UNITED STATES PATENT AND TRADEMARK OFFICE

TRANSPARENCY STAKEHOLDER LISTENING SESSION

Alexandria, Virginia

Monday, August 5, 2024

A G E N D A

Opening Remarks

KATHI VIDAL
Under Secretary of Commerce for IP and Director of the USPTO

Introduction

ANN CHAITOVITZ
USPTO Copyright Attorney

In-Person Roundtable

Motion Picture Association (MPA)

- BENJAMIN SHEFFNER
  Senior Vice President & Associate General Counsel, Law & Policy

Recording Academy

- MICHAEL LEWAN
  Managing Director, State and Federal Advocacy, Recording Academy

HAND

- WILL KRETH
  CEO

Digital Media Association (DIMA)

- CHARLES COLIN RUSHING
  General Counsel and EVP

National Association of Voice Actors

- TIM FRIEDLANDER
  President/Co-Founder

Sheppard Mullin

- JAMES GATTO
  AI Team leader

Child Safety Advocate/CEO IGGY Ventures LLC

- PATRICK LANE

Chamber of Progress

- ADEN HIZKIAS
  Policy Analyst

Adobe, Inc.

- J. SCOTT EVANS

MLB Players, Inc.

- SHAWN MCDONALD
  SVP Business and Legal Affairs

Endeavor

- JONATHAN SEIDEN
  SVP, Associate General Counsel

Entertainment Software Association

- BIJOU MGBOJIKWE, Senior Policy Counsel

INTA

- ANDREW J. AVSEC, Chair
  Right of Publicity Committee

Authors Guild

- UMAIR KAZI
  Director of Policy & Advocacy

* * * * *

P R O C E E D I N G S

(9:28 a.m.)

MS. CHAITOVITZ: Welcome everybody. Those of you who know me know I'm like obsessively on time. So we're starting. Thank you for participating in today's roundtable session to explore issues at the intersection of AI and protections for an individual's reputation, name, image, voice, likeness, or other indicia of identity. Now, that's a long thing until the rest of the time. Today, I'm just going to call it NIL, but it captures, I think, the broader concept, not just the narrow concept of many, what we call, you know, right of publicity laws. We look forward to hearing your views on these issues. I'm Ann Chaitovitz, a copyright attorney at the USPTO, and I'm going to serve as the moderator for this session of today's roundtable. Although frankly, there's not going to be a whole lot of moderation, because it's mostly just going to be you all talking. Before we begin, I'd like to recognize, recognize Kathy Vidal, Under

Secretary of Commerce for intellectual property and the director of the US Patent and Trademark Office, to provide some welcoming remarks. And those of you long time D.C. people, we can do a Warner Wolf, let's go to the videotape. Does anybody remember that?

MS. VIDAL: I'm Kathy Vidal, Director of the USPTO and Under Secretary of Commerce for Intellectual Property. I am pleased to welcome you today for what promises to be a fascinating roundtable on AI technology and its impact on the legal protections of personal reputations and name, image and likeness rights, or NIL. The potential for AI technology to provide tremendous societal and economic benefits and foster new forms of innovation is undeniable. However, we also need to evaluate the potential challenges AI presents, including IP related challenges. The USPTO is proactively examining AI technology and advancing policy at the intersection of AI and IP. The USPTO has already issued guidance in this area, including regarding the patentability and

inventorship of AI assisted inventions and in the AI stack, and on the use of AI in preparing applications and filings before the agency, and we're working more both in terms of patents and in the copyright spaces. We also continue to solicit stakeholder opinions on these issues, including to the USPTO's recent requests for comments seeking input on AI implications for other evaluation make during the patent examination process.

In addition, President Biden's executive order on safe, secure and trustworthy AI tasks the USPTO with providing guidance on the impacts of AI and AI related IP policy issues. President Biden's executive order also tasked the USPTO with providing recommendations for executive action related to AI and IP matters. We are currently analyzing and engaging with stakeholders on all of these issues, including AI's implications for copyright laws and in the creative space more generally. Today's roundtable focuses on AI implications for NIL laws and felicities, including whether current legal protections are

sufficient to protect an individual's NIL. Currently, NIL is protected primarily by state laws. However, many stakeholders have cited the patchwork nature of the remedies, and scope of protection provided under state laws as a concern. In addition, some federal statutes protect aspects of NIL instances.

One example is section 43A of the Lanham act, which provides a remedy to stop the unauthorized use of an individual's NIL certain commercial circumstances. However, this Lanham Act remedy has limitations, including the fact that many federal circuits require plaintiffs to have some level of fame or notoriety in order to succeed on a section 43A claim involving NIL. Today's round gives an opportunity for stakeholders to provide views on all these issues. The input we receive today will help the USPTO will fully understand the current and help inform our recommendations to President Biden for potential executive actions. It will also inform our work with Congress in the courts. So thank

you again for participating in today's roundtable. I look forward to hearing your views on these important issues.

MS. CHAITOVITZ: Thank you, Director Vidal. And I now like to set some basic ground rules for today's roundtable session. Today's speakers should feel free to discuss whatever issues you think are relevant to NIL and AI. Some issues we are particularly interested in hearing about are whether existing legal protections for individuals, NIL and reputations are sufficient, how these legal protections intersect with other IP laws, and how AI technology impacts existing legal protections for NIL and reputation. We also welcome your input regarding recommendations the USPTO should present to the President pursuant to President Biden's executive order on AI, namely, what, if any, executive action can or should be taken related to NIL protections in the context of AI. So we're especially interested in if you have any recommendations for executive actions.

Now, turning to the format of today's

roundtable session, we ask that speakers address your comments to the moderator. But really, that's me there. But you're going to be talking to everybody facing here. You're going to come up to the podium, each speaker will have ten minutes to deliver remarks, and I'm going to strictly enforce this time limit. You're going to be standing here. There's a clock there that will be counting down your time. So, as I said, I'm a stickler for things like starting on time, and I'm going to hold you to your time limit. That's important so that everybody has an opportunity to provide remarks. And we're going to go in the order that you are sitting. You'll come up here to make your remarks. We'll start with Ben. We'll go down this road to James, and then we're going to go back behind James, to Rick, and then down that road to Andrew, and back behind him, and all the way back until we finish the speakers.

After each speaker concludes their remarks, I may ask some follow up questions of the speaker, although chances are I might save the

follow ups to the end just to make sure we don't run out of time. And if time permits, after all the speakers have provided remarks, there may be an opportunity for each speaker to make additional remarks, but that's all going to be depending on the amount of time. Now, as a reminder, this roundtable is being live streamed and will be recorded and posted on the USPTO's website, along with a transcript of the roundtable. Remarks made today may be used by the PTO in its report and potential recommendations to the president. So with that, we should begin. Ben. Oh, when you come up here, just for the transcript and everything, please identify yourself and your organization and then start with the remarks.

MR. SHEFFNER: Good morning. I'm Ben Sheffner with the Motion Picture Association. I want to thank USPTO for hosting this roundtable and for allowing me to participate on behalf of the MPA and our member studios. MPA represents the leading producers and distributors of movies and television programs here in the US and around

the world. Sony Pictures, Netflix, Disney, Warner Brothers, Discovery, and NBC Universal. Since our founding in 1922, we have fought to protect the intellectual property rights and creative freedoms of our members, which give us a uniquely balanced perspective on the issues we're facing today. For over a century, the MPA's members have employed innovative new technologies to tell compelling stories to audiences worldwide. From the introduction of recorded sound in the 1920s, color in the 1930s, to the dazzling special effects in movies like this year's Dune Part two, Kingdom of the Planet of the Apes, and Twisters. The MPA's members have long used technology to allow filmmakers to bring their vision to the screen and tell their stories in the most compelling way possible.

Artificial intelligence is the latest such innovation impacting our industry. MPA sees great promise in AI as a way to enhance the filmmaking process and provide an even more compelling experience for audiences. But we also

share the concerns of actors and recording artists about how AI can facilitate the unauthorized replication of their likenesses and voices to supplant performances by them, which could potentially undermine their ability to earn a living practicing their craft. And while this isn't directly about our industry, we're also concerned about other abuses of this technology, such as to generate nonconsensual intimate images or to deceive voters in the context of election campaigns. In addressing these issues, before rushing to enact legislation or regulations around depictions of individuals, NPA urges policymakers and stakeholders to first pause and ask whether the harms they seek to address are already covered by existing law, such as the Lanham Act, state right of publicity law, defamation, fraud, intentional infliction of emotional distress, or other torts. Often the answer will be yes, indicating that a new law is not necessary. And if policymakers identify a gap in the law, for example, regarding protections for professional

performers or related to pornographic or election related deepfakes, the best solution is narrow, specific legislation targeting that specific problem.

Another thing we must all keep foremost in mind is that imposing rules about how we are all allowed to depict individuals necessarily involves doing something that the First Amendment sharply limits. Regulating the content of speech. The Supreme Court has made clear that laws regulating the content of speech are subject to the demanding strict scrutiny standardization. That means they are, quote, presumptively unconstitutional and can survive the strict scrutiny hurdle only if they, one, serve a compelling government interest and two, are narrowly tailored to serve that interest. Legislating in this area requires very careful drafting to address real harms without inadvertently chilling or even prohibiting legitimate, constitutionally protected uses of technologies to enhance storytelling. I want to

emphasize, digital replica technology has entirely legitimate uses, uses that are fully protected by the First Amendment and do not require the consent of those being depicted. Take the classic 1994 film Forrest Gump, which depicted the fictional Forrest character played by Tom Hanks navigating American life from the fifties through the 1980s, including by interacting with real people from that era. Famously, the filmmakers, using digital replica technology available at the time, had Forrest interact and even converse with presidents Kennedy, Johnson, and Nixon. Or take a more recent example involving the show, produced by our member Sony Pictures, streamed on Apple TV, called For All Mankind. It's an alternative history version of the USSR space race. The producers of that series use digitally manipulated videos to present a fictional version of history that incorporates real people, including John Lennon and President Reagan.

To be clear, those depictions did not require the consent of their heirs, and requiring

such consent would effectively grant heirs or their corporate successors the ability to censor portrayals they don't like, which would violate the First Amendment. As I suspect just about everyone in this room is aware, just last week, senators Coons, Blackburn, Tillis, and Klobuchar introduced a No Fakes Act, a bill that would establish a new federal intellectual property right in one's voice and likeness. MPA has endorsed that bill as a thoughtful effort to address abusive uses of digital replicas of likenesses and voices. But for today's discussion, I'd like to step back a little bit from the specifics of any particular bill and focus on what we believe are the most important provisions of any bill regulating digital replicas.

First, the definition of digital replica must be limited to highly realistic replications of individuals, likenesses or voices. It should not encompass, for example, cartoon versions of people you might see on shows like the Simpsons or

South Park. Second, any bill regulating digital replicas must include a robust set of statutory exemptions, specifically delineating uses that are outside the scope of the statute and thus do not require permission. These exemptions must cover uses where the digital replica is used to depict an individual as himself or herself, for example, in a docudrama or a biopic. They must also cover uses for purposes such as scholarship, commentary, criticism, and parody and satire. These types of exemptions give filmmakers the clarity and certainty they need to determine whether to move forward with a particular movie or TV series before spending tens or even hundreds of millions of dollars to produce the project. If the statutory exemptions are not adequate, some producers will simply not proceed with their projects, a classic chilling effect that the First Amendment does not allow.

And exemptions such as these are not just good policy, they're a constitutional imperative. Indeed, in United States v. Stevens,

the Supreme Court struck down on First Amendment grounds a federal statute regulating animal torture videos as overbroad, precisely because the exceptions in that statute for constitutionally protected speech were inadequate. Third, any federal digital replica bill should preempt state laws that regulate the use of digital replicas in expressive works. Simply adding a federal layer on top of the existing patchwork of state laws would only exacerbate the problems associated with inconsistent laws in this area.

To be clear, MPA is not advocating for a new federal law that would preempt all of what we call traditional right of publicity law, which only applies to uses in advertisements or on merchandise. Right of publicity law is generally technology neutral, so it already covers the uses of digital replicas to sell products. Traditional right of publicity generally functions well, and we see no need to supplant it. However, regulation of digital replicas in expressive works such as movies, television programs, or songs is a

novel area, and having a single federal statute in this novel area is appropriate. And fourth, the scope of the right should focus on the replacement of performances by living performers. Going beyond that risk, sweeping in wide swaths of First Amendment protected speech for which there is no compelling government interest in regulating, which would make the statute vulnerable to constitutional challenge. Thank you again for the opportunity to participate in this roundtable, and I look forward to the discussion.

MS. CHAITOVITZ: Thank you so much. I did have a question for you, but you answered it later in the -- Michael?

MR. LEWAN: Good morning, I'm Michael Lewan, managing director of state and federal advocacy for the Recording Academy. Best known for the annual Grammy Awards, the Recording Academy is a leading trade association representing individual music makers. Our members include thousands of creators across all genres, regions, levels of fame and craft, including

artists, songwriters, and studio professionals. For decades, the academy has been at the forefront of policy initiatives, impacting the music community and ensuring that the rights of creators are protected. We've enjoyed working with the Patent and Trade Office on a number of occasions, room makings, roundtables, and other initiatives, and I'm grateful to Director Vidal and this office for including us today in this important discussion.

In the music ecosystem alone, there are a number of policy considerations that could and should be explored when it comes to artificial intelligence. In due time, the Recording Academy will certainly be heavily involved in those discussions. But for the better part of the last two years, we have focused first and foremost on protections for name, image, likeness, and I'll add and emphasize and voice to establish guardrails against unauthorized digital replicas that clone our members identities without consent, compensation, or control. This includes working

with bipartisan members of the 118th Congress in the drafting and introduction of legislation like the No AI Frauds Act, the No Fakes Act, providing witnesses at hearings and informational roundtables, including our CEO testifying at the House judiciary's hearing in Los Angeles during Grammy weekend and advocating for federal protections with our members during Grammys on the Hill. We've also worked with the United States Copyright Office, the Biden Harris administration, and other stakeholders in discussing the framework of what federal guardrails could look like. Also flagged, our reporting academy has been heavily involved at the state level. Some of these initiatives predate the current conversation around AI and digital replicas, where we've worked to pass rights of publicity laws across the country. But notably, the academy worked closely this year with legislators in Tennessee on the development and eventual passage of the Elvis Act, and as well as working in Illinois on the passage of HB 4795 and our members continue to work today

in California on AB 1836. We've also explored similar attempts in other states.

The reason we've been focused on concerns around name, image, likeness and voice is because it is the most immediate harm without recourse. In the age of generative AI confronting individual music makers, the speed to create and the speed to spread digital replicas is unprecedented. Within moments, we all witnessed how a fake Drake can go viral and become part of the zeitgeist last summer. And that was just the beginning. The advancements in cloning services are causing real harms right now. This is painfully more troublesome for independent artists and other creative individuals who lack the platform and resources of Drake and artists of his stature. What used to take significant costs time. Excuse me. These creative individuals often find themselves powerless to put a stop to the unauthorized taking of their identity. While utilizing someone's likeness is not a new phenomenon, the age of AI has 100 percent

exasperated the creation of unauthorized digital replicas. What used to take significant cost, time, and experience can now be created virtually anywhere, at any time, with little to no cost or training. And in a digital context where music distribution is frictionless and borderless, the potential harm is self evident. Rapid proliferation and multiplication, an endless game of whack a mole that at best leads to a dilution of royalties and results in unfair creative competition, and at worst can be outright deception, fraud, and reputational harm.

Gen AI digital replicas pose a real threat to human creativity and the relationship between creators and their audiences. More troubling, the proliferation of digital replicas goes beyond commercial harms and poses a threat to all individuals, regardless of level of fame. From fraud to deepfake revenges, individuals are vulnerable to having their identity digitally cloned. We've all heard the anecdotes of the teenager subject to revenge or the elderly victim

to financial scam calls. It is AI that is bringing these harms to bear. I want to be clear. The Recording Academy is not anti AI or even anti digital replicas. We believe AI can serve an invaluable tool for human creators. It can expand the universe who can create music and remove many barriers to entry. Digital replicas even represent a legitimate new avenue for authorized and licensed uses. Artists have already begun to grant permission to use their NIL by third parties, and a viable marketplace could soon be established. This has the potential to be an important new revenue stream and create new ways for artists to engage with their fans, and vice versa. But the key factor here comes down to permission and the three consent, control, compensation, a fake Drake, done with Drake's permission, is wildly different than an unauthorized taking of his likeness. And that's why the Recording Academy is calling for improved and harmonized protections.

