



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

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February 28, 2025

The Honorable C.T. Wilson
Chair
House Economic Matters Committee
Maryland House of Delegates
230 Taylor House Office Building
6 Bladen Street, Annapolis, MD 21401

RE: HB 1407 (Amprey) – NO FAKES Act – Unfavorable

Dear Chair Wilson and Members of the Committee,

On behalf of TechNet, I'm writing to share our concerns on HB 1407.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.5 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance. TechNet has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, Tallahassee, and Washington, D.C.

We support protecting an individual's personhood and are committed to working with legislators to address any gaps in the law for legitimate protections. Our primary concern is with the assignment of liability, which must attach to the bad actor that seeks to profit from a person's likeness without their permission, not to an intermediary that is simply making available the technology that can recreate a person's photo or voice. We believe that the legislation needs to better clarify this distinction. Liability should also be attached to commercial exploitation.

The bill seeks to prevent the exploitation of an individual's identity, and it must include vigorous protections for the First Amendment rights of creators, producers, and distributors of expressive works that include the names, likenesses, and other attributes of real-life people in motion pictures, television programs, books, magazines, music, video games and works of art. Importantly, these works enjoy full constitutional protection, whether they are sold, rented, loaned or given away, and whether they are intended to entertain or to inform. The bill also creates new state property rights. We are concerned that this could interfere with federal

intellectual property rights. We also believe that such property rights should expire at death, and not 10 years after death.

We have reservations about provisions in this bill related to the removing and disabling of material that is "claimed". If an online service removes content, they could be subject to First Amendment free speech violations. Further, the standard of "promptly notify" is subjective and open to different interpretations by different companies. This bill could be improved by adding a safe harbor which allows online services to take down infringing digital replicas when on actual notice of specific violative conduct.

Should the committee decide to advance this legislation, we believe that HB 1407 could be improved to address liability concerns by clarifying the definition of a "Digital Replica" to a representation that is "indistinguishable from" the voice or visual likeness of an individual, and by making clear that primary liability rests solely with the bad actor, and not the tool or provider such bad actor may have used for the digital replica. Also, the bill could be improved by further clarifying that secondary liability does not attach to intermediaries or service providers that are making or distributing technology tools.

Finally, HB 1407 contains a private right of action (PRA), which TechNet is opposed to. We believe that PRAs lead to frivolous lawsuits that don't bring significant benefits to consumers in relation to the alleged violation.

Below you will find suggested comments on the bill as drafted. These comments have also been submitted to the sponsors in redline form. Thank you for your consideration of our concerns and please let me know if you have any questions.

Sincerely,



Margaret Durkin
TechNet Executive Director, Pennsylvania & the Mid-Atlantic

11-1701.

We're requesting the addition of a "Commercial Use" definition:

- **"COMMERCIAL USE" MEANS THE USE OF THE NAME, VOICE, OR LIKENESS OF AN INDIVIDUAL ON OR IN ANY PRODUCT, MERCHANDISE OR GOOD OR FOR THE PURPOSES OF ADVERTISING, MARKETING, SELLING OR SOLICITING THE PURCHASE OF ANY PRODUCT, MERCHANDISE, GOOD OR SERVICE**

For the definition of "Digital Replica", we're requesting that the phrase **MADE FOR COMMERCIAL USE AND IS** be added to the definition before **"readily"** on page 2, line 6. Also, we'd like to add the following language as new (1):

- (1) **IS NEARLY INDISTINGUISHABLE FROM THE ACTUAL VOICE OR VISUAL LIKENESS OF THAT INDIVIDUAL SUCH THAT A REASONABLE PERSON WOULD BELIEVE THAT THE ELECTRONIC REPRESENTATION IS ONLY OF THAT PARTICULAR, ACTUAL INDIVIDUAL; AND**

We'd like to add **DESCRIBED IN SUBPARAGRAPH (1)** after **"individual"** on page 2, line 11, and again on line 14 after **"individual"**.

