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First-of-Its-Kind Artificial Intelligence Law Addresses Deep Fakes and Voice Clones

By **Catie Lane Bailey, Tanisha Pinkins and Lauren Caverly Pratt**

The rise of artificial intelligence (AI) has been a growing concern among recording artists, music industry leaders and lawmakers, who, for the most part, have all pushed for stronger protections over musicians' copyrights and other intellectual property. This article explores how Tennessee's new Ensuring Likeness Voice and Image Security (ELVIS) Act of 2024 (ELVIS Act), expands artificial intelligence protections for the name, image, likeness and voice (NIL+V) of artists and explores additional protections and rights for artists that may be on the way.

The ELVIS Act provides that every individual has a property right in the use of that person's NIL+V in any medium in any manner, including use in a song, documentary, film, book and social media posts (e.g., Tik Tok, Instagram), among other mediums.

The Tennessee General Assembly has provided a summary¹ and the full text² of the ELVIS Act.

The authors, attorneys with Holland & Knight LLP, may be contacted at CatieLane.Bailey@hkllaw.com, Tanisha.Pinkins@hkllaw.com and Lauren.Pratt@hkllaw.com, respectively.

THE IMPORTANCE OF THE ELVIS ACT

The expanding capabilities of AI have outpaced the ability of regulators to establish boundaries around the uses of AI in various industries. Lawmakers are eager to address existing problems and anticipate new problems surrounding the use of AI technology to simulate or impersonate individuals, particularly in various entertainment industries.

- *Protection for Recording Artists:* AI voice synthesis technology has made recording artists vulnerable to convincingly accurate impersonations called "voice clones" that could confuse, offend, scam or mislead their fans and the public at large. The use of voice clones could diminish the value of a recording artist's unique talent by mass-producing music featuring an AI approximation of the artist's voice. For artists, Tennessee's new law establishes, for the first time, a foundation for artists to receive explicit protection over their voices, in addition to the standard name, image and likeness (NIL) rights.
- *Protection for Voice Actors, Podcasters and Others:* While much attention has been drawn to its potential

Deep Fakes and Voice Clones

impact in the music industry and voice cloning of famous artists, the ELVIS Act also protects podcasters and voice actors, at all levels of fame, from the unfair exploitation of their voices, for example, by former employers after they have left the company. Individuals have a new tool to protect their personal brands and ensure the continuing value of their voice work.

HOW DID WE GET HERE?

A 2019 episode of the futuristic HBO anthology series “Black Mirror” (“Rachel, Jack and Ashley Too”) foreshadowed the nature of concerns facing artists today: the use of their voices to create and release new content over which they have no control or approval rights. These concerns have only grown as AI technologies have become more sophisticated and capable of creating deep fakes and voice clones that are nearly indistinguishable from their real counterparts. Following the recent controversial release of the alleged “Fake-Drake” song “Heart on My Sleeve” by Ghostwriter (a TikTok user), who used AI technology to create the song without consent, the subject of AI voice cloning has been a burning topic. To further highlight this growing issue, since shortly after the release of the “Fake-Drake” song, a number of music business executives have been calling for laws to regulate AI in the music space.

SUPPORT AND CONCERNS

Before it was signed, the bill that became the ELVIS Act was discussed at length in both House and Senate committee hearings. The music industry was largely on board with the bill in these hearings, and local talents, including Luke Bryan, Chris Janson, Lindsay Ell, Natalie Grant and others, were vocal in their support for the bill. However, members of the film and TV industry raised concerns that the “right to publicity” protections covered in the ELVIS Act would unfairly restrict the production of movies and shows by, for instance, creating an undue burden to obtain the necessary approvals and or permissions to use an individual’s name, image, voice, or likeness. Despite their protests, the bill received unanimous support from Tennessee legislators in all respective committees and on the House and Senate floors (30-0 in the Senate and 93-0 in the House).

The ELVIS Act was passed on March 21, 2024, without material amendment and with considerable fanfare from prominent members of the Nashville music community.

KEY ASPECTS OF THE ELVIS ACT

The ELVIS Act amends Tennessee’s existing Personal Rights Protection Act (PPRA) of 1984, which was passed, in part, to extend Elvis Presley’s publicity rights after his death in 1977. The PPRA prohibited the use of a person’s name, image or photograph and likeness solely “for purposes of advertising” and authorized both civil and criminal actions for violations; however, protections were not extended to uses of a person’s voice.