Existing law is a combination of

antiquated right of publicity laws at the state level, an inefficient patchwork ill equipped to handle the interstate nature of music distribution, or imprecise federal standards like the Lanham Act that require clear cut market and consumer confusion. In short, no law in the books is giving the individual the kinds of protection and recourse he or she needs. Existing protections were not conceived to or equipped to protect against generative AI scenarios, let alone non commercial use misuses. They are 20th century solutions. As mentioned at the start, that's why the academy isn't calling for a federal law, and we are proud to endorse the bipartisan No AI Fraud Act and last week's recently introduced No Fakes Act in the Senate. We additionally applaud the recent copyright office report recommending a federal standard. We firmly believe, since music knows no boundaries, that a uniform federal standard provides the best protections for all creators and can establish minimum guardrails to ensure that individuals can control their likeness

in the digital context. As both the House and Senate have put forth, a federal law should, at a minimum, clearly define and establish a digital replica right for all individuals. This right should give the individual means to combat the infringement and grounds to seek damages for harms. The right should not be limited commercial use, but framed to regulate all types of digital replicas that realistically imitate an individual's likeness without the permission.

As illustrated already, the right should not be limited to quote unquote celebrities, but be brought off to be enjoyed by individuals, regardless of how famous he or she may be. Recognizing that certain states, like Tennessee, may go above and beyond what a federal law might protect, we concur with the copyright office's recommendation that federal law should not preempt state laws. But the academy has also been open to exploring carefully crafted, crafted preemption standards, such as those found in the No Fakes Act. We believe a federal standard should result

in a healthy marketplace where individuals are unable to use the right to monetize and license their likeness if so desired. This would include the flexibility to empower others to license their likeness on their behalf and or enforce against unauthorized use. Similarly, creation of a federal standard should also incentivize secondary parties like platforms to establish an effective system to quickly take down and keep down unauthorized digital replicas and empower the creators to control how their likeness is used on these platforms. Platforms have shown that they can be responsible partners and allies to creators in other contexts, and that kind of relationship can be fostered with respect to digital fakes.

We believe the right should extend posthumously to ensure that individuals who continue to have commercial value beyond death may be protected and that their states are in control of this race. We have seen deceased legends in our industry have their identities profited on without permission, and must do what we can to

ensure the heirs are in control. Last, the recording firmly respects and believes in the power of the First Amendment and calls for a right that balances First Amendment protections. The No AI Fraud Act is a great example of how to walk this path in crafting legislation at the federal and state level, the Recording Academy has been an honest broker and sought to find consensus amongst stakeholders, including on some of these more contentious issues and provisions. We pledge somebody to work with the USPTO and others in this room on finding the best path forward. Again, thank the director for convening today's roundtable and welcome continued dialogue where the reporting academy can provide assistance on this important matter. Thank you.

MS. CHAITOVITZ: Just have one question. Do you see --

(audio cut off).

MR. LEWAN: The Recording Academy would probably err on the side of having a legislative attempt at this just to ensure that all platforms

are able to abide by the same rules we've seen. Sometimes voluntary commitments have led to inconsistencies where certain platforms go above and beyond others are not, you know, adhering to the pledge. So a federal standard with some actual teeth to expeditiously remove infringement content will probably be the better path forward.

MS. CHAITOVITZ: Thank you. I apologize because this is my first time working with clocks and I know I started it again. Hopefully still time on it and it didn't run over. So, Will Kreth?

MR. KRETH: Morning everybody. Hi, I'm Will Kreth, the CEO and founder of Hand Human and Digital, a digital object identifier foundation registration agency. DOI Foundation's been around since 1997. They are an ISO state standard and they identify objects, be they digital or physical, to the tune of 1.3 billion objects per month. I'm the former executive director of the entertainment id Registry eider and the director of metadata governance for showtime Networks. I

have experience working in the music industry, also on the standards and protocols side as a current working group co chair at the music industry's standards body digital data exchange, or known as DDEX popularly. I'm also a contributor member of the Coalition for Content Providence and Authenticity. That's C2PA many of you may have heard about. It's also mentioned in federal legislation and executive orders, and also a member of the Media Providence Working Group at the International Press Telecommunications Council, theiptc.org dot so for those of you wondering why I'm here today, what is HAND?

I want to give you a brief little bit of information on that so HAND as an interoperable public talent identifier for notable public figures and we heard recently that the differentiation delineation between the private individuals and public figures. We identify public figures only built on an ISO level standard id, providing persistent global talent identity resolution and verification to enable cost

savings, greater security and revenue acceleration. We identify three objects in the media supply chain just really simply notable legal and natural people, their connected digital replicas for today's conversation and fictional characters, because for every Spider man and Batman or Barbie, they're interchangeably portrayed over the decades by different human beings. This roundtable topic is at the very heart of what we've already built and deployed to Hollywood and soon sports leagues and federations. I see Sean here today around the ethical use of consent based NIL rights licensing of digital replicas per the SAG AFTRA agreement of 2023, which codified language around employment based and independently created digital replicas and background actor replicas and synthetic performers.

Built on that same standards based Emmy award winning technology that ITER won at a 2023 Emmy award for last year. Hand, like ITER, is one of only twelve DOI registration agencies in the

world. As I mentioned. Remember CTPA and IPTC to the USPTO's questions requested in advance. And thank you for those questions. Do technological mechanisms or protocols currently exist to identify AI generated NIL content to prevent or deter unauthorized AI generated NIL content or use or remove unauthorized AI NIL content after it has been released? We are not a detection company, but what we have do is on the provenance side of the business tracking beacon, if you will, of notable individuals and the replicas. We're currently working with Sony Pictures Entertainment and also working with companies like fabric and Origin and others in the media supply chain. And we're looking to show a proof of concept at the International Broadcasting Convention in Amsterdam in September around a project we call digital replica and talent id Providence verification and new automated workflows.

So I want to speak to the notion of the question around does the use of unauthorized NIL content harm individuals? We think that it

basically hand views that that violates the four C's, not just three C's, but the four cs which we in a webinar in February with the folks at CAA, the talent agency describe as consent, control, credit and compensation. It's the removal of human agency and the control of the right of publicity codified state to state, and the moral rights which are codified in the EU for both public figures and private individuals, it is deleterious to their control, their privacy, reputation, and for public figures, their quote unquote brand use of AI technology clearly accelerates the velocity of unauthorized and potentially infringing usages of mail rights by threat actors seeking to defraud or misrepresent real legal and natural peoples. It is essentially a nefarious, pernicious virus that will require a public private partnership to regulate and enforce both the provenance tools and detection tools to curtail and reduce the risk to society. Ethical usages of AI to create consent based digital replicas and legal and natural people for their

licensing and monetization purposes will require guardrails and guidelines not yet nationally legislated nor litigated to set case law precedents. We heard the No Fakes Act mentioned earlier. We know Tennessee has the Elvis Act. I know that this body comes down on watching and understanding that there's room for both.

As our friend Benjamin said from MPA earlier, there has to be room for both non infringing usages of identity and no rights, and for creative works, expressive works, as you mentioned. But also looking at where unauthorized usages take place, what are the means to either deter, detect, or to find a way to remediate that infringement? So I want to speak to this that I can't speak to the Lanham Act, but I want to say to the folks here today that one thing that people have to remember, you don't need AI to create a digital replica. Photogrammetry, volumetric capture, multiple technologies exist to create unauthorized replicas before large language models and adoption of these tools. For open AI and

others, AI can help the kind of the creation of it. But the unauthorized deepfakes did not start with AI. I think it's important for folks to remember that fact. Essentially to this I want to say that one more thing around the question that was posed to us. What limits, if any, should be placed on the voluntary transfer rights concerning NIL to third parties? For example, should there be limits to the duration of such transfers? I think we heard a bit from Benjamin earlier on this, but to the best of my knowledge, the estates of deceased individuals, usually celebrities or public figures, have already transferred and or licensed no rights to third parties for utilization in voice cloning, advertising, et cetera.

We saw recently that a company name called Eleven Labs created a set of voice trained voice collection called the iconic Voices, where the estates of the late Judy Garland, James Dean Burt Reynolds and Sir Lawrence Olivier have licensed their voice likenesses to eleven labs to

train for their voice cloning software. If we are to look at past legislative examples, potentially the potential controversial S-505 Sony Bono Copyright Term Extension act. Even with that federal extension, there is still an eventual time limit, expiration date for rights before copyrighted works move into the public domain. So if no rights are to extend in perpetuity to third party rights holders, obtaining a transfer of rights from the estate to the deceased, that would be anomalous to the current laws around copyrighted works. Food for thought and room for debate, quite possibly. I want to thank Ann and Jeffrey and team today for allowing me to speak, and I look forward to hearing the conversation. And thank you all for your time today.

MS. CHAITOVITZ: Thank you. Can I ask questions? You said that HAND was for public figures, and I'm just wondering how that defined thinking. I don't know how many of you read, there was a New York Times magazine article, and it was about a, I think, a state senator in

Florida and a city council person in Broward County who were both victims of deep fakes. And I mean, they are elected officials, but they're not, you know, national officials, state senator, and a city council person. I don't know if they fit in your definition of public figures. So I'm just curious how you define public figures. And then I have one more question after that.

MR. KRETH: Okay, so we have something we call from the kind of critical metrics of what makes someone notable, citation backed, notability. It's basically this. Who you are, what you've done, and who said, so, those three elements, I can explain that to my son, who's eleven, I can explain that to him, are kind of the rubric, the fabric of what we're trying to do. And by establishing that, we're trying to identify, in the first phase of what we do, the public figure, the celebrity, the notable individual, the person who has multiple citations, who has multiple identifiers, existing databases around the world today. That is a metric that

allows us to have confidence that if Library of Congress decided that you were notable enough to appear in their database, that's a great litmus test to say, this individual is going to have a lasting persistence, notability, from here going forward.

The public figures in Broward County you mentioned, we were actually asked, on a related note by Bloomberg News if we would identify politicians. We intend to start moving that direction, but cautiously, with some of the most notable individuals. We already have Donald Trump in our database because he's also a television personality. So it is entirely possible that the quantifiable critical metrics of notability for politicians could also be part of this. We've also been asked by the fashion industry if identify fashion models, but we're trying to take it slow and not boil the ocean to start with, to create an interoperable unique identifier at the highest level, the ISO level, trying to identify just the most notable people. To start with your

second question, we're out of time, almost.

MS. CHAITOVITZ: We have 10 seconds right now, but --

MR. KRETH: I hope that answered your question.

MS. CHAITOVITZ: Yes, it did. Thank you. And the final question is, you mentioned private public ship. Wondering if you envision any executive actions that could facilitate those private.

MR. KRETH: It'd be possible. I think the one thing we wanted to share with folks is around the notion that when it comes to id namespaces and media supply chain, there's a saying that goes, if you can't identify it, you can't automate. And to scale any business, you have to have the systems and methods, the means by which to automate processes. Otherwise it becomes extremely manual, there's high friction and costs more money, takes more time, becomes something that is onerous or burdensome challenge for people. So to have unique identification of

objects in a media namespace, media supply chain helps. And so I don't know if that's something that's come to the executive branch, but I think that historically we know that with packaged goods and GT members and GPC codes, whole industries, whole systems, whole supply chains around the world have been changed by having the ability to automate the object identity with a unique identifier, a numeric identifier.

MS. CHAITOVITZ: Thank you. Just another area where we need unique identifiers.

MR. KRETH: Thank you.

MS. CHAITOVITZ: Thank you. Colin?

MR. RUSHING: Going to put my reading glasses to the test. All right. My name is Colin Rushing. I'm the Executive Vice President and general counsel of the Digital Media Association, or DIMA. We represent the large music streaming companies, Apple, Amazon, Pandora, Spotify, YouTube, as well as Feed FM, which provides business to business music services. Our members are at the forefront of the growth of the music

industry. They're the source of basically all the growth in recent years in the music industry and the reason that the recorded music business has recovered from where it bottomed out about a decade ago. We really appreciate the opportunity to be a part of this conversation. Artificial intelligence in general has obviously transformed music, in particular, how it is created, as well as how people are enjoying it and consuming it. And that's especially true when it comes to name, image, and likeness. It has presented some risks and issues that the panelists have addressed today. It's also presented tremendous opportunity for music creators. One great example of that is that the studio technology literally allowed Randy Travis to. To use his own voice and release new record of his own music.

We are still very much in the early days of this technology. We don't really know where it's going to go over the next ten years plus, there's no doubt that it will continue to be transformative, but it's important to remember

that we're very much in the earliest stages of this, of these new tools. We do believe at DIMA that there should be federal protection for name, image and likeness. Our members do not have any incentive or interest in having deceptive or harmful content proliferated on their services. It doesn't do music creators any good. It doesn't do fans any good. It doesn't do the industry any good. So we do support the creation of new laws that are specially tailored to this unique circumstance that we find ourselves in. We see basically five general principles that should be applied when going down this path and figuring out finding solutions that work. So the first, and building very much on what Ben said, and I'm always glad to follow him when addressing these issues. It's important that any new law be narrowly tailored to address the specific harms that are at that we're talking about. We do believe the right foundation, the right body of law to look to, or is law on rights of publicity. It's obviously imperfect, but that is the right

source of principles. We think in contrast with copyright law, which is addressed a different type of problem or a different type of issue, we think the goal of any new law should be to protect identity and personhood.

Second, the liability, and this is where I'll probably spend the most of my remaining five minutes plus, is an important issue here. We think that the liability for any harmful content that's created should fall squarely on the creator and the person who introduced the content into the supply chain, for a couple of reasons. One, there's a fairness issue. Person who creates a harmful content should be the person responsible to that person is in the best position to defend the content. As Ben talked about, we're talking about expressive works, right? There's a very, very high likelihood that stuff people may find objectionable or unlawful could in fact be protected by the First Amendment. Who's the person best situated to defend content and the legitimacy of new content? It's the person who

created it. The flip side of that is the sort of secondary liability challenge. This goes back to the dawn of the Internet. We have different approaches to dealing with secondary liability. You have the section 230 regime, you. Have the section 512 regime. We can talk about the mechanics and the details. We'll save that for a little bit later.

But I want to just focus on some basic observations and principles. First, as I mentioned, our members, honestly, every legitimate player in the marketplace has no incentive to see harmful, deceptive content proliferating in the marketplace. And so, looking at institutional incentives, there's not a reason to incentivize people to remove our members to remove harmful content. Second, when it comes to music in particular, the huge majority of the activity is subject to robust supply chains with very detailed contractual relationships between the platforms and the distributors and the rights owners that govern the removal of potentially harmful content.

That works. Third, even when that doesn't apply, if you're talking about user generated content, things of that sort, there are existing robust, voluntary measures to remove harmful content already for all types of content. One of the policy arguments for section 230 is that if you create broad immunity, you create room to develop robust content moderation practices. That's what we've seen. It exists. We should let that continue to work. Fourth principle, the specter. The issue around broad secondary liability regimes is you create a really significant risk of over blocking, of removing legitimate content in order to reduce costs, avoid liability.

Again, we, there is no doubt that if you have a broad secondary liability regime, it just creates a powerful incentive to remove content on the first sign of a hint that there's an issue. So if there is going to be secondary liability in place, we think, and again, we think it's unnecessary. But if you are going to have it, there should be a really heightened knowledge

requirement to make sure it's not applied too liberally should only be actual damages. There should not be statutory damages, which, especially in the context of online distribution, could create catastrophic and astronomical damages. And third, you really need to have a truly robust, safe harbor to protect the services that are trying to do the right thing sort of related to that issue. Any new legislation, any new governmental action should respect the existing supply chains, respect the way industry is done today. Industry participants have broad incentive to get the mechanisms in place to make the industry work better. Again, I'm glad I followed Will, talked about DDEX that's been critical to the operation of the music industry. These relationships among music creators and the services is robust, well established, subject to truly existing supply chains.

Finally, on the topic of preemption, we do think this is an area that calls for a federal rule. We think relying on a patchwork of state

laws will disrupt commerce and will create uncertainty for everyone. And then the copyright office suggested any federal law should just be a floor. Our view should just be a single federal standard that provides certainty throughout the ecosystem. Again, thank you very much for this opportunity to be a part of this conversation. It's a fascinating and thorny issue. It's a fun problem to work on, and I'm glad to be part of the dialogue.

