

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Right of Publicity Act is amended by
5 changing Sections 5, 20, 30, and 35 as follows:

6 (765 ILCS 1075/5)

7 Sec. 5. Definitions. As used in this Act:

8 "Artificial intelligence" means a machine-based system
9 that, for explicit or implicit objectives, infers, from the
10 input it receives, how to generate outputs such as
11 predictions, content, recommendations, or decisions that can
12 influence physical or virtual environments. "Artificial
13 intelligence" includes generative artificial intelligence.

14 "Commercial purpose" means the public use or holding out
15 of an individual's identity (i) on or in connection with the
16 offering for sale or sale of a product, merchandise, goods, or
17 services; (ii) for purposes of advertising or promoting
18 products, merchandise, goods, or services; or (iii) for the
19 purpose of fundraising.

20 "Application software provider" means a person providing a
21 digital distribution service for other software applications
22 and that allows users to search for and download such
23 applications.

1 "Cloud service provider" means a cloud service provider as
2 defined by 6 U.S.C. 650.

3 "Digital replica" means a newly created, electronic
4 representation of the voice, image, or likeness of an actual
5 individual created using a computer, algorithm, software,
6 tool, artificial intelligence, or other technology that is
7 fixed in a sound recording or audiovisual work in which that
8 individual did not actually perform or appear, and which a
9 reasonable person would believe is that particular
10 individual's voice, image, or likeness being imitated.

11 "Generative artificial intelligence" means an automated
12 computing system that, when prompted with human prompts,
13 descriptions, or queries, can produce outputs that simulate
14 human-produced content, including, but not limited to, the
15 following:

16 (1) textual outputs, such as short answers, essays,
17 poetry, or longer compositions or answers;

18 (2) image outputs, such as fine art, photographs,
19 conceptual art, diagrams, and other images;

20 (3) multimedia outputs, such as audio or video in the
21 form of compositions, songs, or short-form or long-form
22 audio or video; and

23 (4) other content that would be otherwise produced by
24 human means.

25 "Identity" means any attribute of an individual that
26 serves to identify that individual to an ordinary, reasonable

1 viewer or listener, including but not limited to: (i) name,
2 (ii) signature, (iii) photograph, (iv) image, (v) likeness, or
3 (vi) voice.

4 "Individual" means a living or deceased natural person,
5 regardless of whether the identity of that individual has been
6 used for a commercial purpose during the individual's
7 lifetime.

8 "Juristic person" means a partnership, trust, estate,
9 corporation, unincorporated association, or other organization
10 capable of suing and being sued in a court of law.

11 "Name" means the actual name or other name by which an
12 individual is known that is intended to identify that
13 individual.

14 "Person" means a natural or juristic person. "Person" only
15 includes a service provider under subsections (b) and (d) of
16 Section 30 if the service provider created the unauthorized
17 digital replica. "Person" does not include a data center, as
18 defined by the Department of Commerce and Economic Opportunity
19 Law of the Civil Administrative Code of Illinois, under
20 subsections (b) and (d) of Section 30.

21 "Service provider" means any entity offering broadband
22 service as that term is used in Section 10 of the Broadband
23 Advisory Council Act, a wireless carrier as defined by 47
24 U.S.C. 615b(4), or a telecommunication carrier as that term is
25 used in Section 13-202 of the Public Utilities Act.

26 "Unauthorized digital replica" means the use of a digital

1 replica of an individual without the consent of the
2 appropriate person or persons identified in Section 20 or
3 their authorized representative.

4 "Work of Fine Art" means (i) a visual rendition including,
5 but not limited to, a painting, drawing, sculpture, mosaic,
6 videotape, or photograph; (ii) a work of calligraphy; (iii) a
7 work of graphic art including, but not limited to, an etching,
8 lithograph, serigraph, or offset print; (iv) a craft work in
9 materials including, but not limited to, clay, textile, fiber,
10 wood, metal, plastic, or glass; or (v) a work in mixed media
11 including, but not limited to, a collage, assemblage, or work
12 consisting of any combination of items (i) through (iv).

13 (Source: P.A. 90-747, eff. 1-1-99.)

14 (765 ILCS 1075/20)

15 Sec. 20. Enforcement of rights and remedies.

16 (a) The rights and remedies set forth in this Act may be
17 exercised and enforced by:

18 (1) an individual or his or her authorized
19 representative;

20 (2) a person to whom the recognized rights have been
21 transferred by written transfer under Section 15 of this
22 Act; or

23 (3) after the death of an individual who has not
24 transferred the recognized rights by written transfer
25 under this Act, any person or persons who possesses an

1 interest in those rights.

2 (a-5) In addition to the enforcement of rights and
3 remedies in subsection (a), the rights and remedies set forth
4 in this Act may, in the case of an individual who is a
5 recording artist, be enforced by:

6 (1) the individual who is the recording artist; or

7 (2) a person who has entered into a contract for the
8 individual's exclusive personal services as a recording
9 artist or who has entered into a contract for an exclusive
10 license to distribute sound recordings that capture the
11 recording artist's audio performances.

12 (b) Each person described in paragraph (3) of subsection
13 (a) shall make a proportional accounting to, and shall act at
14 all times in good faith with respect to, any other person in
15 whom the rights being enforced have vested.

16 (Source: P.A. 90-747, eff. 1-1-99.)