Most notably, the ELVIS Act adds an individual’s actual or simulated “voice” to the list of personal characteristics that were already protected by the PPRA. It also amends the PPRA in three key ways:

1. A person will be liable in a civil action, and commits a Class A misdemeanor, if the person:
 - publishes, performs, distributes, transmits or otherwise makes available to the public an individual’s voice or likeness with knowledge that use of the voice or likeness was not authorized by the individual or, in the case of minors and the deceased, a person with appropriate authority, or
 - distributes, transmits or otherwise makes available an algorithm, software, tool or other technology, service or device, the primary purpose or function of which is to produce a particular, identifiable individual’s photograph, voice or likeness with knowledge that distributing, transmitting or otherwise making available the photograph, voice or likeness was not authorized by the individual or, in the case of minors and the deceased, a person with appropriate authority.
2. A person or entity, such as a music label, that has exclusive rights to (a) an individual’s personal services as a recording artist or (b) the distribution of sound recordings that capture an individual’s audio performances can bring an action and seek remedies against bad actors on behalf of the individual.
3. A use of an individual’s name, photograph, voice or likeness is expressly deemed a fair use under copyright law, to the extent it is protected by the First Amendment, if it is:
 - in connection with any news, public affairs or sports broadcast or account;
 - for purposes of comment, criticism, scholarship, satire or parody;

- a representation of the individual as themselves in an audiovisual work, unless the audiovisual work containing the use creates and was intended to create the false impression that the work is an authentic recording in which the individual participated;
- fleeting or incidental; or
- in an advertisement or commercial announcement for any of the foregoing.

Violations of the ELVIS Act can be enforced in a civil cause of action and criminally enforced as a Class A misdemeanor, which carries penalties of up to 11 months, 29 days in jail and/or fines up to \$2,500.

STATE-TO-STATE PROTECTIONS

Name, image and likeness “right of publicity” protections, which protect individuals from commercial exploitation without authorization, vary from state-to-state in the U.S. The lack of uniformity among the states make enforcing an individual’s ownership over their name, likeness and voice more complicated. Approximately 39 states have either passed or proposed (or plan to propose) Name, Image and Likeness (NIL) legislation. Tennessee’s ELVIS Act is not the first to include protection for an individual’s voice (NIL+V), as California has longstanding NIL+V protections in place, but it is the first to expressly protect against uses of AI to infringe on an individual’s rights to their own NIL+V.

FEDERAL PROTECTIONS ARE IN THE WORKS

The federal government is also developing solutions to address concerns over publicity rights. In January 2024, a bipartisan group of House legislators introduced the No Artificial Intelligence Fake Replicas And Unauthorized Duplications Act (No AI FRAUD Act), which aims to establish a framework on the federal level to protect one’s voice and likeness and sets out First Amendment protections. It is said to build upon the Senate’s Nurture Originals, Foster Art, and Keep Entertainment Safe Act (NO FAKES Act), a draft bill that was introduced in October 2023.

Although the NO AI FRAUD ACT seeks to establish broader and more synchronized protections on the federal level, if an artist lives in a state with stronger protections than the No AI FRAUD ACT, it may be prudent to seek redress under state law.

AVOIDING VIOLATIONS OF AN INDIVIDUAL’S RIGHTS IN THEIR NAME, IMAGE, LIKENESS AND VOICE

- “Publicly available” does not necessarily mean “free to share without repercussion.” Do not copy, promote or circulate anything pertaining to an individual’s name, image, likeness or that uses the individual’s voice or a simulation of an individual’s voice without consent or that is not subject to First Amendment protections.
- Seeking permission or getting a license is always helpful to reduce the risk of a potential infringement claim, especially if the use is commercial in nature. If you think this might not be feasible or necessary, contact experienced legal counsel.
- Stay apprised of developments in NIL+V law. While the ELVIS Act only applies to Tennessee residents, other states may follow suit with similar legislation. National legislation may be on the horizon as well.

AI will unequivocally play a role in shaping the future of the arts and especially the music industry as AI technology continues to develop.

IN SUMMARY

- Tennessee’s Ensuring Likeness Voice and Image Security (ELVIS) Act explicitly includes a person’s voice as a protected property right for the first time, with “voice” being defined broadly to include both an individual’s “actual voice” and a “simulation” of the individual’s voice.
- Violations of the ELVIS Act can be enforced in a civil cause of action and criminally enforced as a Class A misdemeanor, which carries penalties of up to 11 months, 29 days in jail and/or fines up to \$2,500.
- Music labels that have contracts with artists may seek remedies against bad actors under the ELVIS Act, which took effect on July 1, 2024, and will be exclusive and limited to Tennessee residents.

Notes

1. <https://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=HB2091&GA=113>.
2. <https://publications.tnsosfiles.com/acts/113/pub/pc0588.pdf>.

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