MS. CHAITOVITZ: Thank you so much. Can I ask question, how would is there a way you wish to suggest as safe harbor, that would avoid all the issues that were mentioned in the past 512 report and issues of Whack-A-Mole? I mean, if you're a famous person with Taylor Swift's pornographic deep fake that was out there so that you wouldn't have to play Whack-A-Mole.

MR. RUSHING: Sure. In the development of sort of a system, the devil is very much in the details. So no, I don't have a specific solution to say how could we address that problem that

makes everyone sort of satisfied? I do think that the 512 system has some complications in it that we would not want to replicate. I think the red flag knowledge standard is an aspect that doesn't work particularly well. I think the simple approach is the right approach. Approach where there is any sort of notice, specifically identifies the content at issue on these harder sort of questions about what's the right balance, right, what's the right set of obligations to impose on streaming platforms. Anytime you have an obligation to sort of broadly block content based on unspecified sort of criteria, you create a significant risk of over blocking or a decision to remove functionality altogether. One of the challenges is an identification. The music industry in particular has problems just keeping track of who owns what on very basic things. If you add this whole additional layer of things to track and things to potentially filter for you, just create an environment that may not accommodate any practical solution. Thanks.

MR. FRIEDLANDER: Good afternoon. My name is Tim Friedlander. I am the co-founder and president of the National Association of Voice Actors. We are a social impact nonprofit that represents approximately 1200 members of the United States. We also are co-founder of the United Voice Artists Federation, which is the global federation of voice acting Associations in 19 countries. We have worked along SAG AFTRA for this last year. However, 80 percent of the voiceover industry is nonunion, meaning that even if those are working under contracts, they're not going to be protected under the SAG after contracts. Additionally, 60 percent of our membership is located outside of California and New York. So they are located outside of states that have the robust protections for voice image, name and likeness. During COVID the voiceover industry grew exponentially. It was one of the few areas of the entertainment industry to continue to grow.

Our concern is with synthetic voices,

specifically in voice cloning. And our approach over this last year has been education of our members cooperation, working with the platforms themselves. Eleven Labs, OpenAI various platforms out there to express our concerns and legislation. We have been in DC supporting the No AI Frauds and No Fakes Act. In our most recent surveys, 11 percent of our membership knowingly lost jobs to AI. We are unsure how many unknowingly lost work out of that 11 percent. 80 percent of that loss were for people who were identified as people of color. So, we are finding currently, at least in the voice industry, it is having harm exponentially different for minorities. We are concerned with reputational harm and business harm. We license our voices for a certain product, in a certain market, for a certain period of time. And previously, we had to contend with those uses happening longer than we had anticipated. Currently, now we have to contend with completely new products and commercials being made out of our voices that we never agreed to.

As a human, I could walk into a session, I could be given a script for a product that I have a conflict with or something that I wouldn't say, and I can walk out of that session.

Currently, our synthetic voice, our clone, cannot leave a session if it's giving something that we do not agree with. So we are concerned with false endorsement, false light, and potential possibilities that our voices could be saying things people wouldn't agree with, endorsing political candidates that we do not support, or products that we have conflicts with with public access to sites. There's many examples of voice actors who have lost work with engineers who have just felt, well, I'll just upload your audio to a certain website and create a new branding for this product. That takes away our ability to continue to work, potentially is work that we would have had from that pickup session. We currently sit at the intersection of public and private. Many of our voice actors are heard millions of times a day, yet they would be

unrecognizable and unidentifiable.

We are not the celebrities. We're the working class, blue collar, mom and pop businesses that are making minimum wage in a lot of areas. I would suggest looking at Bev standing versus TikTok. She's a nice grandmother out of Canada who had her voice cloned and became the voice of TikTok for a certain period of time until legal action had that taken. We are not, as is mentioned before, anti AI, anti tech. Currently, the power of balance is in favor of the corporations that unfairly take advantage of voice actors using contracts for in perpetuity that have language such as across the universe, in all technology, now or forever to be invented. We are finding that many people who have worked over the years, have signed these contracts at the beginning of their careers, are now being used against them to create clone voices. There are some definite possibilities. Those who are nonverbal, doing what we call impossible jobs. For example, narrating the New York Times cover to

cover when it comes out. Karin Guilfrey, our vice president, has licensed her voice to be the voice of a weather app that can say, verbally give you the weather in any location at any time on the planet. That's not something that a human could do, but she has a very clear licensing that has consent, control and compensation.

Currently, there are no technological solutions that we have worked with that actually can identify an AI generated voice, let alone identify where that voice came from. We were very much interested in provenance and knowing where the voice came from. Voice actors almost predominantly record at home. We record on our own systems, and we hand deliver those audio files. We don't hand deliver those audio files. We email those audio files to our clients around the world without any provenance, without any tracing, tracking or monitoring that can happen with those. We are looking for the ability to work with the companies to know that if something is uploaded to them, that the person uploading it

actually has the rights to upload that voice. Currently, if you want to upload to Eleven Labs, for example, you just state that you have the right to upload that voice, and without having any provenance or ability to control that. It's very often very probable that voice actors voices are there. We got started with this in November of 2022 when Apple released their synthetic voice narrators, and we found that some of our members were unknowingly the voices of the Apple audiobooks. And followed shortly thereafter where we found multiple websites with tens of thousands of cloned voices from our members, taken from video games and commercials and animation, many of them not safe for work, and pornographic material that currently are still up because there is no way to legally have them removed. We've asked nicely, but that does not do much if the companies aren't willing to take them down.

We believe that citizens in all states deserve protections from unauthorized uses of their voice. There are multiple states that

require showing an individual identity has commercial value. However, lots of the work that we do is nonindustrial, non-broadcast. It's never public facing, and a lot of times it's never actually going to be heard by anybody outside of a small group of people. We want to make sure that state of publicity laws, state right of publicity laws, apply only when the infringement occurs in advertising. That is something that we have a problem with, because a lot of times, as I said earlier, that advertising doesn't actually happen. Federal laws should be required for non-commercial abuse, and these harms are inflicted by non commercial use, including deepfake pornography or the use of our voices where we would not like them to be used. We are supporting the No Fakes Act and the No AI Fraud Act, and we are asking that federal law set the floor, not a ceiling, for these protections. Many times we have many voice actors who work in California and their client is in Georgia or Tennessee or various other states. And so, lots of times we're unsure as to which

laws we are actually covered under. We are interested in covering all protections of unauthorized replicas. However, we understand that AI, because of its effectiveness and technology, is something we should focus on very specifically.

Fame recognizability should not be a factor. The law should capture that would not capture the majority of the views that's happening for voice actors currently. And we also would ask that a voice clone or a replica should not be a condition of employment, which currently it is in many cases. There should be, and we have supported this. Proper extensions for First Amendment speech. We have dealt closely with those who are working on the No Afraid Act and no faith act to ensure that First Amendment rights are protected in there. This technology is growing at an exponential rate and we are finding new uses and new abuses for it on a daily basis. So we would ask that there be some ability to keep up with the pace of the growth which is essential

to the efficacy of this law. We are calling this voice image, name and likeness to make voice very specifically a concern. It is very much the tip of the spear and very, very easy to manipulate and use. And we would ask that there be any First Amendment considerations be adjudicated on a case by case basis outside of those which are already enforced.

I would like to leave with just that. This impact is as much on our business as on our reputation. Many of us work directly with our clients. We have very personal relationships with them, and these are small clients and large clients. As I said earlier, our vice president is the voice of a major pharmaceutical chain. You hear her voice every time you call in to get your prescription refilled. And if her voice were to be unauthorized and used somewhere else, that would be a massive infringement on her ability to continue working, as well as her reputation with that company and voice actors. We're very much small mom and pop businesses. You can look

through SAG AFTRA and see their information there. That 11 percent of the industry makes less than $27,000 a year within SAG AFTRA. And the voice industry is very similar to that where a lot of us work for minimum wage or not much higher than that. So, thank you very much and great to be here today. Thank you so much.

MS. CHAITOVITZ: Thank you. They changed my mic because apparently not loud and that's the first time I've heard that. Thank you very much.

MR. GATTO: Good morning. My name is James Gatto. I'm a partner at Sheppard Mullen. I founded and lead our AI team, which is one of the largest practices in the country. Over 100 lawyers practicing with all different legal backgrounds and industry specializations, not the least of which includes IP, privacy and entertainment of relevance to today. I started my career at the USPTO back in 1984. So, for 40 years I've been advising clients and IP and other technology law issues. I teach. I've been doing

AI work for over 24 years and I teach an AI law course at Ole Miss Law School. I'm also an appointed member of the AI Machine Learning Task Force of the IP section of ABA and co chair the AI subcommittee of the AIPLA Emerging Technology Committee. I applaud the USPTO for continuing to seek feedback from stakeholders on key issues with AI and the other hearings you've recently held. I'm honored to be able to present my thoughts today. Of course, these views are my personal views, not that of the firm and client, or any of the groups that I mentioned that I'm associated with.

I support thorough legislation on the issues of misuse of a person's name, image, or likeness, whether they're AI generated or otherwise. Certainly, the rapid rise of generative AI has exacerbated the issues by facilitating the generation of realistic images, videos, replicas, voice simulations of real people. But the protections are needed whether AI generated or not. There's other technologies that

certainly predate AI that continue to improve and continue to contribute to the problems. I'd like to share my thoughts on some of the issues to be considered in connection with such legislation. First, I think it's important to consider that a person's likeness can be misused in a number of ways, not all of which fall under what we traditionally think of as right of publicity. Clearly, when someone uses another's name, image, or likeness for commercial purposes, that can violate the right of publicity. However, as we've seen, there's many other improper uses that are not necessarily commercial purposes, but do cause other types of harm. For example, there's a growing trend to misuse a person's name, image, or likeness to cause personal harm in various ways. We've seen scammers use a person's voice print to send realistic sounding messages to loved ones seeking money for help leading to financial loss. We've seen revenge porn and other sexual depictions of people based on their likeness, and many other types of personal harm that can result

from such activities.

So in some cases, the false depiction of a person may impact not just the person, but a group or society as a whole. For example, a false depiction of a candidate may harm the candidate, but it may misrepresent the position of a party, and it may led to the spread of misinformation that could in fact skew the election as a whole to the detriment of society. Also, we've seen situations where AI generated videos using the appearance and voice of a CEO, again, can harm the CEO if it's a false message, but it may also not just paint the CEO in false light, but it can actually harm the company. And if it's used for purposes such as manipulating stocks, again, it could have an impact on society as a whole. So, my point is that these issues create personal harms, but there can be greater harms to consider as well. So, in crafting any legislation, I recommend the careful consideration being given to these and other harms, and the full range of damages that can result from these types of

activities. And it is likely that we can't pigeonhole this all into one category of right of publicity. We may need to have different remedies for different types of harms.

I believe the federal legislation would be beneficial because the current situation is a bit messy. The patchwork of dozens of state laws and common law rights is confusing, inconsistent, and creates many issues. The protectable rights of a person may be based on their state of residence or domicile. But if what we're trying to focus on is protecting inherent rights or characteristics of a person, why should it matter where they live? Everyone should be entitled to these rights. So with respect to the question of to whom these rights should apply, I submit everyone should benefit from these rights, not just celebrities or famous people. In today's creator economy, it may be both hard and perhaps not necessary to show that someone is famous or recognizable to protect the commercial interest in their name, image, or likeness. The degree of

fame may impact the damages of individuals. But if a law is enacted to protect identities and enhance characteristics of individuals, this should apply to everyone, just like the right to privacy applies to everyone. If a person's right of privacy is misused and they are not a celebrity, the damages may be less, but they should enjoy the rights nonetheless. And as mentioned before, many of the harms caused may not relate to commercial activity, and the level of fame is largely irrelevant when you're dealing with personal harm.

Any legislation should carefully consider the basis for protecting right of privacy and what rights are included. Well, this may be a bit controversial. I submit that right of privacy is not really an intellectual property right. If we think about what intellectual property is, if you look at the WIPO definition, for example, intellectual property denotes creations of the mind, such as inventions, literary and artistic works, design symbols, et cetera, used in

commerce. The USPTO at times designed to describe IP as creative works or ideas embodied in a form that can be shared or enabled others to create, emulator, manufacture them. In contrast, right of publicity covers protectable aspects of a personal identity or characteristics of a person. These are not things that a person creates, but rather inherent characteristics, traits, or identifiers of an individual. Examples of characteristics currently affordable protection, of course, include name, physical appearance, voice, and other distinctive personal attributes. Some states, however, under the right of privacy laws, go further and protect things such as portraits, pictures, avatars, and even famous sayings. Under at least some current law we look at, there's a distinction between right of privacy and copyright. For example, so if I'm a photographer and I take a picture of a famous person, legally, I own the copyright in that picture, and I can sell that picture even though a person's image is in it. In fact, in some cases, when the celebrity

tries to use that image on their website, they may be infringing my copyright.

And so, we have cases along those lines that highlight the distinction between right of publicity and copyright. Now, of course, if I use my image to endorse a product or a service, then I may be violating that person's right of publicity. So I think we need to really carefully consider the basis for the rights and how it interacts with existing rights, such as intellectual property and other existing rights. Another topic, particularly with AI, to consider in this context is avatars or digital chat bots. Digital chat bots, which are certainly, we're going to see increasing use of them in many contexts. I think it's helpful to consider these issues in at least two ways. The creative aspects of an avatar should be protectable under copyright, but to the extent that the avatar includes aspects of a person's name, image, or likeness, those aspects should be subject to right of publicity. So in part, it may depend on how the avatar is used.

Certainly if it's used for commercial purposes or endorsement of products or services that would step on the name, image and likeness and write a publicity. But other uses of an avatar may not do so. So I think, again, careful consideration should be given to the lines to be drawn between the way in which avatars et cetera, are used.

Another issue I think that's important to think about is when should unauthorized use of NIL be permitted? In some cases, as has been noted before, the use of name, image, and likeness may be part of the First Amendment protective speech. So the question is, what should the test be when First Amendment speech impacts name, image and license rights? Should the test be modeled after the Rogers test, which used. Which is used to balance the First Amendment protected expression with trademark law, or should the test be modeled after fair use doctrine under copyright law, or is a new test needed? I think elements of those are probably relevant, but I'm not sure either would be sufficient alone.

Another issue to consider is whether and to what extent the right of publicity should be licensable. Certainly, if a person has a right to commercialize their name, engine, likeness, they should be able to permit others to do so. I think it's interesting question, though, is whether that right should be fully assignable. If we look at it as a personally inherent right based on your own characteristics, unlike the right of privacy, maybe assignability may be not the best course of action. Defendability is another whole issue which currently seems to be the law. One other thing I'd like to mention in the time left is that, or two things are actually one is that the law should have keys. There needs to be, of course, a private right of action, but there should be attorneys fees. There should be minimum statutory damages and other provisions to ensure that it's not cost ineffective to actually enforce your rights as it is in some other situations. Last thing is that there's technical mitigation that can be used. There's questions about some of

the technologies, use filters that can help mitigate searches, that are designed to output something that would include NIL's. I'm not saying that those should be mandated, but the availability of technology to help mitigate the issue should be considered in connection with such litigation.

One last topic is style. You asked about whether style should be protected. I think not. I think style is not an inherent characteristic of a person. To the extent that the style is just an idea, it's probably not protectable under copyright. But to the extent that there's actually creative elements that protectable, elements that constitute the style or reflect it, then style may be protectable under copyright if it meets those tests. Thank you for the opportunity to appear today, and I again appreciate the Patent office USPTO holding these hearings. Thank you.

MS. CHAITOVITZ: Thank you. And yes, I did let him run over a minute, but that's because

I felt bad because I didn't start the timer on everybody else. Always on time.

MR. LANE: Good morning. My name is Rick Lane. I am the CEO of Iggy Ventures. I also volunteer my time advising over 200 child safety groups nationwide on tech policy relating to online child safety. Over the past 36 years, I've worked on almost every major federal technology bill from e Sign and the Digital Millennium Copyright act to foster SesTA, the Kids Online Safety act, and the recently enacted TikTok divestiture bill. I would like to thank the PTO for organizing this important meeting and for allowing me to present from the perspective of a child safety advocate, the headlines speak for themselves. The AI generated child abuse nightmare is here. Or predators exploit AI tools to generate images of child abuse. There's no question that AI has promise and potential. However, it also puts powerful weapon in the hands of some of the worst people on the Internet, child predators and pedophiles. And we must not allow

that to happen. This is not the first time tech companies conduct and design decisions have put our children at risk. And Congress is considering legislation to fix the legal gaps and hold tech companies accountable. Like the recently Senate passed legislation, the Kids Online Safety and Privacy Act COSPA that passed by a vote of 91 to three. On January 31 of this year, the Senate Judiciary Committee held yet another hearing with CEO's of Snap, X, Discord, Meta and TikTok under willful disregard for the safety and well being of our children. We have seen cases in the US where AI technology was used to harass young girls by generating nude photos from their publicly clothed images. AI technology is also being used to manipulate existing CSAM into new images to satisfy users demand for fresh materials re victimizing the children who have previously been abused, experts have warned. A horrific new era of ultra realistic AI generated child sexual abuse images is now underway.