"Online Service" – We're requesting the following language for "Online Service":

- **MEANS A SERVICE THAT ELECTS TO PROVIDE A DESIGNATED AGENT UNDER SECTION 11-1706(D) AND IS:**
- A PUBLIC-FACING WEBSITE, **AN ONLINE SERVICE**, AN ONLINE APPLICATION, A MOBILEAPPLICATION, OR A VIRTUAL REALITY ENVIRONMENT, **OR CLOUD SERVICE PROVIDER** ~~THAT PREDOMINANTLY PROVIDES A COMMUNITY FORUM FOR USER-GENERATED CONTENT, SUCH AS SHARING VIDEOS, IMAGES, GAMES, AUDIO FILES, OR OTHER MATERIAL; OR (II) A SERVICE ENGAGED IN THE TRANSMISSIONS OF A DIGITAL-AUDIO TRANSMISSIONS MUSIC PROVIDER, AS DEFINED IN~~ **114(J)(5) OF TITLE 17, UNITED STATES CODE** ~~17 U.S.C. §115(E);~~

On page 3, line 14, strike **"the"** and replace it with **"such"**.

11-1702.

On page 3, line 25, strike **"individual or"**.

On page 3, line 29, after **"individual"** add **"to whom the right applies"**.

On page 4, line 1, add **DESCENDIBLE AND** before **"Licensable"**.

On page 4, line 3, after **"individual"** add **"to whom the right applies"**, and add the phrase to page 4, line 6 after **"individual"**. And again on line 17 after **"individual"**.

On page 4, line 23, add the phrase **IN INTERSTATE OR FOREIGN COMMERCE** after **"individual"**, and at line 30 on page 4 after **"individual"**.

On page 5, line 8, please add **THAT IS THE EARLIER OF 20** after **"date"**. At line 9 after section, please add **OR THE DATE UPON WHICH THE EXISTING COMMON LAW RIGHT OF PUBLICITY TO THE EXTENT RECOGNIZED BY MARYLAND COURTS WOULD TERMINATE.**

11-1703.

On page 5, please strike lines 13-15, and lines 21-29 on page 5, and lines 1-5 on page 6.

On page 6, at line 6, please strike **"AND (B)"** and add an **"s"** to Sections.

11-1705.

We suggest the following language on page 7, starting at line 22:

(A) A PERSON SHALL BE LIABLE IN AN ACTION BROUGHT UNDER § 11-1707 OF THIS SUBTITLE **FOR ANY ACTUAL DAMAGES SUSTAINED BY THE RIGHTS HOLDER INJURED AS A RESULT OF THAT ACTIVITY** IF THE PERSON, IN A MANNER AFFECTING INTERSTATE OR FOREIGN COMMERCE (OR USING ANY MEANS OR FACILITY OF INTERSTATE OR FOREIGN COMMERCE):

On page 7, strike lines 24-25. At line 26 on page 7, insert **"intentionally"** before **"publishes"**, strike **"reproduce"**, and strike **"transmits"**.

On page 8, line 3, please add after **"section"** **MUST HAVE ACTUAL KNOWLEDGE OF EACH PROSCRIBED ACT, THAT**, and strike **"have willfully acted in a manner to avoid any knowledge that"**. At line 5, strike **"and"**. On line 7, please add after **"holder"** **AND (III) SUCH PERSON IS ENGAGED IN AN ACTIVITY DESCRIBED IN SUBSECTION (A)(1).**

At line 8, add **(B)** before **(1)**. At line 12 after **"if"**, add **REGARDLESS OF THE DEGREE OF FICTIONALIZATION.** At line 14, strike **"bona fide"**. At line 15, add **"applicable"** before **"digital replica"**. At line 16, strike **"materially"**. At line 18, add **"docudrama"** after **"documentary"**. At lines 19-20, please strike **INCLUDING SOME DEGREE OF FICTIONALIZATION, UNLESS:**, and strike lines 21-29 on page 8. On line 31, strike **CONSISTENT WITH THE PUBLIC INTEREST** and **BONA FIDE**

On page 9, line 2, strike **"or"**. At line 7 on page 9, add an **"or"** after **"announced;"** Then add:

(6) THE USE IS OTHERWISE PROTECTED BY THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

11-1706.

