, and likenesses.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Digital depiction" means a replica, imitation, or approximation of the*
7 *likeness of an individual that is created or altered in whole or in part using*
8 *digital technology such that the individual is depicted in a manner in which*
9 *they did not actually appear;*

10 *(b) "Digital technology" means a technology or device now known or hereafter*
11 *created, including but not limited to computer software, artificial*
12 *intelligence, machine learning, quantum computing, or other similar*
13 *technologies or devices;*

14 *(c) "Digital voice replica" means an audio rendering that is created or altered*
15 *in whole or in part using digital technology and is fixed in a sound*
16 *recording or audiovisual work which includes replications, imitations, or*
17 *approximations of the voice of an individual engaging in expression that the*
18 *individual did not actually perform;*

19 *(d) "Individual" means a natural person, living or dead, and includes the estate*
20 *of an incompetent or deceased individual;*

21 *(e) "Likeness" means an actual or simulated physical, digital, or other*
22 *depiction or representation of an individual, regardless of the means of*
23 *creation, that is readily identifiable as the individual by virtue of the*
24 *individual's face, outward appearance, or other distinguishing*
25 *characteristic, or other information displayed in connection with the readily*
26 *identifiable characteristics of the individual;*

27 *(f) "Person" means any individual, firm, association, partnership, corporation,*

1 joint stock company, syndicate, receiver, common law trust, conservator,
2 statutory trust, or any legal or commercial entity organized, formed, or
3 created, whether foreign or domestic. "Person" includes nonprofit
4 corporations, associations, educational and religious institutions, political
5 parties, community, civic, legal, or commercial entities;

6 (g) "Personalized cloning service" means an algorithm, software, tool, or other
7 technology, service, or device the primary purpose or function of which is to
8 produce one (1) or more digital voice replicas or digital depictions of
9 particular, identified individuals; and

10 (h) "Voice" means sounds in any medium containing the actual voice or a
11 simulation of the voice of an individual, whether recorded or generated by
12 computer, artificial intelligence, algorithm, or other digital technology,
13 service, or device, to the extent that the individual depicted or simulated is
14 readily identifiable from the sound of the voice depicted or simulated, or
15 from other information displayed in connection with the voice or simulation
16 of the voice.

17 (2) Every individual shall have property rights in his or her name, voice, and
18 likeness. Whether or not an individual commercially benefited from his or her
19 rights during the individual's lifetime, his or her rights shall:

20 (a) Be freely transferrable and descendible, in whole or in part;

21 (b) Not expire upon the death of the individual; and

22 (c) Be exclusive to the individual during his or her lifetime, subject to the
23 transfer of rights as provided in paragraph (a) of this subsection; and to the
24 executors, heirs, transferees, or devisees for a period of ten (10) years after
25 the death of the individual unless:

26 1. The name, voice, or likeness of an individual remains in use for
27 commercial purposes by all executors, heirs, transferees, or devisees;

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or

2. All executors, transferees, heirs, or devisees of the individual exercising his or her property rights are deceased.

(3) An agreement authorizing the use of digital depiction or digital voice replica for a new performance of the individual in an advertisement or expressive work shall be valid if the agreement is not unconscionable and, at the time the agreement was executed:

(a) 1. The individual exercising his or her property rights was eighteen (18) years of age or older, or, if under eighteen (18) years of age, the agreement is approved by a parent, guardian, or court in accordance with applicable state law;

2. The individual exercising his or her property rights was represented by counsel; and

3. The agreement was in writing; or

(b) The terms of the agreement are governed by a collective bargaining agreement.

(4) A person shall be liable for damages as set forth in subsections (5) or (6) of this section if the person, without consent of the individual exercising his or her property rights or the holder of the property rights:

(a) Distributes, transmits, or otherwise makes available to the public a personalized cloning service;

(b) Publishes, performs, distributes, transmits, or makes available to the public a digital voice replica or digital depiction with knowledge that the digital voice replica or digital depiction was not authorized by the individual or the holder of the property rights; or

(c) Materially contributes to, directs, or facilitates any of the conduct set forth in paragraphs (a) or (b) of this subsection with knowledge that the

1 individual or the holder of the property rights has not consented to the
2 conduct.

3 (5) A person who violates subsection (4)(a) of this section shall be liable to the
4 injured person for fifty thousand dollars (\$50,000) per violation per person or the
5 actual damages suffered by the person, whichever is greater, plus any profits
6 from the unauthorized use of the individual's name, voice, or likeness.

7 (6) A person who violates subsection (4)(b) or (c) of this section shall be liable to the
8 injured person for five thousand dollars (\$5,000) per violation per person or the
9 actual damages suffered by the person, whichever is greater, plus any profits
10 from the unauthorized use of the individual's name, voice, or likeness.

11 (7) (a) In establishing profits under subsection (5) or (6) of this section, the injured
12 party or parties shall be required only to present proof of the gross revenue
13 being either directly or indirectly attributable to the unauthorized use.

14 (b) The person who violated this section shall be required to prove his or her
15 expenses deductible therefrom.

16 (c) Punitive damages and reasonable attorneys' fees may also be awarded to
17 the injured party or parties.

18 (8) It shall not be a defense to an allegation of a violation of subsection (4) of this
19 section that the unauthorized user displayed or otherwise communicated to the
20 public a disclaimer stating that use was unauthorized or that the individual or
21 owner of the individual's rights did not participate in the creation, development,
22 distribution, or dissemination of the unauthorized digital depiction, digital voice
23 replica, or personalized cloning services.

24 (9) An action to enforce this section may be brought by:

25 (a) The individual whose name, voice, or likeness is at issue;

26 (b) Any other person to which the individual has assigned, bequeathed,
27 transferred, or exclusively licensed their name, voice, or likeness rights; or

1 (c) In the case of an individual who performs music and receives remuneration
2 for his or her performances and has not authorized the use at issue, by any
3 person or entity that has entered into a contract for the individual's
4 exclusive personal services as a recording artist or an exclusive license to
5 distribute sound recordings that capture the individual's audio
6 performances.

7 (10) To the extent such use is protected by the First Amendment to the United States
8 Constitution, it shall not be a violation if the use is:

9 (a) By a news-gathering organization as defined in KRS 189.635(8)(b);

10 (b) In connection with any news, public affairs, sports broadcast, or account;

11 (c) For purposes of comment, criticism, scholarship, satire, or parody;

12 (d) A representation of an individual as himself or herself in audiovisual works
13 as defined in 17 U.S.C. sec. 101, unless the work containing the use is
14 intended to create, and does create, the false impression that the work is an
15 authentic recording in which the individual participated;

16 (e) Fleeting or negligible; or

17 (f) In an advertisement or commercial announcement for a work described in
18 this subsection.

19 (11) No civil action shall be maintained under the provisions of this section unless it is
20 commenced within four (4) years after the party seeking to bring the claim
21 discovered, or should have reasonably discovered, the violation.

22 (12) Nothing in this section shall be construed to limit any rights an individual may
23 have under KRS 391.170 or any other statutory or common law providing
24 protections against the unauthorized use of an individual's name, voice, or
25 likeness.