

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;

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

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

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

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

26 (f) "Person" means any individual, firm, association, partnership, corporation,
27 joint stock company, syndicate, receiver, common law trust, conservator,

1 statutory trust, or any legal or commercial entity organized, formed, or
2 created, whether foreign or domestic. "Person" includes nonprofit
3 corporations, associations, educational and religious institutions, political
4 parties, community, civic, legal, or commercial entities;

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

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

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

19 1. Be freely transferrable and descendible, in whole or in part;

20 2. Not expire upon the death of the individual;

21 3. Be exclusive to the individual during his or her lifetime, subject to the
22 transfer of rights as provided in subparagraph 1. of this paragraph;
23 and

24 4. Be exclusive to the executors, heirs, transferees, or devisees after the
25 death of the individual and shall not terminate as long as the name,
26 voice, or likeness of the individual is used for commercial purposes by
27 an executor, heir, transferee, or devisee, or for ten (10) years after the

1 death of the individual, whichever is longer.

2 (b) The property rights described in paragraph (a) of this subsection may be
3 terminated by:

4 1. Proof of the nonuse of the name, voice, or likeness of an individual for
5 commercial purposes by an executor, transferee, heir, or devisee for a
6 period of two (2) consecutive years subsequent to the initial ten (10)
7 year period following the individual's death; or

8 2. The death of all executors, transferees, heirs, or devisees of the
9 individual exercising his or her property rights.

10 (3) An agreement authorizing the use of digital depiction or digital voice replica for a
11 new performance of the individual in an advertisement or expressive work shall
12 be valid if, at the time the agreement was executed:

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

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

19 3. The agreement was in writing; or

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

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

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

27 (b) Publishes, performs, distributes, transmits, or makes available to the public

1 a digital voice replica or digital depiction with knowledge that the digital
2 voice replica or digital depiction was not authorized by the individual or the
3 holder of the property rights; or

4 (c) Materially contributes to, directs, or facilitates any of the conduct set forth
5 in paragraphs (a) or (b) of this subsection with knowledge that the
6 individual or the holder of the property rights has not consented to the
7 conduct.

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

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

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

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

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

23 (8) It shall not be a defense to an allegation of a violation of subsection (4) of this
24 section that the unauthorized user displayed or otherwise communicated to the
25 public a disclaimer stating that use was unauthorized or that the individual or
26 owner of the individual's rights did not participate in the creation, development,
27 distribution, or dissemination of the unauthorized digital depiction, digital voice

1 replica, or personalized cloning services.

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

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

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

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

12 (10) In evaluating any defense to an alleged violation of subsection (4) of this section
13 under the First Amendment to the Constitution of the United States, the public
14 interest in access to the use shall be balanced against the intellectual property
15 interest in the name, voice, or likeness. Factors to be considered shall include
16 whether:

17 (a) The use is transient or negligible;

18 (b) The use is commercial;

19 (c) The individual whose name, voice, or likeness is at issue is necessary for
20 and relevant to the primary expressive purpose of the work in which the use
21 appears; and

22 (d) The use competes with or otherwise adversely affects the value of the work
23 of the owner or licensee of the name, voice, or likeness rights at issue.

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

27 (12) Nothing in this section shall be construed to limit any rights an individual may

- 1 *have under any other law providing protections against the unauthorized use of*
- 2 *an individual's name, voice, or likeness.*