On page 9, line 13, strike “**secondarily**”. At line 15 after “**service**” add **UNLESS THE PERSON DIRECTED THE PRODUCTION OF THE DIGITAL REPLICA.**

Strike the rest of the sentence. Please strike lines 17-24 on page 9. At line 25, please see this suggested language:

- (B) SUBJECT TO SUBSECTION (D) OF THIS SECTION, AN ONLINE SERVICE MAY NOT BE HELD LIABLE FOR A VIOLATION UNDER THIS SUBTITLE FOR REFERRING OR LINKING A USER TO AN UNAUTHORIZED DIGITAL REPLICA, OR BY CARRYING OUT AN ACTIVITY DESCRIBED IN SUBSECTION (F) OF THIS SECTION, **(1) IF, UPON RECEIVING A NOTIFICATION AS PROVIDED IN SUBSECTION (F) OF THIS SECTION,** THE ONLINE SERVICE **EXPEDITIOUSLY** REMOVES OR DISABLES ACCESS TO THE MATERIAL **THAT IS SET FORTH IN THE NOTICE DESCRIBED IN SUBSECTION (F) AND THAT** IS CLAIMED TO BE AN UNAUTHORIZED DIGITAL REPLICA ~~AS SOON AS IS TECHNICALLY AND PRACTICALLY FEASIBLE FOR THE ONLINE SERVICE,~~ **OR (2) THE ONLINE SERVICE DOES NOT HAVE THE RIGHT OR ABILITY TO REMOVE OR DISABLE ACCESS TO THE MATERIAL THAT IS SET FORTH IN THE NOTICE DESCRIBED IN SECTION (F) AND THAT IS CLAIMED TO BE AN UNAUTHORIZED DIGITAL REPLICA, AND THE ONLINE SERVICE EXPEDITIOUSLY NOTIFIES THE PROVIDER OF SUCH MATERIAL OF THE RECEIPT AND CONTENTS OF SUCH NOTIFICATION.**

At line 32 on page 9, please see the following language:

(C) SUBJECT TO SUBSECTION (D) OF THIS SECTION, AN ONLINE SERVICE MAY NOT BE HELD LIABLE FOR A VIOLATION UNDER THIS SUBTITLE FOR **ENGAGING IN AN ACTIVITY DESCRIBED IN SUBSECTIONS 11-1705(A)(1) WITH RESPECT TO** ~~STORING THIRD-PARTY-PROVIDED MATERIAL THAT RESIDES ON A SYSTEM OR NETWORK CONTROLLED OR OPERATED BY OR FOR THE ONLINE SERVICE IF, AFTER RECEIVING A NOTIFICATION THAT SATISFIES SUBSECTION (F) OF THIS SECTION, THE ONLINE SERVICE:~~

- (1) IF, UPON RECEIVING A NOTIFICATION THAT SATISFIES SUBSECTION (F), THE ONLINE SERVICE**

On page 10 at line 4, see the following language:

- (A) **EXPEDITIOUSLY** REMOVES OR DISABLES ACCESS TO ~~ALL INSTANCES OF THE MATERIAL, OR AN ACTIVITY USING THE MATERIAL,~~ **THAT IS SET FORTH IN THE NOTICE DESCRIBED IN SUBSECTION (F) AND** THAT IS CLAIMED TO BE AN UNAUTHORIZED DIGITAL REPLICA ~~AS SOON AS IS TECHNICALLY AND PRACTICALLY FEASIBLE FOR THE ONLINE SERVICE;~~ AND

On page 10, line 10, add:

OR (2) IF THE ONLINE SERVICE DOES NOT HAVE THE RIGHT OR ABILITY TO REMOVE OR DISABLE ACCESS TO THE MATERIAL THAT IS SET FORTH IN THE NOTICE DESCRIBED IN SUBSECTION (F) AND THAT IS CLAIMED TO BE AN UNAUTHORIZED DIGITAL REPLICA, AND THE ONLINE SERVICE EXPEDITIOUSLY NOTIFIES THE PROVIDER OF SUCH MATERIAL OF THE RECEIPT AND CONTENTS OF THE NOTIFICATION.

On page 11, lines 6-7, strike **OR AN ELIGIBLE PLAINTIFF UNDER § 11-1707(B) OF THIS SUBTITLE**; Please strike lines 17-18 on page 11.

Add new VI:

(VI) IF NOT THE RIGHT HOLDER, A STATEMENT THAT THE NOTIFYING PARTY HAS THE AUTHORITY TO ACT ON BEHALF OF THE RIGHT HOLDER; AND

On page 11 at line 29, **strike "and materially"**.