17 (765 ILCS 1075/30)

18 Sec. 30. Limitations regarding use of an individual's
19 identity.

20 (a) A person may not use an individual's identity for
21 commercial purposes during the individual's lifetime without
22 having obtained previous written consent from the appropriate
23 person or persons specified in Section 20 of this Act or their
24 authorized representative.

25 (b) A person may not knowingly distribute, transmit, or

1 make available to the general public a sound recording or
2 audiovisual work with actual knowledge that the work contains
3 an unauthorized digital replica.

4 (c) If an individual's death occurs after the effective
5 date of this Act, a person may not use that individual's
6 identity or digital replica in violation of this Act ~~for~~
7 ~~commercial purposes~~ for 50 years after the date of the
8 individual's death without having obtained previous written
9 consent from the appropriate person or persons specified in
10 Section 20 of this Act.

11 (d) Any person who materially contributes to, induces, or
12 otherwise facilitates a violation of subsection (b) by another
13 person after having obtained actual knowledge that the other
14 person is infringing upon an individual's rights under this
15 Section may be found liable for the violation.

16 (e) Subsection (d) does not apply to a person that solely
17 transmits, stores, or provides access to data or software,
18 including interactive entertainment software, application
19 software providers, or cloud service providers with respect to
20 any unauthorized digital replica stored or transmitted at the
21 direction of a user of material that resides on a system or
22 network, if the person:

23 (1) does not have actual knowledge that the material
24 or an activity using the material on the system or network
25 is unauthorized;

26 (2) in the absence of such actual knowledge, does not

1 willfully disregard facts or circumstances that would
2 create actual knowledge; or

3 (3) upon obtaining actual knowledge, facts or
4 circumstances that would create actual knowledge, or
5 written notification of claimed unauthorized activity,
6 acts expeditiously to remove or disable access to the
7 material that is the subject of infringing activity; if
8 the person does not personally have the ability to remove
9 or disable access to the material, the person acts
10 expeditiously to notify the person that has the ability to
11 remove or disable access to the material. As used in this
12 subsection, "expeditiously" has the same meaning as it
13 does in 17 U.S.C. 512.

14 (f) Subject to the limitations in subsection (e), all of
15 the elements of 17 U.S.C. 512 shall be incorporated mutatis
16 mutandis with respect to claims relating to unauthorized
17 digital replicas. This exemption shall apply without regard to
18 whether the unauthorized version infringes copyright.

19 (g) Nothing in this Act may be construed in a manner
20 inconsistent with 47 U.S.C. 230 or any other federal law.

21 (Source: P.A. 90-747, eff. 1-1-99.)

22 (765 ILCS 1075/35)

23 Sec. 35. Applicability.

24 (a) This Act applies to acts or events that take place
25 after the effective date of this Act.

1 (b) Subsections (a) and (c) of Section 30 do ~~This Act does~~
2 not apply to the following:

3 (1) use of an individual's identity in an attempt to
4 portray, describe, or impersonate that individual in a
5 live performance, a single and original work of fine art,
6 play, book, article, musical work, film, radio,
7 television, or other audio, visual, or audio-visual work,
8 provided that the performance, work, play, book, article,
9 or film does not constitute in and of itself a commercial
10 advertisement for a product, merchandise, goods, or
11 services;

12 (2) use of an individual's identity for non-commercial
13 purposes, including any news, public affairs, or sports
14 broadcast or account, or any political campaign;

15 (3) use of an individual's name in truthfully
16 identifying the person as the author of a particular work
17 or program or the performer in a particular performance;

18 (4) promotional materials, advertisements, or
19 commercial announcements for a use described under
20 paragraph (1), (2), or (3) of this subsection; or

21 (5) use of photographs, videotapes, and images by a
22 person, firm, or corporation practicing the profession of
23 photography ("professional photographer") to exhibit in or
24 about the professional photographer's place of business or
25 portfolio, specimens of the professional photographer's
26 work, unless the exhibition is continued by the

1 professional photographer after written notice objecting
2 to the exhibition has been given by the individual
3 portrayed.

4 (c) Subsections (b) and (c) of Section 30 do not apply to
5 the use of identity or digital replicas in the following:

6 (1) news, public affairs, or a sports broadcast or
7 account, or any political campaign;

8 (2) for a purpose that has political, public interest,
9 educational, or newsworthy value, unless use of the
10 audiovisual digital replica is intended to create, and
11 does create, the false impression to a reasonable viewer
12 or listener that the work is an authentic recording in
13 which the individual participated;

14 (3) use of a digital replica to depict the individual
15 in a documentary, docudrama, or historical or biographical
16 audiovisual work, or any other representation of the
17 individual as such individual, regardless of the degree of
18 fictionalization, unless the use of the audiovisual
19 digital replica creates the false impression to a
20 reasonable viewer or listener that the digital replica is
21 an authentic recording or that the individual participated
22 in the work, including, for example, in a live performance
23 of a musical work an individual did not participate in;

24 (4) use of digital replica for the purposes of
25 comment, criticism, scholarship, satire, or parody; or

26 (5) promotional materials, advertisements, or

1 commercial announcements for a use described in paragraphs
2 (1), (2), (3), and (4).

3 (d) The provisions of this amendatory Act of the 103rd
4 General Assembly do not apply to any action filed before, nor
5 to any action pending on, its effective date.

6 (Source: P.A. 90-747, eff. 1-1-99.)