

Kentucky SB 317

OPPOSITION TESTIMONY

March 21, 2024

Kentucky State Senate

NetChoice respectfully asks that you **oppose SB 317** due to its vague language, unintended consequences, and overly broad scope. However, we also want to acknowledge the recent amendments made to a similar bill in Tennessee, which address many of the concerns we have with SB 317.

NetChoice is a trade association of leading internet businesses that promotes the value, convenience, and choice that internet business models provide to American consumers. Our mission is to make the internet safe for free enterprise and free expression.

SB 317 would make illegal posting a selfie at a concert

Protecting an individual's likeness is a worthy goal, and one that has been done previously in law. Today, under existing law, the Kentucky Attorney General can take action against any business that engages in unfair and deceptive practices, including deceptive advertisements. It does not matter if those advertisements are created in whole or in part with artificial intelligence; to any extent that they are used to deceive customers in unlawful ways, prosecutions can occur right now without any new law.

SB 317 seeks to protect the rights to an individual's name, voice, and likeness in the digital era. However, the bill as drafted is so broad that it assumes that any use of another person's photograph, voice, or likeness, in any medium – if someone publishes, distributes, or makes available a photograph they know isn't authorized – is liable to a civil action. Take, for example, instances in which someone could be held liable: posting a photograph taken of a celebrity at a concert shared on social media or a video recording of an artist during a performance sent by text to a friend. The bill is simply so broad that the unintended consequences far outweigh any protections that could be inferred.

Furthermore, SB 317's First Amendment defense is a rebuttable one, which means that even if an individual believes their actions are protected under free speech, they would still have to defend themselves in court. This places an undue burden on innocent citizens and could lead to a chilling effect on free expression.

A better approach

Tennessee, faced with similar issues in their proposed ELVIS Act, has made significant amendments to address these concerns. The amended bill clarifies definitions, provides explicit fair use exceptions for

certain types of content, and limits the scope of the law to prevent unintended consequences. These changes demonstrate a more thoughtful approach to regulating AI-generated content while minimizing the potential for legal overreach.

Rather than advance SB 317 in its current form, the Kentucky government should look to the example set by Tennessee and consider amending the bill to address its shortcomings. Additionally, the state should focus on enforcing its existing unfair and deceptive trade practices laws against any instance of deception in advertisements, whether AI-generated or not. Such enforcement of existing laws will make it clear to anyone using artificial intelligence that every law applies to them and that criminals cannot escape justice just because they use a computer.

Addressing problems from AI

If the state wants to take action on AI, it should enact laws like the *Stop Deepfake CSAM Act*, which closes a loophole in child-exploitation law to make clear that AI-generated child sexual abuse material (CSAM) is illegal even if created with AI. The state should also consider enacting the *Stop Non-Consensual Distribution of Intimate Deepfake Media Act*, which makes clear that victims of AI-generated revenge pornography can bring civil actions against bad actors.

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Again, we respectfully ask you to **oppose SB 317** in its current form and consider the amendments made by Tennessee as a model for addressing the concerns raised. As always, we offer ourselves as a resource to discuss any of these issues with you in further detail, and we appreciate the opportunity to provide the committee with our thoughts on this important matter.

Sincerely,

Carl Szabo
Vice President & General Counsel, NetChoice

NetChoice is a trade association that works to protect free expression and promote free enterprise online.