On page 12 at lines 9-11, strike **CAUSED BY THE RELIANCE OF THE ONLINE SERVICE ON THE MISREPRESENTATION IN REMOVING OR DISABLING ACCESS TO THE MATERIAL OR ACTIVITY CLAIMED TO BE AN UNAUTHORIZED DIGITAL REPLICA**

At line 12, add **"incurred by the alleged violator"** after **"fees"**.

11-1707.

On page 12, strike lines 14-20. At line 22, add **"exclusive"** before **"right"**. At line 23, add **"described in subparagraph (1)"** after **"individual"**.

After line 24, add:

(3) ANY OTHER PERSON THAT EXCLUSIVELY CONTROLS, INCLUDING BY VIRTUE OF A LICENSE, THE RIGHT TO AUTHORIZE THE USE OF THE VOICE OR VISUAL LIKENESS OF THE INDIVIDUAL DESCRIBED IN SUBPARAGRAPH (1);

At line 29, strike **"directly or indirectly"**.

On page 13, line 2, add **"as a sound recording artist"** after **"artist"**. At lines 3-4, strike **"one or more"**.

Add after line 5:

PROVIDED THAT THE SOUND RECORDING ARTIST IS AN INDIVIDUAL AND HAS GIVEN SAID PERSON EXPRESS WRITTEN AUTHORIZATION TO COMMENCE SUCH A CIVIL ACTION ON THEIR BEHALF.

Strike lines 10-16 and lines 22-28.

At line 30, add **“violation”** after **“the”** and strike **ACTIVITY, PLUS ANY PROFITS FROM THE UNAUTHORIZED USE THAT ARE ATTRIBUTABLE TO THE USE AND NOT TAKEN INTO ACCOUNT IN COMPUTING THE ACTUAL DAMAGES**

On page 14, starting at line 3, suggested language:

(2) IN THE CASE OF A WILLFUL VIOLATION ~~ACTIVITY~~ IN WHICH THE INJURED PARTY HAS PROVEN THAT THE DEFENDANT ACTED WITH MALICE, FRAUD, KNOWLEDGE, OR ~~RECKLESS-DISREGARD-OF~~ WITH KNOWLEDGE THAT THE CONDUCT VIOLATED THE LAW, THE COURT MAY AWARD TO THE INJURED PARTY PUNITIVE DAMAGES; AND

Strike lines 20-32 on page 14 and lines 1-2 on page 15.

Please add the following:

(E) REPLACEMENT OF REMOVED OR DISABLED MATERIAL AND LIMITATION ON OTHER LIABILITY.

(1) NO LIABILITY FOR TAKING DOWN GENERALLY—SUBJECT TO PARAGRAPH (2), AN ONLINE SERVICE WILL NOT BE LIABLE TO ANY PERSON FOR ANY CLAIM BASED ON THE ONLINE SERVICE’S GOOD FAITH DISABLING OF ACCESS TO, OR REMOVAL OF, MATERIAL OR ACTIVITY IN CLAIMED VIOLATION OF THE RIGHT DESCRIBED IN SECTION 11-1702(A) OR BASED ON FACTS OR CIRCUMSTANCES FROM WHICH SUCH ACTIVITY IS APPARENT, REGARDLESS OF WHETHER THE MATERIAL OR ACTIVITY IS ULTIMATELY DETERMINED TO BE IN VIOLATION.

(2) EXCEPTION. PARAGRAPH (1) WILL NOT APPLY WITH RESPECT TO MATERIAL RESIDING AT THE DIRECTION OF A USER OF THE ONLINE SERVICE OR NETWORK CONTROLLED OR OPERATED BY OR FOR THE ONLINE SERVICE THAT IS REMOVED, OR TO WHICH ACCESS IS DISABLED BY THE ONLINE SERVICE, PURSUANT TO A NOTICE PROVIDED UNDER SECTION 11-1706(F), UNLESS THE ONLINE SERVICE—

(i) TAKES REASONABLE STEPS PROMPTLY TO NOTIFY THE USER THAT IT HAS REMOVED OR DISABLED ACCESS TO THE MATERIAL;