In 2023, the National center for Missing

Exploited Children received 4,700 reports related to synthetics and CSAM. This number is a fraction of the overall number of reports that NCMEC received in 2023, which was 36 million reports. But the misuse of AI has potential to increase the production of this exploit of content exponentially and to accelerate disarm. But today we as child safety advocates are organized and ready to address this new threat, and thankfully, Congress sees the urgent need to act in the AI NIL policy space. On a positive note, bipartisan proposals have been introduced in the House and Senate, such as the Take It Down Act. This legislation creates a notice and takedown regime similar to the Digital Millennium Copyright act. The legislation has strong support from child safety accuracy community like Niki Nik and Niccosi. Under the Take It Down Act, when a takedown request is sent to an online platform, the content must be removed within 48 hours, according to child safety groups. Large platforms such as Reddit and X frequently disregard takedown

requests for these types of images. Websites must also make reasonable efforts to remove copies of the images, so notice and stay down enforceable by the Federal Trade Commission, the Take It Down Act targets not only the person who creates abuse videos, but anyone who uploads sexually explicit content without the affirmative consent. This broadens the scope of accountability and protection. The act not only criminalizes the publication of unauthorized sexual explicit content, but the threat to publish such content on social media or any other online platform, also known as extortion.

As you may know, extortion has led directly to multiple suicides of young males, and the FBI has seen a dramatic increase in financial extortion cases targeting minor victims here in the United States. Also notably, the bill permits the good faith disclosure of such content to law enforcement or for medical treatment, which currently such disclosures could be deemed to be illegal for the victim or parent to disclose

another piece of legislation that recently passed the Senate is the Defiance Act. This legislation lets victims of sexually explicit deepfakes pursue civil remedies against those who produce or process the image with the intent to distribute it. Victims who are identifiable in these kinds of deepfakes can receive up to $150,000 in damages under the bill, and up to $250,000 if the incident was connected to actual or attempted sexual assault, stalking or harassment, or the direct approximate cause of those harms. The Defiance Act is now awaiting House consideration. The third piece of legislation being considered is also known as No Fakes. This legislation was recently introduced and we create a federal intellectual property protection for so called right of publicity for the first time. Those celebrities and public figures have the most significant stake in this subject. The law would apply to deepfakes of everyone, famous and non famous alike. The bill would establish a notice and takedown process for removing unauthorized

replicas, but unlike the Take It Down Act, it does not have a 48 hours time requirement, but instead has a more vague requirement that the service quote removes or disables access to the unauthorized digital replica as soon as technically and practically feasible after receiving the notice.

The No Fakes Act also does not have a takedown and stay down provision like the Take It Down Act. The No Fakes Act only has a three year statute of limitations running from the date the plaintiff discovered or with due diligence should have discovered the violation compared to the Take It Down act, which has a ten year statute of limitation from the date of which the identifiable individual recently discovers a violation. But more importantly for children has ten years from the date which the child that turns 18. So that way they can have cause of action when they're adults because they may not have known about it when they were children. However, as good as these bills are, all new NIL legislation needs to

provide additional powerful legal tools and create substantial new costs and legal risk for AI CSAM mills, which none of these bills necessarily do, especially for those websites that are operating overseas.

My recommendations are the first legislation must create a remedy against the developers and AAM models to enable this new generation of CSAM and harm to children. A law that allows action only against the predators and pedophiles who use these tools provide some justice, but will ultimately fail to deliver meaningful protection for our kids. These harms occur at scale and the only way to stop them is at the source. That is why I agree with the coauthors of section 230 of the CDA, senators Ron Wyden and former member Chris Cox, who stated that CDA protections do not provide do not apply to generative AI. Second, lawmakers must resist watering down new remedies and protections based on bad faith arguments about supposed risks to free expression. No one disputes the vital

importance of First Amendment protection, but CSAM or AI generated CSAM is not protected speech, and the right place to sort these out is in individual court cases, not through vague exceptions that risk draining these critical new laws of vitality and force. Online entities that are hosting, storing or facilitating the creation of AI generated CSAM must not be given a free pass from criminal or civil liability. In addition, an entity that is knowingly transmitting or receiving CSAM that is included in its training AI training data should also be held accountable because that is basically distributing child porn. Third, legislation must ensure that the statute of limitations does not hinder children from seeking relief later in life. Fourth, as we have seen with sextortion, these harmful, nonconsensual, intimate images can be created, stored, and posted on websites based overseas and outside US law, and we need to ensure that websites that there's a mechanism to take care of those.

In addition, we also must address the

issues of search results. Google recently proposed that they will now downrank websites that have CSAM or other AI generated content, but down resing. If you can down res which are down demote these searches, then you can also delete these searches and Google must be held responsible if it does not. Fifth, there needs to be a way to determine the identities of the individuals or entities behind these websites that display harmful deepfakes or unauthorized NIL for legislation like the Take It Down act, Defiance and No Fakes Act to be effective. Currently, website owners information is being concealed by registries such as Verisign and registrars such as GoDaddy, Namecheap and the Public interest Registry with unfortunately, the full knowledge of the Department of Commerce's NTIA. This is happening despite the us policy since 1999, which aims to ensure that who is registrant data is accurate and available for cybersecurity and consumer and child protection purposes. Since 2016, who is registrant data has remained dark and

inaccessible and hidden behind so called privacy proxy calls.

Congress and the administration must fix this dark who is problem through legislation six. We need to address the encryption issue that is allowing individuals who are causing harm to children to hide behind anonymity. Congress and the administration must move fast. Predators and pedophiles who would manipulate generative AI to invent new forms of CSAM that harm children are not waiting around, and victims should not be forced to wait either. As stated in a letter to Congress from 54 states on September 5, 2023. While we know Congress is aware of concerns surrounding AI and legislation has recently proposed at both the state and federal level to regulate AI, much of the focus has been on national security and education concerns. And while these interests are worthy of consideration, the safety of children should not fall through the cracks when evaluating the risk of AI. Thank you.

MS. CHAITOVITZ: Thank you. Can I ask

one follow up?

MR. LANE: Of course you can.

MS. CHAITOVITZ: You mentioned a number of proposal bills that are currently pending. Most of them were specifically targeted to protecting children and sexual abuse, but there was also the No AI Fakes Act or the No Fakes Act. Do you have a preference to whether the legislation needs to be separate and shouldn't be included in a broad legislation or whether it should be included in a broader piece of legislation that protects everyone from AI fraud and fakes?

MR. LANE: I think it really just gets to the statute of limitations issue because for children, a child may not know realize what they've gone through into later in life because of suppressed memories. And so, if you have a three year statute of limitations, it happens when a child's seven. That means by the time they're ten they can't do anything. So having a longer statute of limitations, especially allowing

children who have been harmed in this space to have a cause of action as adults, when maybe they've gone through therapy and they're able to understand what has happened to them, or someone says, I've seen a picture of you when you were a child, and that triggers something that they're not hindered by a three year statute of limitation.

MS. CHAITOVITZ: Thank you. So the next person on our agenda, Aden Hizkias, has had an emergency and she's not going to be able to be here today, but she will be on the virtual roundtable this afternoon, so we will be able to hear her comments. We are running ahead of schedule, so I suggest that we just keep going and have our break at 11:20 as previously scheduled, and hopefully then we'll be able to leave even earlier. So yeah. Scott Evans.

MR. EVANS: Good morning. My name is J. Scott Evans, and I am the senior director of IP and advertising at Adobe Inc. I'm sure everybody's very familiar with our products. I'm

sure you all use them or someone in your organization uses them. Adobe's in a very unique position because we are also on the cutting edge of inventing AI products that are embedded in our products. In fact, artificial intelligence has been in our products for 15 years. What's changed is generative AI, and that's where arguably the output can compete with the training data. And that has caused an innovation, a disruptive innovation in the market. I'm reminded because I was involved with the development of Icann and I wrote the UDRP. So, this is very similar to the issues we dealt with when there was technology that really threatened and got ahead of IP and nobody knew what to do. We all sit here and, you know, if you read newsletters, every government is dealing with this, every agency. When the government is dealing with this, the courts are dealing with it. There are, I think, over 25 cases now that have been filed surrounding IP rights and AI. There's the executive order the copyright office is doing, has just released one

of three studies. And so, this is a thing that everybody is looking at and everybody's very interested in. I think at Adobe we are very pleased with the No Fakes Act. We're glad to see it happen. I think we, I think the most important thing with the No Fakes Act is that it be preemptive because you really don't want 51 laws that you have to deal with when you're trying to do this. It only makes things more complicated.

The more complicated it is, the more people violate it on YouTube and other things because they just can't figure out how to do it or it's too expensive to do it. And that causes a problem. I think we think there should also be a federal act, because when you get through looking at this issue, it's not always a right of publicity. I'm from North Carolina, where I have a license in North Carolina. Also practice in California. California is a right of publicity, which means it's your right to trade on your image, your likeness, your name. But in North Carolina, it's the right of privacy. And it's a

very different approach that you come in, the courts have mucked it all up because they use the terms interchangeably and they don't know. So, the case law is not very clear. An unclear case law only creates more problems. It allows people to violate it, and it allows people to bring unnecessary actions. And that becomes a Peter Wolf situation. People quit listening because they get so many right of publicity claims or right of publicity claims. They just don't take anything seriously.

So I think clearing it up on a federal level would be very helpful. It needs to be narrowly tailored. I think we agree with that. I think we agree with Ben. And it needs to have very clear First Amendment exceptions in the statute itself, nothing vague, but we think that the No Fakes Act doesn't go far enough. And why do we think that? Because we think even with the 50 different laws, the people who have a right of publicity already have protection. There have been cases where Bette Midler sued Ford because

they used her sound alike. She prevailed. Right. There have been other cases. John Waite sued when they used looked sound alike for him, and he's hedged, sued under state law. So the famous people have protection. Who doesn't have protection are the graphic artists and artists who are every day putting out brochures and putting out things that color our world everywhere we go, and they're not getting protection because they're not famous. And so, we do think that style needs to be protected. And we have proposed the federal anti-impersonation. Right. And it's a statute that protects style because we ran tests on all of the AI text to image generators. And when you do a one-to-one comparison, you can't see it. But if you take an artist and you take about 15 of their art and you hold that one up to the 15, you see how someone ate the style, right? These are digital forgeries, my friend. And forgery in fine art was rare because you had to have the same talent as the artist in order to do a forgery. Now all I have to do is be able to type and be

able to come up with a clever prompt, and I can create something that takes away your economic harm.

We think it should be only for commercial uses, that if your daughter wants to get in there and play and have Britney Spears on a hippo on her phone, that should be completely fine. But if then they're selling it on Etsy and it looks like it was created by a famous artist, that should be actionable by the artist. We believe that there should be statutory damages because so many times artists don't bring actions because they don't have the money and they don't have a way to recoup the money. We believe there should be punitive damages if it's found to be willful. We believe that there should also be a collection of attorney's fees, and we believe that it should preempt other actions. So that's what we're here to talk about. That's what we believe should be done. I think that, you know, we think there's a lot going on. We think there's a lot of good positive thoughts going on. Adobe started

the content authenticity initiative four years ago, in 2019, five years ago, because our general counsel said deepfakes is probably the greatest threat to our democracy that's ever occurred. And that's a way there's now 3,500 number companies.

And this is started then the CTVA, the content creation provenance. And that is a nutrition label that would go on all digital media voluntarily. It would tell you where it was created, who created it, if it was manipulated with AI, was it created with the AI? It'll have a little symbol at the top and you would touch that symbol and this label would come out in the dialogue box and it'll give you all that information. And so, what we would say to the executive branch and to your office is, we need help educating. We need help educating people because it's media literacy that's going to help stop these fakes. If people don't see that symbol, they would know to question it, right? To think the white doesn't have the symbol, that tells me. But it is voluntary because we've

worked with organizations who represent small reporters who use their iPhones in very oppressive regimes, and they take pictures and photographs. They don't want people to know who they are because there are tremendous repercussions for them politically in imprisonment or torture.

So we understand it has to be voluntary, but we believe that if people get their media literacy and they use these tools, we can help thwart the misuse of this stuff, of this technology. The reality is, this technology is not going anywhere. They are not going to put the genie back in the bottle. No court is going to do it. No administration is going to do it. No government is going to do it. So rather than throwing stones at one another, what we need to do is sit down in a room and find out ways to protect our children, our customers, our families, our wives, and find real world solutions for that. And the government can do that by bringing more of these forums together and having industry and consumer groups and content creators sit down and

put us in a room and lock us in a room and say, figure it out. And we will. We all have a vested interest in doing so. That's all I have to say.

MS. CHAITOVITZ: Thank you. Can I just ask one question? You said you favored a federal law for commercial uses, and I don't know whether you meant only because then the example you gave was --

MR. EVANS: It would only be actionable if it was a wholly generated piece of art. So, if you took it into another thing and you like, you like the style, and you're growing on the style, you're growing, you're going to be a genre, it's going to look like something that wouldn't be actionable. It has to be wholly generated. So, it's just a prompt make me something the style of J. Scott Evans and it pops out and then I can show it and it's a commercial use.

MS. CHAITOVITZ: And that's what I wanted to ask about, because you said for commercial use, but at the same time, the example you gave was a private use.

MR. EVANS: We have exceptions. We have the First Amendment exceptions and one of them is noncommercial use. So, the example I gave would fall into a First Amendment exception. It would not be actionable. The daughter.

MS. CHAITOVITZ: Okay, so for, I'm just trying to get to the commercial use versus noncommercial use as distinguished through the private versus public use. For example, the Taylor Swift sexual, you know, pornographic thing that was put up. Do you think it was put up? Was not commercial. That was just a deep fake?

MR. EVANS: Well, under our, under our statute, that's not, that doesn't cover that kind of thing. I mean, it would cover if there was an artist, I guess if there was an artist who's known for their erotic art and you use them to create this, then that artist would be able to have an action. Taylor Swift would not. Under this, under the Fair Act, it's only the artist that has the right to bring the action, not the person. If you put, you know, somebody who didn't give you

authorization, it's different than right of publicity. And that's one of the things I think we also need to say is this technology didn't exist until like two years ago and it's grown so very fast. So, let's quit trying to shove the solutions into the laws that already have existed and never contemplated this. We need to think outside the box. And that's the fair act is outside of copyright. It's outside of trademark. It is something wholly independent.

MS. CHAITOVITZ: Okay, so now. And so, for the only commercial uses, you were talking about the Fair Act as opposed to the No Fakes Act?

MR. EVANS: Correct.

MS. CHAITOVITZ: Okay.

MR. EVANS: And I'm happy to send you a copy of our draft so you can see it. All right, thanks super.

MS. CHAITOVITZ: Thank you. Shawn?

MR. MCDONALD: Good morning, everyone, and thank you so much for having me here today. My name is Shawn McDonald. I'm the senior vice

president of business and legal affairs at MLB Players, Inc. Which is the for profit and wholly owned subsidiary of MLBPA, the Major League Baseball Players Association. MLBPA holds the exclusive worldwide right to use license and sub license the NIL of all active major league and minor league and recently minor league players for use in or in connection with any brand, product, service or product line in various circumstances, including when three or more players are used. PA appointed MLBPA appointed MLBPI to represent PA in all licensing matters. As you know, the Supreme Court has characterized the purpose of NIL protection as preventing unjust enrichment by theft or goodwill. That simple and straightforward concept recognizes that in our society, every person has the right to enjoy the fruits of their labor, including the value of their name, image, and endorsement. Supreme Court sorry -- the third circuit held that unauthorized use harms the person both by diluting the value of the name and depriving that individual of

compensation.

Unauthorized appropriation of NIL content also harms professional athletes and other rights holders by linking their identities to commercial products, companies, and uses with which they do not want to be associated. This is a particularly salient concern for professional athletes in the current polarized era, as many companies and products are tied to ideological positions and many fans and consumers pay attention to the products that their players are endorsing. Unauthorized use of player players NIL risk associating players with products or views they simply do not support. AI technology does not change these harms, but the ease of creating AI images makes the harm much more likely to occur. Now, to be clear, when products are properly licensed and created with the approval and compensation of the professional athletes, celebrity, or individual, new technological tools such as AI can be used to create high quality content. There are benefits to be had from

properly licensed and created content, and examples are numerous.

