

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,

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

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

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

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

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

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

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

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

1 or

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

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

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

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

14 3. The agreement was in writing; or

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

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

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

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

26 (c) Materially contributes to, directs, or facilitates any of the conduct set forth
27 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.