(ii) UPON RECEIPT OF A COUNTER NOTIFICATION DESCRIBED IN PARAGRAPH (E)(c), PROMPTLY PROVIDES THE PERSON WHO PROVIDED THE NOTIFICATION UNDER SECTION 11-1706(F), WITH A COPY OF THE COUNTER NOTIFICATION, AND INFORMS THE PERSON THAT IT WILL REPLACE THE REMOVED MATERIAL OR CEASE DISABLING ACCESS TO IT IN 10 BUSINESS DAYS; AND

(iii) REPLACES THE REMOVED MATERIAL AND CEASES DISABLING ACCESS TO IT NOT LESS THAN 10, NOR MORE THAN 14, BUSINESS DAYS FOLLOWING RECEIPT OF THE COUNTER NOTICE, UNLESS ITS DESIGNATED

AGENT FIRST RECEIVES NOTICE FROM THE PERSON WHO SUBMITTED THE NOTIFICATION UNDER SECTION 11-1706(F) THAT SUCH PERSON HAS FILED AN ACTION SEEKING A COURT ORDER TO RESTRAIN THE USER FROM ENGAGING IN THE CLAIMED VIOLATION RELATING TO THE MATERIAL ON THE ONLINE SERVICE'S SYSTEM OR NETWORK.

(3) CONTENTS OF COUNTER NOTIFICATION. TO BE EFFECTIVE UNDER THIS SUBSECTION, A COUNTER NOTIFICATION MUST BE A WRITTEN COMMUNICATION PROVIDED TO THE ONLINE SERVICE'S DESIGNATED AGENT THAT INCLUDES SUBSTANTIALLY THE FOLLOWING:

(i) A PHYSICAL OR ELECTRONIC SIGNATURE OF THE USER.

(ii) IDENTIFICATION OF THE MATERIAL THAT HAS BEEN REMOVED OR TO WHICH ACCESS HAS BEEN DISABLED AND THE LOCATION AT WHICH THE MATERIAL APPEARED BEFORE IT WAS REMOVED OR ACCESS TO IT WAS DISABLED.

(iii) A STATEMENT UNDER PENALTY OF PERJURY THAT THE USER HAS A GOOD FAITH BELIEF THAT THE MATERIAL WAS REMOVED OR DISABLED AS A RESULT OF MISTAKE OR MISIDENTIFICATION OF THE MATERIAL TO BE REMOVED OR DISABLED.

(iv) THE USER'S NAME, ADDRESS, AND TELEPHONE NUMBER, AND A STATEMENT THAT THE USER CONSENTS TO THE JURISDICTION OF FEDERAL DISTRICT COURT FOR THE JUDICIAL DISTRICT IN WHICH THE ADDRESS IS LOCATED, OR IF THE USER'S ADDRESS IS OUTSIDE THE UNITED STATES, FOR ANY JUDICIAL DISTRICT IN WHICH THE ONLINE SERVICE MAY BE FOUND, AND THAT THE USER WILL ACCEPT SERVICE OF PROCESS FROM THE PERSON WHO PROVIDED NOTIFICATION UNDER SECTION 11-1706(F) OR AN AGENT OF SUCH PERSON.

(4) LIMITATION ON OTHER LIABILITY. AN ONLINE SERVICE'S COMPLIANCE WITH PARAGRAPH (2) OF THIS SUBSECTION WILL NOT SUBJECT THE ONLINE SERVICE TO LIABILITY FOR A CLAIMED VIOLATION WITH RESPECT TO THE MATERIAL IDENTIFIED IN THE NOTICE PROVIDED UNDER SECTION 11-1706(F).

On page 15 at line 6, add the following language and change the **"but"** to an **"and"**.

- (3) In the case of a right holder who has died before the date of enactment of this article, shall vest in the executors, heirs, assigns, or devisees of the right holder; but**

Exemptions

HB 1407 could also be improved by making it clear that liability rests solely with the bad actor, and not the tool or provider such bad actor may have used for the digital replica. Suggested language is below:

- **"No Internet service provider, or its affiliates or subsidiaries, search engine, or cloud service provider shall be held to have violated the**

provisions of this section solely for providing access or connection to or from a website or other information or content on the Internet or a facility, system, or network not under the control of the provider, including transmission, downloading, intermediate storage, or access software."