As technology evolves, sometimes current legal protections are sufficient and sometimes they are not. The Langham Act, which many folks have discussed today, allows for a claim of false endorsement in certain limited circumstances, namely when someone's NIL is used to advertise goods or services and that person can show a likelihood of confusion as to whether they are endorsing that product. The likelihood of confusion test is complicated and involves many factors, such as the celebrity's level of recognition among the intended audience, the relationship between the source's individual fame and the product, and the defendant's intent, amongst others. This test makes false endorsement no litigation under the act complicated and requires significant financial resources by the plaintiff. As we all know, not all states have statutes or common law protections ensuring the right of publicity, although the vast majority do.

Nearly a dozen either have no protection or only uncertain protections against the unauthorized use of an athlete's or other well-known person's NIL. The patchwork nature of the state laws makes enforcement difficult, particularly for athletes and others whose images may be used and misused by companies across the country. States also vary in the scope of the information they protect. Some states cover names and image narrowly. Others make more clearly protect important and identifiable images. Elements of a player's likeness, such as a player's name and historical statistics.

From the perspective of uniformity, there could be benefit in a federal law establishing a nationwide baseline minimum protections for NIL rights. This would ensure that all rights holders have minimum protections regardless of which state laws might apply in a given case. Any such federal law must also allow states to provide increased protections for NIL rights holders in order to safeguard them from

content exploiters seeking to commercialize their reputations and of identities without compensation. States have been regulating and balancing NIL interests for several decades and continue to be permitted to do so. States have a strong, local, rooted interest in history and tradition in protecting their residents NIL and other property rights. Importantly, transactions and relationships have been founded on the prevailing state regimes, and to impose a federal rule that overrides those state law protections would invite chaos. It is common for federal statutes to set a floor for protective regulations while allowing states to provide increased protections. Any federal legislation on NIL's should do the same. For instance, for decades, trade secret protection was a matter of state law. When federal trade secret legislation was passed in 2016, it expressly provided that it did nothing preempt state law, thereby allowing states to provide greater trade secret protection. With respect to worker protections the Fair Labor

Standards Act sets minimum wage, overtime, and other requirements for employees but employers, but allows states to establish more protective requirements. We think the same approach should apply here.

So what are the key elements that we believe should be in some no law? I'm just going to start from the top, which is we believe there should be a federal private right of action. We think that you should be able to enforce your protections. You know, frankly, the Taylor Swift example we just discussed, we think that Taylor Swift should have a private right of action. Any law should include the strongest possible protections against unauthorized commercial use of NIL, the heightened risk created by the explosion of generative AI, and the ease of appropriating a professional athlete's or other persons NIL's support strong protections. Name, image, and likeness should be defined broadly to cover all depictions or representations of those attributes, including, but not limited to names, nicknames,

signatures, or facsimile thereof. Biological information, numbers, playing records, performance data, voice, image, likeness, performances, publicity rights, and other personal attributes, however generated, whether through AI, massive data aggregation, or any other current or future technology.

A federal NIL law should clearly and expressly protect all identical aspects of a person's attributes when used other than in the context of contemporaneous news reporting. Any federal law should also address and protect the right holder's ability to assign or otherwise grant those rights. Any federal law should cover all unauthorized replicas whether generated by AI or otherwise, focusing on AI only would undermine effective enforcement of law, as AI generated replicas are difficult to define and difficult to identify or distinguish from other computer-generated replicas. The use of an AI tool to edit an image that a creator drew or picture that a photographer took, for example, is

not the same thing as an image created entirely by AI from a text prompt. But it could be a daunting challenge in many instances to distinguish between the two determine which would be covered by the law. Any potential consumer looking at an image may not be able to tell how it was created, so drawing a distinction would likely trigger extensive litigation requiring discovery into the process of producing the work.

More importantly, whether the image was AI generated is unrelated to the harms of unauthorized use. As I discussed previously, to mitigate those harms, legislation should focus on the work itself, not how it was produced. Through the private right of action, persons whose federal NIL rights have been violated should be able to seek damages to remedy the violation, and injunctive relief to stop the violation and prevent the violation from reoccurring. As for First Amendment concerns, the Supreme Court has said that we should balance the right of publicity against defendants free speech rights. We have

concerns that it can be difficult to capture and implement the balancing analysis required. Overly reductive interpretations can take an exception far beyond what is required under the First Amendment, thereby undermining the intent. We do support certain narrow exceptions. Thank you. Thank you very much. Appreciate it.

MR. SEIDEN: Good afternoon. My name is Jonathan Seiden and I'm here on behalf of Endeavor, a global leader in sports and entertainment. I'm grateful to have the opportunity to speak at this roundtable and discuss Endeavor's position regarding how the protection of an individual's name, image, and likeness is challenged by the advent of artificial intelligence and the creation of non-authorized digital replicas.

Endeavor's portfolio companies include William Morris Endeavor Entertainment, known as WME, which is one of the nation's preeminent talent agencies. WME represents actors, screenwriters, directors, musicians, authors,

athletes, and public figures in a variety of commercial negotiations, including to license its clients NIL. At Endeavor, I serve as Senior Vice President and Associate General Counsel as global head of Endeavor's Intellectual Property and Brand Protection practice. Previously, among other things, I was General Counsel for Elvis Presley Enterprises and Muhammad Ali Enterprises, and worked with Muhammad Ali a lot during his life.

Although the Lanham Act and some state right of publicity laws provide some protection for an individual's NIL, it's become clear that these protections are not sufficient in light of the proliferation of AI tools capable of closely imitating an individual's NIL in a variety of ways, including for both commercial uses such as a fake endorsement, and non-commercial uses such as sexually explicit deepfakes.

As the Executive Branch's primary intellectual property policy official, the Director of the USPTO and her team have a valuable role to play in educating others in the government

and shaping the administration's position on these issues. Endeavor has been on the front lines in addressing the impact that generative AI has on our clients and their industries, both in terms of addressing the harms caused by unauthorized AI generated deepfakes, and in terms of helping our clients explore legitimate AI related opportunities to open new licensing avenues and deepen fan engagement. We've also been involved in legislative and regulatory efforts involving AI. WME publicly endorsed the introduction and progression of the NO FAKES Act, and its support was cited in the bill's press release.

I would like to make three points as part of this roundtable. First, I'd like to discuss harms of generated of AI generated deepfakes. I'd like to speak to the ways in which the unauthorized AI generated NIL content has harmed WME and IMG and Endeavor's clients. Several of our clients have already been the victims of convincing AI generated deepfakes, appearing to depict them marketing scam products

and fake financial services which had been posted to social media. For example, Wayne Gretzky faced a deepfake, appearing to depict him selling sham AI powered investment services. The video that was on the Internet realistically depicted Wayne giving an apparent interview where he endorsed the company running the platform. Nobody in this room or watching via Zoom or streaming will be shocked, but removing these videos from the Internet proved to be extremely time consuming, expensive, and difficult, as many social media sites and the domain name registrar would not remove the video unless we could prove the underlying copyright rights into the video itself.

That took weeks. We finally tracked down the underlying video on which the deepfake was based. We then had the general counsel of the copyright owner send something that -- we didn't even send it, and then the content was finally removed. It eventually worked, but this is not the process. This cannot be the way going forward. As a means to best protect our clients,

Endeavor has been on the cutting edge of exploring technology to address these issues. For example, WME entered into a commercial partnership with a company called Loki (phonetic), a technology company that specializes in software to flag unauthorized content posted on the Internet that includes clients likeness. The company then quickly sends requests to online platforms to have those unauthorized photos and videos removed.

But even where it's possible to identify AI generated deepfakes, existing legal protections are often insufficient to address these problems. For example, right of publicity laws vary widely from state to state and jurisdiction to jurisdiction, and some jurisdictions lack robust right of publicity case law clarifying the existing status of protection. The Lanham Act may help to target certain uses, but would not provide a tool to address uses that may not confuse a typical consumer or that do not occur for a commercial purpose. Moreover, the proliferation of unauthorized deepfakes from anonymous Internet

sources means that even where illegal action is theoretically available, pursuing such action would be prohibitively burdensome at scale, as I just noted above.

Furthermore, the expeditious removal of such deepfake content by social media platforms and other ISP's still remains an area that needs great improvement. It should not take two weeks to get something removed, even 48 hours is a long time. To be clear, this is not entirely a new issue. The clients have long safeguarded their NILs against unauthorized uses. But the difference with generative AI is that this technology offers the potential ability to cheaply and easily replicate an individual's NIL in a way that may be indistinguishable to most viewers, many who are just scrolling through videos at such a rapid pace through TikTok or Instagram, that such deepfakes appear as any other ad that they would quickly scroll through. However, due to the proliferation of generative AI tools without a legal framework that effectively addresses these

problems, Endeavor and its clients will now be forced to play a game, as we've said throughout this session, of whack-a-mole.

In addition to AI generated deepfakes created by unauthorized third parties, our clients are also laser focused on the ways in which the availability of generative AI tools may impact their standard contractual relationships. For example, our clients have legitimate concerns that counterparties will use AI to manipulate those clients' facial expressions, tone of voice, and other core aspects of their presentation. They also have legitimate concerns that contractual counterparties will use their existing performances or images to train AI tools to generate additional content without compensation. Because legal protections in this area are uncertain, these concerns may chill our clients willingness to enter into commercial arrangements, particularly where there may be concerns that a client might be interpreted to have authorized the ability to use their NIL in future AI generated

content without their consent.

Avenues for authorized AI tools. At the same time, Endeavor and many of its clients are eager to lean into innovation and embrace the opportunities opened up by this new technology. Indeed, many of our clients are exploring creative uses of AI that allow them to license authorized AI generated deepfakes or sound lags. For example, WME has negotiated a deal between the Estate of Notorious B.I.G. and Pepsi to celebrate Biggie and his music through the use of AI; and a deal between Snoop Dogg, who's killing it at the Olympics right now, and the AI app Artifact to allow use of his voice to read news articles aloud. Endeavor has also been exploring additional licensing opportunities through its partnership with Vermillio, which provides opportunities for customers to license their data to generative AI platforms to develop authorized authenticated deepfakes.

Finally, I want to briefly address what steps are needed in light of the issues that we've

just discussed. As we've discussed and are undoubtedly aware, the Copyright Office's recent report calls for federal legislation that would specifically regulate digital replicas by prohibiting the unauthorized creation of digital replicas that are indistinguishable from an authentic depiction of a person, and that would provide for a notice and takedown regime that would prevent the dissemination of such replicas on social media sites. Endeavor wholeheartedly supports legislation along these lines.

Also as been discussed, a bipartisan group of senators just introduced the NO FAKES Act, which has been extensively workshopped through listening sessions and has garnered broad industry support, including the support of WME and others. At the same time, the Executive Branch can further facilitate these protections by continuing to work to develop universal authentication standards for authorized deepfakes and by ensuring that disputes over AI generated likenesses are properly dealt with both in the

form of prohibiting unauthorized AI generated likenesses, and in the form of protecting authorized AI generated likenesses. As I mentioned earlier, the USPTO is particularly well positioned to shape executive priorities both on legislation and on these additional strategies. Thank you very much.

MS. CHAITOVITZ: Thank you so much. Can I ask one --

MR. SEIDEN: Sure.

MS. CHAITOVITZ: -- follow up, because you noted the issue with whack-a-mole?

MR. SEIDEN: Sure.

MS. CHAITOVITZ: So, I was wondering if you had any suggestion for a safe harbor notice and take down --

MR. SEIDEN: Yeah.

MS. CHAITOVITZ: -- to avoid the whack-a-mole?

MR. SEIDEN: Well, I would think that we've always been in favor of some sort of expeditious removal procedure working together

with the ISPs that could effectuate this in a timely manner. It was -- the situation that we had in other situations that we haven't discussed here, it's very frustrating for clients. They see what's going on and the way that it works. Having something taken down in two or three days is not sufficient anymore. It has to be done more effectively. Thank you.

MS. CHAITOVITZ: Okay, so now we are 5 minutes after our 10-minute break, so why don't we break now? And we'll still break for 10 minutes. So, we'll come back at 11:36. Thank you.

(Recess)

MS. CHAITOVITZ: Okay, we are starting now.

MR. MGBOJIKWE: Okay. Hello, everyone. My name is Bijou Mgbojikwe. I'm here on behalf of the Entertainment Software Association, the trade association that represents U.S. video game companies. And I would like to thank the USPTO and Ann for being on my case and encouraging me to be here to speak on some of the industry's

priorities and concerns in this space. Video games have come a long way. A hundred and ninety million Americans currently play video games. That's 61 percent of the U.S. population. The average age is 36. Think about 10 years ago, it was 29. So, older millennials, those who have sort of grown up with video games, are still playing them now and playing them with their kids. The industry is expected to hit $300 billion globally by 2030. Some of the most important games you may be aware of. Number one, best-selling game of last year, Hogwarts Legacy. Number two, Call of Duty: Modern Warfare III, Madden NFL 24; Marvel's Spider-Man; and, Legend of Zelda: Tears of the Kingdom.

So, our industry is unique because we've been using AI for over 40 years, since the ghosts in Pac-Man. And it's been developing since then to do all kinds of things from procedural generation. Think of trees on a golf course, if you're playing a golf game. To fixing bugs and quality assurance testing in video games before

the day of rollout. You don't want a buggy game. And just things like, for example, if you're playing a soccer game, the wind moving through your hair or moving through your shirt. All that is AI. So, generative AI has the potential to do even more in video games. But we've been using AI for a long time, and we'd like to see legislation that doesn't somehow prevent us from continuing to do what we do.

So, our overall message today is that certain aspects of digital replica legislation uniquely impact the video game industry, from definition, to licensing, to liability, innovation and creativity in the development and operation of modern video games may stand to be negatively impacted by legislation that, while it rightfully seeks to remedy discrete harms, may do so in ways that unintentionally of it an important medium for entertainment, such as by, for example, reducing characters to more cartoonish or alien depictions rather than realistic depictions for fear of massive dedication (phonetic).

If a digital replica right is -- a federal digital replica right is contemplated that intends to cover non-commercial uses, you know, it should take care that the definition should be precise, because a computer generated, highly realistic digital replica is a video game character. If it seeks to directly regulate expressive works such as video games, then greater care must be taken to ensure First Amendment protection. And other issues such as post-mortem rights should be term limited and verifiable, and there should be preemption of similar rights on the state level.

We definitely think that federal law may prohibit certain non-commercial uses that are intended to cause harm, or that may not be lawful speech. But a distinction may need to be made between those harms and regulation of digital replicas in expressive works. Different laws may need to be contemplated to remedy different harms, and in this way, the unique impacts of digital replica legislation on video games may be better

considered. So, we agree with Ben from MPA on that point.

On enforcement mechanisms, I'll just touch briefly on this. So, some video games have user generated content, and this can come in the form of creating your avatar, creating your character, or customization of your character within the game. So, this is very different from, you know, uploading an unauthorized image or a video that can make the round of different platforms. So, we have concerns about secondary liability and we think that there should be a heightened standard of knowledge. In our case, we believe it should be actual knowledge that the digital replica is unauthorized. We would prefer specific notice of such an unauthorized digital replica as well. I believe Colin touched on that platforms have content moderation systems already, and our members that have games with user generated content already have those. And so, we would like, you know, some acknowledgement and some recognition that if you already have a system

that works well, particularly for a closed platform like a video game, you should be able to continue using that.

We also believe that there should be no additional liability, which is something we've seen on the state level, for video game publishers who either license out likeness creation tools to others for game development, virtual experiences, or even movie production, or for those who make those tools available to players for avatar customization within the game, or even those that populate open worlds with what's called non-player characters. So, it's random generation of characters, some of whom may actually look like a real person out in the world.

On First Amendment, just quickly end here, you know, we would like laws, a law that protects fictionalized uses for entertainment, such as in video games. And that is probably one of the most important things that we would like. We would also like categorical exemptions for certain kinds of uses, importantly, certain kinds

of works. Most members are not into either some of the harms that have been listed here or deceptive uses, and so we would like that to also be recognized. That's it.

MS. CHAITOVITZ: Thank you. Andrew?

