CHAMBER OF PROGRESS

August 5, 2024

US Patent and Trademark Office
Berne Conference
600 Dulany Street
Alexandria, VA 22314

Re: Public Roundtable on Protections for Name, Image, Likeness, Other Indicia of Identity, and Reputation

On behalf of Chamber of Progress, a tech industry association supporting public policies to build a more inclusive country in which all people benefit from technological leaps, we appreciate the opportunity to share this response to the Public Roundtable on Protections for Name, Image, Likeness, Other Indica of Identity, and Reputation.

Artificial Intelligence (AI) technology holds potentially significant benefits regarding the use of individuals' likenesses. AI can enhance user experience in various fields, including entertainment, marketing, and personalized services. For instance, AI-driven tools can create realistic avatars for virtual reality experiences, allowing users to engage in immersive environments that are more interactive and enjoyable.

Additionally, AI has the potential to revolutionize education. For example, AI can generate interactive historical figures or cultural icons, allowing students to engage in immersive educational experiences. For instance, students learning about history can have virtual conversations with AI-generated avatars of historical figures, deepening their understanding and making lessons more vivid and memorable. In language learning, AI can use the likeness of native speakers to provide realistic and contextually relevant practice scenarios, helping students improve their pronunciation and conversational skills. Incorporating AI and likeness into educational tools can create more dynamic and compelling learning experiences catering to diverse educational needs.

3. Do technological mechanisms or protocols currently exist to identify AI-generated NIL content, to prevent or deter unauthorized AI-generated NIL content, or to remove unauthorized AI-generated NIL content after it has been released? What other types of mechanisms or protocols exist, or should exist, to identify AI-generated NIL content or address unauthorized NIL content?

Watermarking and digital signatures may be effective methods for identifying AI-generated content by embedding identifiable markers into digital media. These techniques enable content to be traced back to the creator or original sources, ensuring authenticity and ownership. For example, Google is exploring methods to embed digital signatures into media, aiding in verifying and tracking AI-generated content.[1] Collectively, these approaches may help manage and address the unauthorized use of digital likeness content. Content watermarking is an evolving space and there is not yet a single, agreed industry standard for watermarking. As such, policymakers should not mandate a specific watermarking technology at this time.

5. There have been calls for a new Federal law to address unauthorized use of NIL content, including content generated by AI. Should Congress create a new Federal law to protect NIL?

Congress should refrain from creating a new federal law to address the unauthorized use of likeness content, including AI-generated content, as existing legal frameworks offer sufficient protection. For example, the right of publicity safeguards individuals' control over the commercial use of their likeness.[2]

Additionally, copyright and trademark laws prevent unauthorized exploitation of likeness. Trademark law can prevent the unauthorized use of likeness in a way that suggests endorsement or affiliation, thus protecting the individual's brand and reputation.[3] For example, using a celebrity's likeness to promote a product without consent can constitute trademark infringement if it implies an endorsement. Copyright law complements this by protecting original works, including photographs and other visual representations, from unauthorized reproduction and distribution.[4] This means that individuals can enforce their rights against unauthorized uses of their likeness captured in creative works. Together, these legal frameworks offer comprehensive coverage for addressing unauthorized likeness issues and ensure that individuals have recourse against misuse without the need for new federal legislation.

The tech industry is increasingly adopting self-regulation and ethical guidelines to manage likenesses responsibly, demonstrating that existing protections are adaptable and effective. For example, Google's Responsible AI initiatives, including its AI Principles and internal review processes, exemplify how the tech industry is proactively self-regulating to ensure ethical and accountable use of artificial intelligence technologies. [5]

---

[1] https://newsinitiative.withgoogle.com/resources/trainings/verification/
[2] https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1467&context=facpub
[3] https://natlawreview.com/article/protecting-image-and-likeness-through-trademark-law
[4] https://www.nlm.nih.gov/hmd/copyright/patron-guide-privacy-and-publicity-rights.html
[5] https://ai.google/responsibility/principles/