MR. AVSEC: Good morning. My name is Andrew Avsec. I'm here on behalf of the International Trademark Association. In 2019, INTA passed a board resolution regarding the need to protect the right of publicity that recognized the harm caused by the commercial exploitation of a person without their permission. Every jurisdiction that recognizes rights of publicity has recognized the need to protect natural persons from exploitation of their identity. The impersonation may occur from making an unauthorized use of a person's name, likeness, voice, or other personal characteristic that identifies that individual to an ordinary and reasonable viewer or listener. Whatever characteristics are used to identify or invoke that person to a reasonable observer should be

protected.

AI technology has dramatically eased access and lowered the cost of tools that create unauthorized NIL content. INTA's members have developed significant experience and expertise detecting, preventing, deterring, and removing infringing, counterfeit, and fraudulent online content. Important corollaries exist between the challenges posed by trademark enforcement and obstacles to preventing and deterring unauthorized AI generated NIL content and distribution.

INTA is actively considering technological measures that would assist consumers by providing transparency as to when A) good or service or content incorporates or is a product of AI technology, B) how to reach them, and C) other technologies that have proven effective in communicating, origin, ownership, or licensing information in support of online IP enforcement. In the context of combating the online sale of counterfeit goods and trademark infringement, INTA has expressed support for legal regimes that

immunize electronic commerce platforms from liability when the platforms expeditiously disable or remove infringing content in response to reasonable notices. Similar stakeholder-driven incentives to promote online enforcement deserve consideration in the context of curbing the spread of unauthorized AI NIL content.

Finally, depending on how unauthorized NIL content originates and spreads online, access to domain name registration information may also prove critical. Registration information for domain names serves as a critical baseline for online IP enforcement. INTA has long advocated for an accessible, contactable, and accurate WHOIS global database of domain name registrants. Unfortunately, ICANN registrars and registry operators have taken actions that have made it significantly more difficult for victims of torts like impersonation fraud to find contact data for the parties responsible for online fraud or to find -- by limiting access to previously public WHOIS data.

Given these issues, at a minimum, INTA respectfully submits that any proposal to address unauthorized use, display, or distribution of AI generated NIL content should include a mechanism to allow for easy access to information regarding the identity of the responsible party. For example, if connected to a domain name, then domain name registration information about the parties responsible, whether it be WHOIS information or the customer information for domain names covered by privacy or proxy services.

Although protection for NIL may be complimentary to the rights and remedies available to trademark owners under the Lanham Act, it's important to recognize that these are distinct rights and there are important differences to the requirements for enforcement. For example, courts often describe the obligation for trademark owners to police their marks against unauthorized use online. It is unclear whether that obligation should apply to NIL rights, and there are important policy reasons not to impose that

obligation on individuals. Moreover, a Lanham Act claim requires that the complaint of action caused consumer confusion, mistake, or deception. An individual should retain the ability to control their NIL regardless of whether the unauthorized use causes a likelihood of confusion or deception, as those terms are understood in the context of the Lanham Act.

Finally, it's unclear whether 1125(A) of the Lanham Act offers relief to individuals who have not previously commercially exploited their own NIL. Accordingly, INTA respectfully proposes that any attempt to address unauthorized NIL content be designed to complement the protections of the Lanham Act and related trademark and unfair competition law and the existing right of publicity laws. INTA supports a federal right of publicity law that preempts state law. A federal right of publicity statute is needed to bring uniformity and predictability to this area of law. Currently, rights of privacy and publicity are controlled by the vastly differing statutory and

case law of the 50 states. Businesses wishing to make nationwide use of particular aspects of a living or deceased individual's persona need to analyze all of these different laws and apply the most onerous requirements of each state in order to avoid liability.

In 1998, the INTA board of directors approved in principle the necessity of having U.S. federal right of publicity legislation as an amendment to the Lanham Act. INTA has also identified certain standards that should be met by such an act. First, as mentioned, it preempts all state law, both statutory and common law. Second, it harmonizes, to the extent practicable, the divergent laws of various states in a manner that recognizes the principles underlying the right of publicity and fairly balances competing public interest. Third, the right of publicity should prohibit others from making an unauthorized use of a person's name, likeness, voice, or other personal characteristic that identifies that individual to an ordinary and reasonable viewer or

listener. Four, an individual claimant need not make commercial use of his or her persona to have a right of publicity. Therefore, INTA does not support a requirement that individual demonstrate fame. The commercial value of a persona may have an impact on any damage amount claimed in dispute.

Five, to be actionable, the use at issue should be for commercial purposes, and a direct connection between the use and the commercial purpose must exist. The claimant must establish that the use of his or her persona results in an injury or damage to the claimant and or unjust enrichment to the defendant. An individual should have post-mortem rights for a defined term. The rights should be freely transferable, licensable, and descendible property rights without regard to whether the right was exploited during the person's lifetime. The -- should also protect the public interest by providing, through a grandfather clause, prior users' rights for the owners of names and marks consisting of aspects of a persona lawfully acquired before the enactment

of the federal right of publicity legislation.

And finally, it protects the public's interest by exempting from liability uses of persona that meet fair use and First Amendment standards for such uses, such as and without limitation, news, biography, history, fiction, commentary, education, research, and parody. In addition, and as previously noted, INTA has also expressed support in principle for statutory mechanisms that offer legal protections to electronic commerce platforms that expeditiously disable or remove infringing content once a platform has been put unreasonable notice of the infringing material and terminates the accounts of the users who have repeatedly offered infringing materials. Given the speed and scale of online distribution, similar enforcement mechanisms that provide meaningful relief for violations of NIL rights and legal protections for platforms that comply with takedown requests deserve serious consideration. Legal claims other than the rights of publicity may be available to address

non-commercial uses of NIL, but INTA has not formulated a position on that issue.

As mentioned, INTA approves, in principle, of a federal right of publicity legislation as an amendment to the Lanham Act, subject to differing differentiating requirements for enforcement, as explained previously. As a commercial intangible property right, the right of publicity should be subject to transfer or licensing to promote commercialization where authorized by the individual. This is consistent with other intellectual property rights. INTA has no position on the duration of a transfer, but supports a fixed term on the right of publicity.

Thank you very much for the opportunity and we look forward to further dialogue on this issue.

MS. CHAITOVITZ: Thank you. I do have one follow up. You mentioned that a proposed federal right should be done as an amendment to the Lanham Act. Is that in disposition as opposed to like the standalone NO FAKES Act?

MR. AVSEC: INTA has not taken a position yet, I think, on the pending bills. The board resolution that INTA had previously passed anticipated supporting an amendment to the Lanham Act in principle. So we have to take back to INTA any specific comments on the pending legislation.

MS. CHAITOVITZ: Thank you.

MR. KAZI: Hi. Thanks everyone. Just a quick introduction. I am Umair Kazi. I'm the Director of Policy & Advocacy of Authors Guild. It's a pleasure to be here, and today I represent the thousands of authors of fiction and nonfiction books, journalism, scholarly, and academic writing, and others whose written works view the literary and civic culture in the United States, all of whom are facing an existential challenge due to the rise of AI. With 15,000 members, the Authors Guild is the oldest and largest professional organization of writers in the U.S.

For the last four years, we've been engaged in advocacy and policy discussions around AI, anticipating the disruptions to copyright in

the industries that rely on it. In 2020, we submitted comments to the USPTO discussing copyright implications of AI technologies, and at that time, generative AI was still largely in prototype form, but its power to shake the foundations of the creative economy was readily apparent.

My remarks they will focus first on how authors names and writing styles are being used to create competing books and derivative works. I will provide some examples of the types of uses we are observing in the market, with new uses appearing regularly. And then I'll touch a little bit on the capacity of existing legal frameworks for a remedy. A lot of it has already been discussed, so I won't belabor those points too much.

The large language models consumers use today were trained, among other data, on vast data sets of copyrighted works, including hundreds of thousands or more books, journalism, articles, et cetera. This unauthorized and infringing

ingestion of works enables LLMs to generate myriads of responses with references to an author's name or title of their work or other well-known attributes. For instance, we can say, write me a story set in Westeros and that would sort of mimic George R. R. Martin. LLMs can generate detailed summaries, reproduce passages, create relative works such as hypothetical sequels, and impersonate an author style and voice.

We are already seeing these users appear in marketplaces, with AI users capitalizing on authors names, goodwill, and reputations to sell low-quality AI generated mimicries. For example, in March, bestselling author Stephanie Land reported finding unauthorized biographies generated using the text of her nonfiction memoirs Maid in Class. We reported these books to Amazon, after which they were taken down. And around the same time, Amazon instituted a policy to stop allowing publications of such companion books because there was a circuit of AI generated

summaries, workbooks, and biographies, weirdly, unless they were published by vetted, reputable publishers. Which kind of stemmed the tide of the AI generated books that we were seeing, but didn't stop them entirely.

Last month, we heard from best-selling author Hampton Sides, who reported finding several, again, AI generated biographies and also summaries of his books, which we reported to Amazon and they were taking down. But just to give you an example of the scope and volume of this problem, one of the so-called publishers that were selling these summaries and biographies had 97 pages of listings on Amazon, and I think one page is like 10 or 15 books, all for AI generated books about or relating to other authors and books, and all of them were published starting -- all of these works seem kind of murky now, but published, quote, unquote, starting in January 2024.

But despite Amazon's crackdowns, AI generated mimicries remain an enticing opportunity

for turning a quick dollar on the Internet. And we have seen and reported apps with hundreds of AI generated summaries and other books on Apple's App Store and Google's Play Store. We have also seen an increase in derivative uses of authors names and other indicia of their personalities, such as author chatbots that allow users to have a text-based conversation with an AI agent purporting to be an author. There's one famous example of the Dan Brown chatbot where you could chat with Dan Brown. I think there have been others since then.

Somewhat relatedly, though, it's not quite a direct NIL appropriation, we have seen users that exploit the reputation of work, which in some cases can be actionable as copyright infringement if there's substantial similarity, but not always because the AI output is not always going to be substantially similar, and that leaves a lot of uncertainty for the infringement claimant.

But the kinds of users that I'm talking

about are third-party agents based on books created by fine tuning and underlying LLM. So, one example we recently saw was someone had created an AI bot that allows you to query it for emotional cues about characters, and it was based on a book called the Emotional Thesaurus. Someone had actually gone and created lists of words that writers could use to describe emotions. We've also seen AI being used to generate unauthorized audiobooks, which are then attributed to fake authors.

But generative AI capabilities and user exploding creative industries and law and policy makers must move urgently to protect the markets for human creators before they're irreparably decimated. Many of the uses of threatened creators are not actionable as copyright violations. And as the Copyright Office's Report on Digital Replicas noted, when it comes to NIL uses, copyright has a limited application. Similarly, state privacy and rights of publicity laws offer limited protection, such as for

commercial uses, but they don't cover the full range of potential harms to individual from unauthorized appropriation of their indicia of personality. These laws also suffer from a lack of uniformity.

The Lanham Act does provide a remedy for some unauthorized NIL uses, but it does not protect against non-commercial uses or uses where there is a lack of attribution, which is a lot of what we see in the AI space when it comes to authors. And further, as Andrew also mentioned, it requires consumer confusion, which is a standard that's not always met. I mean, you might be knowingly interacting with an AI Dan Brown, you know, so. The Lanham Acts remedies are further limited by the Supreme Court's holding in Bay Star, which distinguishes passing off of tangible goods from the passing off of an idea, concept, or communication embodied in the goods.

The NO FAKES Act, which protects individuals against unauthorized uses of their voices and visual likeness, which the authors can

support, does offer a degree of protection to authors, for instance, against a big audiobook in their voice or other synthetic uses of their image and voice. But it does not protect against text-based AI generated imitations and appropriations which we are most concerned about and which we've been actively lobbying for. Some of the solutions that we think would help is adopting moral rights of attribution and integrity, which would give some authors more remedies against the kinds of misappropriations that we're seeing. And we also support a federal right of publicity that includes protection for names.

The NO FAKES Act does not include names. And often when it comes to text-based generation, you prompt the LLM with a name and then it turns out something in a similar style to the authors. So, that's very important for us to have something that actually allows authors to remedy against text-based impersonations.

And I'll just close by saying that the

harm from unauthorized use of an author's name, style, and authorial voice is not just economic. It's a profoundly personal harm that authors have likened to identity theft. And people have said that when they've seen things like an unauthorized biography or a chatbot that, it feels like someone has stolen a part of them. This is not surprising, since writing is an imprint of personality, and an author's written voice are no less personal than an actor's image, a sports star's signature move, or a narrator's cadence.

So, we're hoping to continue working on this and trying to devise robust policy solutions to figure out how we can actually fill the gaps between copyright and fair competition, Lanham Act, and the state rights of personality and publicity claims. Because it seems like when it comes to LLMs and the kinds of uses of books that we're seeing, there's a lot of gaps. So, we're trying to figure out how to, sort of, close them.

Thanks for this convening, and we look forward to the PTO's recommendations.

MS. CHAITOVITZ: Thank you. Can I just ask one question? I understand the issue with protection for names --

MR. KAZI: Yeah.

MS. CHAITOVITZ: -- of authors, but when you say text-based impersonations --

MR. KAZI: Mm-hmm?

MS. CHAITOVITZ: -- by that, do you mean style or do you mean something else? Or how would that, how would we --

MR. KAZI: I mean, that's an interesting thing, right? Because, like, I think we've been talking about, when we talk about digital replicas, there's -- we're talking about some sort of concordance between the person whose identity or indicia of their personality is being taken and the actual sort of AI output. And in this case, you know, style is going to be one, you know, like Dan Brown chatbot will sort of, I'm not sure if it would be like Dan Brown's writing style, but it takes from sort of interviews that he's given or like -- and a user might not think that they're

actually, actually chatting with Dan Brown in that way. But, you know, there's some taking, and we're trying to figure that out, too, because it's like, in some cases, it is actual style, you know, when the style is very sort of recognizable or signature, like a Hemingway style or, you know, George R. R. Martin style, I guess, like, in that case, style is sort of tied also to expression. The kind of imagination that George R. R. Martin has that other authors might not have. But when it comes to, say, like, a chatbot, it's different from, like, a narrator's voice, which is, you know, something biological, I think. I think we talked about this. Like, you know, that NABA has this concept of biometric identity. And we don't have a biometric identity analog when it comes to authors, but there is still a personality that's, that an author is leaving. And sometimes it's the style, it's the technique, so to speak. And other times it's just, you know, the author's name and reputation. Like, if it's Dan Brown and you want to talk to Dan Brown about medieval Christianity,

like, the chatbot can do it, and, you know. It's not a clear answer because we're trying to figure this out, too. It's kind of one of those, you know, abstract questions at times. Thank you.

MS. CHAITOVITZ: Thank you.

MR. LANDAU: Hi, I am Joshua Landau. I am the Senior Counsel for Innovation Policy at the Computer and Communications Industry Association, which is a lot of words, but I wanted to start just by thanking the personnel here from the Patent Office and the Copyright Office. Appreciate your time to this effort, to this issue. And also, we really appreciate the work that the Copyright Office put into their recent report on exactly this topic. I don't agree with every recommendation, but it was a deeply well thought out and thoughtful piece. I really appreciate the effort that went into that.

CCIA has been deeply engaged on AI issues for quite a while. I recently testified before the House Judiciary Committee on AI and authorship and inventorship of AI generated works,

and our members are among the leaders in AI in many different areas. CCIA's members include companies like Google and Meta that are creating AI tools. Also, Google, who have content platforms where AI generated works may emerge.

Beyond that, though, our members use AI in a lot of different ways. For example, Apple is a member. There's a significant amount of AI that goes into the photos that are being taken by your smartphone. And that creates a real problem because AI is such a broad term. It isn't just generative AI. There's lots of other areas, and we have a lot of concern about definition and scope creep.

But even if we limit ourselves to general AI, generative AI, sorry -- hopefully, general AI is a long ways away. Our members seek to be good citizens of the community. I think it was Patrick, or sorry, Rick that pointed out these platforms don't want a lot of this material. We are trying to not replicate protected likenesses. But they also need certainty as to how to handle

these things when user misuse happens. If there is a safeguard that a user manages to defeat, who is going to be held liable? Our members have real concerns about it being them, despite their best efforts to protect against these harms.

We also need to be considering whether an AI specific right is the correct path, or if really we're talking about NIL more broadly. We don't really care in general in American law about how some harm happened. We care about the harm. If somebody has a non-consensual, intimate image out there, it doesn't matter whether it was AI generated or if it was a real image. It's still a problem. This harm is very much the same. We also need to consider, as several people have alluded to, whether existing law covers the harm that we're talking about. In some cases it will, in some cases it doesn't. But where we have coverage already, we should consider letting that coverage go forward. And we've been very appreciative of the efforts from thinking in particular of Lina Khan here, Chairman Khan's

point that the FTC can enforce against AI under its existing authorities. They don't need new authority to go after deceptive business practices.

Turning to some of the specific questions that were circulated in the notes, there are a lot of valuable uses for AI replications or modifications of a person's NIL. That ranges from the Randy Travis example that was mentioned, where you know somebody who's had their voice taken from them. You could also imagine Stephen Hawking being able to use his actual voice from when he was still able to speak throughout his life, instead of the fairly robotic speech synthesizer. That's going to be a common usage, I hope, in the future for people who've had strokes, had other injuries that take that away. But similarly, autotune is a form of AI that's applied to a voice. So, we do need to think about how these sorts of laws might affect those long-established uses.

Another example is a voice professional.

I know some who've had their voices damaged by overuse. This provides a potential avenue for them to avoid that problem. There are also new uses, like when sportscasters in a sports video game, NCAA came out recently, so I'm focused on that they can react more realistically to an on field event without having the sportscaster have to record every single possible line. It's very similar to the New York Times example that was given. It's not practical for one person to do that, but it is a valuable use of AI. And also just the replication of real events in a fictional context. That's the Forrest Gump example. I think these are all very valuable uses of AI that will emerge.

But again, we're going to run into definitional issues. Things like AI, modification of an image of a person that can affect Photoshop, that can affect my smartphone. And concerns about ensuring that protections for things like voice don't approach a protection for style. There was a fairly recent court decision that pointed out

that style is really hard to define in a meaningful way. I mean, let's say the voice in the style of Tom Waits, is that just anybody who sings in a low, gravelly tone? What does that mean? And do we want to provide that much protection?

And there are probably a lot of potential uses that are unknown, or I'm just not smart enough to think of them in prepping this. In terms of technical measures addressing AI, it's difficult enough to detect whether content is AI generated. Sometimes that's impossible, and that's just to detect was it AI generated in some way. Detecting whether a name, image, and likeness in content was AI generated is hard. Detecting whether that's authorized is effectively impossible ahead of time. Even in the copyright context, we see takedowns aimed at authorized content where there's, you know, the two arms are not talking to one another, where the enforcement arm and the marketing arm are not coordinating very well. And automatically detecting whether a

given use is First Amendment protected is, I will say, impossible. And I will put a fair amount of confidence that that's going to be true.

It's particularly concerning given that there are First Amendment protected, unauthorized uses. So, how do you prescreen for those, if you are trying to have an automated system that detects was this AI generated? Was it authorized? Is it First Amendment protected? That's just beyond what I think AI will be able to do anytime soon, or possibly ever.

And finally, on the technical measures, detection tools are likely to always lag generations tools. So, the cutting edge of generation is probably always going to be very difficult to detect. It might be able to detect one generation back, but you're not guaranteed to get the newest forms.

Moving on to the sufficiency of current NIL protections, I would say that sufficiency is the wrong question. The real question is if the patchwork of laws that we have provides the right

level of protection. And I think it's pretty clear that for ordinary individuals, the answer is no. And for commercial participants, probably maybe too much. It really is going to depend on where you are. It may not make sense to try to shoehorn these very different harms. There's a very different harm from non-consensual imagery and a commercial false endorsement. Those two are very different, and they shouldn't necessarily be shoehorned into one law. They may be in one bill, but they do not need the same legal approach. We have privacy violations, we have non-economic concerns for individuals, and for commercial participants they may have some of those same concerns, but a bigger concern is going to be things like loss of creative autonomy or economic injury.

The other special case I would point out is election-related content, which is just always going to need its own protection, given the potential stakes and the particular importance of getting it right. There's a real harm from the

unequal protections we have across states right now. I also teach an IP survey course at American as an adjunct. And for right of publicity, I've pretty much given up on teaching it because there's no meaningful way to teach it. There are 50 different laws. They're not really all that similar. And there's no good theoretical justification behind it that I can point the students to, to say they are all trying to achieve this. They're so different.

The last point I would make on the sufficiency of current protections is just that voluntary mechanisms like content ID can do things that the First Amendment doesn't permit the government to mandate. That may be preferable, or at least something that you might want to look at incentivizing. You can have a voluntary agreement that provides much more protection than a law could.

Turning finally to the parameters of a potential NIL law, I will say that CCIA does not take a position on whether one should be put into

place. But if one is put into place, we need to have full preemption. If you don't preempt, then it's just another layer of law. We've gone from 50 to 51 or 52 if you count D.C. If you do partial preemption, if you do a floor and not a ceiling, you're still dealing with a patchwork of standards. There are still going to be places that you have to think about, and you will ultimately wind up in the situation you're in now, where the most protective standard applies, because practically speaking, you have to work with that one.

We'd also suggest that there should be separate approaches taken for commercial misuse versus privacy type harms to individuals. There might be specific additional approaches for specific harms like non-conceptual imagery or virtual CSAM, election materials. And beyond different requirements, beyond different -- in a commercial context, a fame requirement might be appropriate, not the same kind of fame as in like blurring, but some level of fame might be

appropriate for commercial misuse. That's not going to be true in non-commercial misuse, and they may need different remedies as well. Commercial misuse tends to be more concerned about money. Non-commercial misuse tends to be more concerned about the personhood interests.

We also would suggest that it should not be a transferable right and that licenses should be limited in time and scope. So, when somebody licenses these things, they should know how long it's going to be used, how it's going to be used, and they shouldn't be able to transfer it totally. We have significant concerns about post-mortem rights, especially if they extend too far. And I would add, as many people talked about, we do need robust safe harbors and we should not have an NIL law limited to AI. It should target the harm, not the mechanism. I see I'm out of time, so.

MS. CHAITOVITZ: I'm just still scribbling down everything.

MR. LANDAU: I'm happy to send you my notes.

MS. CHAITOVITZ: I did have a couple questions.

MR. LANDAU: Absolutely.

MS. CHAITOVITZ: The first thing, you mentioned some of these issues, but you started out by saying, by mentioning and giving props to the Copyright Office for their recent, very thorough report. But then you said, but you don't agree with everything. So, if you could elaborate --

MR. LANDAU: Sure.

MS. CHAITOVITZ: -- what you don't agree with, that would be --

MR. LANDAU: So, I think one example that I think hopefully was clear from my statement is that we don't agree on the preemption point. The Copyright Office suggests a partial preemption. We think it needs to be a full preemption. I believe they advocate for a post-mortem right. And we are concerned about that. In general, certainly, an infinitely extendable one would be a problem. And I think

the Copyright Office acknowledges the problems with that kind of right. I haven't read it in a few weeks or not recently, I won't say a few weeks. So, I'm not sure what other areas of disagreement. But those were, I think two of the biggest ones.

MS. CHAITOVITZ: Thank you. And then a couple things, because you did use Tom Waits as an example of issues with, I guess, protecting style.

MR. LANDAU: Yeah.

MS. CHAITOVITZ: But as you know, California law, and I believe that it wasn't actually the statute that they used common law for that Ben will correct me.

MR. LANDAU: I think Middler is common law and Waits was statutory, but.

MS. CHAITOVITZ: I think it was both. I think it may have been both of them. But, so I was just wondering if you have then a concern of kind of, of putting that kind of protection that there already is in California, in a federal law?

MR. LANDAU: I do. I think that there

are some real concerns about style protection. I think in California they really focused it on the voice rather than the style. And I think that there are some line drawing problems between voice and style for people with very distinctive voices in particular. But I think that they're also really hard lines to draw. I think that we can protect voice and say that style is not protected and let the courts work it out, because I don't think that it's something that can be done, certainly not through an executive action and probably not feasibly through legislation.

MS. CHAITOVITZ: Thank you. And I have one final question, which is where you talk about voluntary mechanisms that could be more hopeful, you thought, than legislative mechanisms, and they need to incentivize those voluntary mechanisms. Are there any executive actions that you could think to incentivize those kind of voluntary mechanisms, like the voluntary commitments or something?

MR. LANDAU: Yeah. I mean, voluntary

commitments work. There are certainly imperfections with those, and I don't think we would suggest that they should, that voluntary mechanisms should be the only mechanisms, because there are going to be people who don't want to agree, typically not by members, but bad actors who are not interested in behaving as good citizens on the Internet and in our creative world. I think that it's just a difficult thing to incentivize voluntary commitments, but doing it through the sort of process that was done with the White House recently, with AI companies, things like that can be very helpful in just getting the ball rolling. I think that a lot of the value of voluntary commitments though, really comes in the mechanisms they create. And those, I think are more likely to be things that are done through negotiation between rights holders or interested parties and the platforms, the ISPs, the different entities that have an interest in working with those rights holders or individuals rules.

MS. CHAITOVITZ: Thank you.

MR. LANDAU: Thank you.

MR. MOHR: Good morning or afternoon. Thank you for the invitation to be here today. We're grateful for the Office's efforts to examine issues around name and likeness. These topics are hard. My name is Chris Mohr. I'm the President of the Software and Information Industry Association. We represent about, oh, 350 companies in the business of information. Our members are diverse. They range from startups to some large and pretty recognizable corporations that have operations all over the world. For over 40 years we've advocated for the health of the information lifecycle, advancing favorable conditions towards creation, dissemination, and productive use. Our members create educational software and courseware they create ecommerce platforms. They create legal research and financial databases, as well as scientific, technical and medical publications. We are a place where information and technology meet and occasionally collide.

Our members, as a general, have wholeheartedly embraced AI's promise and predict advances that are going to revolutionize information management, creation analysis, and dissemination. They actively use AI on many fronts, in the classroom and fraud detection, in market data and trend analysis in AML, sorry, anti-money laundering, and in locating missing kids. They have invested billions in its development, acquisition and use.

Normally, we look at issues from a technology neutral standpoint. In other words, fraud remains fraud, whether or not it's done in person, or via a computer, or a phone, or through a synthetic voice. We acknowledge that in some cases AI is different and certainly support the adoption of a risk-based framework to regulate the technology, and our members have been leaders in advancing AI accountability and governance. AI that generates the most accurate and trustworthy information limits unintentional bias, is based on reliable data, is going to be the technology

that's most useful to governments, businesses, and consumers.

Respect for IP is key to our policy mission, and our members rely on the incentives that IP law creates. We've been engaged in anti-piracy work for a long time. We're members of the Copyright Alliance and believe that the use of AI must comply with existing statutory requirements and respect for established intellectual property rights. Those rights exist to provide an ongoing incentive for authors, artists, technologists, and scientists to create original work and advance the progress of science. The use of copyrighted works without permission to train generative artificial intelligence models remains the subject of active litigation, and the legality you choose (phonetic) is going to be heavily fact dependent. Our members are confident that courts will sort this out, and we don't support any changes to the copyright law at this time. Now, but at this point you're probably asking, what does any of this have to do with name

and likeness? We recognize the non-copyrighted harms that misuse and abuse of AI can cause. But it's important that the analysis of these issues do two things. One, that it not prejudge the outcome of this ongoing litigation. In other words, that it not be used as an end-around for existing doctrines, such as transformative use that would balance a variety of equities on a specific factual record. And second, that it focused on the particular kinds of harm that are caused by a particular activity.

When we appeared, when our organization appeared in front of Congress in Los Angeles, we suggested three primary considerations. The first, is the interest injured by AI and IP interest or a privacy interest, it can certainly be both? Second, are these injuries that Congress is looking to remedy addressed by existing law, and are those injuries caused by existing technologies as well as by generated AI? And third, what limits should there be on this kind of regulation, including First Amendment limits?

Many identity-based harms are already covered by different doctrines in federal and state law, and they already apply. Suppose, for example, the generative AI is used to create a digital replica of a celebrity image for purposes of trade or merchandise and used to promote it. This has happened a lot. It happened a lot before AI was a problem. It just wasn't a product of a generative artificial intelligence. All of that's already illegal. Liability in the Lanham Act, there is potentially liability under dilution in certain circumstances. There are remedies understood unfair competition doctrines, and to the extent that a use was misleading or caused confusion, it could be end of outrageous (phonetic), there could be other available doctrines that would apply.

And there's a separate harm that we've also talked about, and that's, there's a second kind of harm. And that's the privacy harm, and that is most easily represented in the appearance of non-consensual intimate injury. In this

instance, the individual suffers. Really, there are two different types of harms. The first is the economic injury that can occur through their appearance in something like this, and the confusion and distaste of an audience. And the second is the privacy injury, the simple one to human dignity that occurs when someone is placed in that circumstance. And this is an area where generative AI has changed things. It is easier to do that now than it was five years ago. And no federal statute exists that covers that kind of injury. But it is important to keep those injuries analytically distinct.

So, for example, if you write a statute that attempts to address both of those injuries at once, you're going to end up with something that is overbroad. We view the NO FAKES Act that way. It conflates privacy and property issues in a way that is going to prejudge ongoing copyright litigation around the scope of generative AI. By presuming that all unauthorized digital replicas are violations of the law, the NO FAKES Act

resolves the question in ongoing copyright litigation without the traditional balancing of interest that the fair use doctrine permits, especially around technological advances and transformative uses.

Second, statutes that address privacy injury will be by definition, narrower. The Defiance Act, which passed in Senate, is an example of such legislation, and we supported it. It creates a civil and criminal cause of action around non-consensual imagery.

Finally, with respect to a federal right of publicity, like others who have spoken before, we compliment the Copyright Office on the thoughtfulness of their work product. We also note that Congress has considered the advisability of a federal right of publicity over the years. And again, that debate is, you know, the remarks from my colleague from INTA took me back to the late '90s, where, and there is a, a symposium issue of the Columbia Arts and Entertainment Journal, and specifically a colloquy around all of

these issues between academics that raises, among them, the ability of computers to do this, the various interests implicated by a right of publicity, and the different theories under which such a right would be promulgated, and that debate and the policies around that statute are worth having. But we do not have a position on a right of publicity. We would, I think, we would share the concerns around uniformity, especially around preemption and scope creep, as well as its existence beyond the life of the individual. But those -- and we are not completely convinced that these issues are entirely, that AI requires a wholesale revision of them. But with that said, we do recognize the privacy homes (phonetic), particularly for individuals outside of commercial context, and when they're affiliated with things that they do not wish to be affiliated with, that there may be gaps in the law that should be examined, but they have to be, we suggest that they be examined carefully on a case-by-case basis.

MS. CHAITOVITZ: Thank you. I think that's your last speaker. So, what I believe.

MR. MOHR: If I had known, it would have been five minutes.

MS. CHAITOVITZ: Pardon? I believe some of my colleagues have some questions, and then depending on how much time is left, we can let you each go through with like a minute of, if you have, like, rebuttal comments or what have you, depending on, we'll just divide by the number of people by the time left to figure out how much time you have?

MR. RITCHIE: I had a question about -- I'm Brandon, Brandon Ritchie. I had a question about where liability should lie. It's a little bit of a nuanced question. We've heard some folks say that the creators should be liable. There's, there could be a distinction between creators and users. So, that's a question that I have. Should liability in a new federal law, should there be a new federal law? Should it rest with the creators of the content, the users of the content, or both?

And should it depend on the types of content, content involved? So, should it be different for child pornography? And I guess underlying that question is, is the creation of a digital fake without any further action, something that should be prohibited? So, that's the question that I have. Anyone can comment. Thank you for entertaining the questions. Yep. Go right ahead.

MR. MOHR: Can you hear me? Is this on?

MS. CHAITOVITZ: Yeah.

MR. MOHR: Okay.

MS. CHAITOVITZ: I think you need to get closer.

MR. MOHR: Little bit closer. That's better? All right, perfect. Obviously, the one difference with CSAM or child pornography is that it is illegal content. It's not content that is being distributed illegally, which it is being distributed illegally, but the content itself is illegal. And therefore, First Amendment concerns are saying that we're going to hinder free speech sometimes misses that point very closely. So, I

think around CSAM, and again, we were talking to Ann earlier about that there is no consent a child can give for that. So, it's already non-consensual illegal content being on. And if we just go after the perpetrator who are now hiding behind encryption or those who are receiving it, which is also illegal, and we're leaving the platforms and the web hosting entities alone, we are not going to put a big dent in this problem. And so, there needs to be legal incentives for the platforms to be more proactive in finding these. The EARN IT Act was one of the ways that we were looking that, but also to ensure that it's not just a whack-a-mole problem. Because the other big difference here, when I worked at Fox, trying to find movies that are Fox movies is not going to hurt you if you are -- if you're a parent and you're finding images of your child and you have to go around to every single website that is out there and find that image or the child themselves as an adult, they are basically having to re-experience that horrible

part of their life.

And the last thing I would say to that in terms of being able to find out who is responsible if it's on a website, I'm glad to hear. I thought I'd be the only one talking about the dark WHOIS and ICANN. But I'm glad my INTA friends are here. Lori will be very proud of you. Have a call with her at 1:00. But on that issue because, because that in of itself is a huge hindrance from a child safety perspective, from a cybersecurity perspective and the consumer protection, and that issue can be solved by the U.S. because the U.S. government controls dot com, dot net, and dot org.

MR. AVSEC: I just want to echo those comments. I think the registries and registrars took advantage of the GDRP to hide. I think if you look back, it clearly states that you had a contractual relationship with the parties prior to implementation of the GDRP. You didn't have to. And they just interpret it the way they wanted to, because let's all be honest, their biggest clients

are criminals. Adobe owns 45,000 domains. I don't own a million. The people who own a million are the people who use it for dark purposes. So, let's all just tell the truth. So, you need to unveil that so that IP owners, parents, consumers can take care of themselves and protect themselves. And those that refuse to participate should be punished.

MR. RITCHIE: So, for child pornography, it's per se illegal to create it, even fictitious depictions of it, I think in most circumstances, maybe, maybe not. Okay, so for that, the mere creation of a digital fake could be prohibited conduct, or we should consider that. But are there other types of fakes that would rise to that level, that the mere creation of it without using it would, you know, justify a prohibition?

MR. KAZI: Well, I guess it would. If there is an exclusive property right in your likeness, then anyone creating, you know, unauthorized version, that would be unauthorized per se, I guess if you're using the NO FAKES

framework. I mean, I think at least, like in terms of models, I think the creator of the model is the one that's sort of collecting the training data and then producing the model that other users can then use to make outputs, which, you know, at least in the text world, I would say that creating a model of a book, an unauthorized model of a book is a greater harm, say, than using that model where the output may or may not be, like substantially similar. But I understand it's different when it comes to images and fakes like that because the output is the likeness.

MR. AVSEC: I think you have to be careful when you get the strict liability because I think it really, legislators don't like it. So, I think you need to stick to real harm. So, if you created fake drug pamphlets that give you false ways to use drugs and things that are safe in public safety, child safety, those are strict liability things at the very creation of it should be punishable. Whether somebody should make $15 million in royalties or $5 in royalties is

something that legislators don't care about. So, I think if we're going to ask for stuff, and we need to be serious, we need to do stuff that will get them on board with us rather than losing that ability to lobby for that because they think we're lumping it in with economic interests of content creators. And I, they're my biggest clients, so I want them to succeed because I want them to buy my software. But I just think if we want to really do, because I'm a parent and I want children taken care of, I want children protected. And so, I think we need to be very focused when we ask for something that we know there's always resistance to in the legislative branch.

MR. RITCHIE: Thank you. Very informative. I appreciate it.

MS. CHAITOVITZ: So, I believe with the number of people that we have and the time, you guys, if you want to have a minute for final statements. We can do that. Now, I have to get this down to a minute, and it's facing the wrong way, so you guys can't even see it. But I'll just

stop you when a minute is up. Okay.

MR. SHEFFNER: Thank you. And thank you again to USPTO for convening us all here today. I learned a lot. One issue I wanted to mention, which I didn't get the chance to address in my opening statement was protection for style. And you did hear a number of people here today advocate for a new federal protection for artistic style. We at the MPA have significant concerns about that, and we addressed this in detail in the comments that we filed with the U.S. Copyright Office back in the fall of 2023. But very briefly, we are concerned that establishing protection for artistic style would significantly erode the idea expression dichotomy in copyright. Of course, copyright protects expression. It does not protect ideas. By protecting vague notions of artistic style, it would effectively be granting exclusive rights in style. Ernest Hemingway, God bless him, does not have a monopoly on short sentences. Neither does David Mamet in screen. And we would have significant concerns about doing

that.

MR. SEIDEN: Thank you. Just want to reiterate my thanks. I think it's clear today that there are a lot of concerned stakeholders and definitely a lot of chefs in the kitchen. So, it's definitely going to be quite the process to figure this all out. But the academy stands ready to work with you all on the path forward.

MS. CHAITOVITZ: Thank you. And one other thing that I want to say, and I'm not using anybody's time for this, is we are open to working with all of you. If you have additional documents or comments you want us to review, please send them to us. We have gone through the Copyright Office, the comments you filed with the Copyright Office. So, we have those. You don't need to send us those. But that was in November, which is a long time in AI time. So, we're happy to get any new comments or documents that you want to send to us.

MR. LANDAU: So, no major comments at this time. Knowing that we're staying between us

here and lunch. But just wanted to say, taking extensive notes. Great to be hearing all the viewpoints, and I just appreciate your invitation today to the session.

MR. AVSEC: All right, thanks, I, too, will be brief. This is a great conversation. I learned a ton. And the point I would probably echo is that any sort of policy proposal really does need to be narrowly tailored to the harm or harms that are being, being addressed.

MR. MOHR: Yeah, real quickly, along those same lines, of kind of narrow tailoring of this. One of the things that we've been trying to navigate is this difference between performance and the biometric data that is contained in those performances, and having that freedom to license our performance like we do on a daily basis without the fear of having our voice or biomedical data extracted from that performance to create something wholly new. So, whether that, you know, that may be something that has to be narrowly tailored just or just towards voice without

affecting other parts of these laws.

MR. LANDAU: One topic that really didn't come up much was training of AI on celebrity or name, image, and likeness, and whether there should be some appropriate limitations on that. Many of the cases that are pending right now, the courts are struggling with whether training on copyrighted material or other protected material itself is a violation of copyright or other law. They're tending to find, at least in the motion to dismiss stage, that you have to both train on it and the output has to include it. But of course, if, you know, if you let the training occur, the propensity for the output to have improper uses is going to be there. So, I don't have a specific proposal, but I think considering whether appropriate limitations on training on protected material would help mitigate some of the issues potentially.

MR. MOHR: Sorry about that. Three areas. First of all, thank you. I thought I'd be the only one talking about ICANN and WHOIS. And I

-- so, that was great. It doesn't happen very often in D.C. But the areas that I just want to emphasize is one on search, because that's how people find the materials, especially with AI getting more or as part of surge and generative AI that just demoting sites that are harmful to children or with CSAM is not enough, they should be (inaudible). That gets into the issue of international reach. A lot of these sites will move offshore and people will be able to reach them because the quote, Internet is borderless. We need to have laws in place that allows law enforcement and others to shut down those sites or at least block those sites from being, being part of it.

And the last issue would really be around ensuring that when we're looking at these issues, as Scott said so eloquently, much better than I'm doing right now, but that we need to make sure that there is this understanding of the difference between the content that we're talking about in CSAM and movie pictures. Right now,

Disney has more rights to take down a Disney movie than a parent does of a picture with a child involved in CSAM. That cannot be the policy of the United States, and we need to make sure that that is not the policy.

SPEAKER: I think one thing, as I said earlier in my opening remarks, the genie is not going back in the bottle. And so, one of the most important things is access to data, because access to data allows it to be more diverse, to include groups, to include cultures that might be left out. I was at a conference years ago, and it was an ethics panel on AI before it was generative AI, and they said that they had used it in an employment context and it was skewing North American male. And I raised the point, well, that's because most, the most, the biggest uncopyrighted data in the world is from the U.S. Government. And I bet you the Pentagon has the largest part of that. And before 1978 or '79, it skewed North American White male. So, we've got to have access to data and to do so.

So, what we need to do is focus on harm and what that harm is and get detailed, very focused remedies to the people who feel they're being harmed by this technology. Thank you.

MS. CHAITOVITZ: Thank you.

MR. MCDONALD: Hello. Hello. Thank you again for having me today. I've really appreciated this spirited discussion. I would like to reiterate Ames's (phonetic) comment that we believe that there should be rules around training on folks's AI -- sorry, training on the IP rights, both the input and the output. We think that both should be regulated independently and concurrently.

In terms of the NO FAKES Act, I did want to say we worked with their office and we appreciate the opportunity to comment there. Just a couple things here. We think that the exclusions in that act are far too broad and there's a fear that it could, frankly, subsume some of the goals of it. We think we're opposed to the limitation of liability that was added to

the final draft. And of course, I spoke at length about preemption or our views there. But we do appreciate that a lot of folks with different perspectives are taking a hard look at this and are taking the opinions of various folks. So, thank you.

SPEAKER: Thank you very much. Just very briefly, wanted to touch on in the case of deceased celebrity estates, authorized AI generated likeness provides really one of the best possible tools to permit those estates to expose new generations to those celebrities legacies and cultivate new fans. You should see some of the ideas that are currently being generated by entertainment companies right now on how to continue the legacy of some of the icons in the entertainment industry. Therefore, it's important to meaningfully address the problem of unauthorized deepfakes while nonetheless leaving open the opportunity to expand individuals personal brands through authorized AI tools. Think about not sure his estate really wants Frank

Sinatra singing Lil Wayne. That maybe should be up to the heirs or whoever owns those rights. So, it's just something as we talk about these rights and do they continue during life or postmortem, I think there should be a focus is also on post mortem as well. Thank you.

MR. MGBOJIKWE: Hi, thank you so much for letting me speak. I really learned a lot today and I really enjoyed hearing others. I just want to touch on, I think something I already raised, which is I think one of our biggest concerns is this idea of random or accidental likeness. We already, our members, some of them already faced lawsuits at the state level with respect to right of publicity, and that's in a sort of commercial context. And we only see more of the same with an imprecise definition of digital replicas in the digital replica context. Because like I said earlier, the definition of a digital replica without that deception element is essentially definition of a video game character. So, in games where realism is the point and

faithful depictions of people, the point here is not showing the ability to sort of tell certain stories using historical characters, for example, or being able to just use particular plot lines. And that's why it's really important to have laws that distinguish the harms that people really want to get at. That allows you to have different First Amendment considerations for the type of context in which the digital replica arises, and that allows video games to be given the benefit of the First Amendment protection to which it's entitled.

MR. AVSEC: I don't have anything significant to add to my prior remarks, but I did want to say thank you to the USPTO and for all of you for inviting us here to the Copyright Office, for being here and all the work you done in this issue, and for all the really interesting thoughts and observations from my co-panelist. And I did, you know, just want to observe that it was nice to see support for two of INTA's longstanding positions. One was on accessibility to the WHOIS,

accurate WHOIS data, and also for a federal right of publicity law that would preempt some of the state laws. I think both are significant tools in combating impersonation fraud and should continue to be explored.

MR. KAZI: Yes, I just want to thank USPTO, and again, I wanted to reiterate the comment, and that as the discussion took place, we really need to be thinking about training as well, because you don't get a digital replica, you don't get the infringement of the, if any rights of personality, without a sort of prior infringement of copyright. And I know that, like, the person depicted may not have the copyright interest in the training material. So, there's a connection there that I feel like is very important. I haven't talked too much about it, but now I will.

MS. CHAITOVITZ: Thank you.

MR. LANDAU: So, I think that one example of the random likeness point that was brought up is the Scarlett Johansson voice that wasn't actually Scarlett Johansson's voice, it was

a voice actor. Everyone assumed it was Scarlett Johansson, but it was a perhaps intentional, perhaps happenstance resemblance. And that, I think, goes into the concerns about defining style, about random unintended likenesses. There are a lot of concerns that that episode is really a good exemplar of.

With respect to post-mortem rights, I do have some worry that if we make it too easy to or too profitable to use other deceased celebrities, what does that do to younger artists who are still trying to make a name for themselves? Is there going to be space for them to operate? And I think I will leave it with that. But just thank you again for your time and your attention.

MS. CHAITOVITZ: Thank you.

MR. MOHR: Very quickly, thank you again for convening this. First of all, with respect to tangible things that the Executive Branch can do, I want to affiliate myself with the remarks of the other panelists around WHOIS data, and the use of that data, pressuring our -- other countries and

the registrars and international bodies to make that available for purpose of detecting, protecting intellectual property infringement and other bad acts. That is, GDPR has become this fig leaf that's thrown over illegal activity, and that's not what it was designed for.

The second thing I would like to do is just affiliate ourselves with Mr. Sheffner's remarks around our concerns about style, in that it is inherently vague and in my mind at least, is a perfect example of the kind of legislation that would prejudge ongoing copyright litigation. And that is it. Thanks.

MS. CHAITOVITZ: Okay, so I have 30 seconds, and I'm just going to thank you all so much, if you can hear me, for coming today, and please stay in touch and send us your thoughts. And this is a really informative discussion. I really found it quite helpful. So, I appreciate you all taking the time to come and share your thoughts with us. Look, to the minute.

MR. MARTIN: We're just waiting on a

couple of more participants just to make sure. Thanks for your patience.

Good afternoon and thank you for all participating in today's roundtable session on NIL. This is the virtual panel portion of the session, which is pretty obvious, but very happy to hear you -- have you here today. We had a pretty rousing session this morning, so we are hoping to continue to have a very good discussion this afternoon. And as you know, our discussion is going to explore issues at the intersection of AI and protections for an individual's reputation, name, image, voice, likeness, or other indicia of identity. And collectively that's referred to here today as NIL. So we are looking forward to hearing all of your views on these issues during the panel.

I'm Jeffrey Martin, an attorney with the Office of Policy and International Affairs here at the U.S. Patent and Trademark Office, and I will be serving as the moderator for this virtual session of today's roundtable.

Before we begin, I'd like to recognize Kathi Vidal, under secretary of commerce for intellectual property and director of the U.S. Patent and Trademark Office, to provide some pre-recorded welcoming remarks, so I'm going to turn that over.

MS. VIDAL: I'm Kathi Vidal, director of the USPTO and under secretary of commerce for intellectual property. I am pleased to welcome you today for what promises to be a fascinating roundtable on AI technology and its impact on the legal protections for personal reputation and name, image, and likeness rights, or NIL.

The potential for AI technology to provide tremendous societal and economic benefits and foster new forms of innovation is undeniable. However, we also need to evaluate the potential challenges AI presents, including IP-related challenges. The USPTO is proactively examining AI technology and advancing policy at the intersection of AI and IP. The USPTO has already issued guidance in this area, including regarding

the patentability and inventorship of AI-assisted inventions and in the AI stack, and on the use of AI in preparing applications and filings before the agency, and we're working more both in terms of patent and in the copyright spaces. We also continue to solicit stakeholder views on these issues, including through the USPTO's recent request for comments seeking input on AI implications for other evaluations we make during the patent examination process.

In addition, President Biden's executive order on safe, secure, and trustworthy AI tasked the USPTO with providing guidance on the impacts of AI and on AI-related IP policy issues. President Biden's executive order also tasked the USPTO with providing recommendations for executive action related to AI and IP matters. We are currently analyzing and engaging with stakeholders on all of these issues, including AI's implications for copyright laws and in the creative space more generally.

Today's roundtable focuses on AI

implications for NIL laws and policies, including whether current legal protections are sufficient to protect an individual's NIL. Currently, NIL is protected primarily by state laws. However, many stakeholders have cited the patchwork nature of the remedies and scope of protection provided under state laws as a concern.

In addition, some federal statutes protect aspects of NIL in limited instances. One example is section 43(a) of the Lanham Act, which provides a remedy to stop the unauthorized use of an individual's NIL in certain commercial circumstances. However, this Lanham Act remedy has limitations, including the fact that many Federal Circuits require plaintiffs to have some level of fame or notoriety in order to succeed on a section 43(a) claim involving NIL.

Today's roundtable is an opportunity for stakeholders to provide views on all these issues. The input we receive today will help the USPTO more fully understand the current landscape and help inform our recommendations to President Biden

for potential executive action. It will also inform our work with Congress and in the courts.

So, thank you again for participating in today's roundtable. I look forward to hearing your views on these important issues.

MR. MARTIN: So we're much appreciative of Director Vidal making those comments, very helpful and a great way to begin our process today.

I'd also now like to set some basic ground rules for today's virtual session, so our virtual speakers should feel free to discuss whatever issues you believe are relevant to NIL and AI. Some issues that we are particularly interested in hearing about are whether existing legal protections for individuals' NIL and reputations are sufficient, how these legal protections intersect with other IP laws, and how AI technology impacts existing legal protections for NIL and reputation.

I would also welcome your input regarding recommendations the USPTO should present

to the President pursuant to President Biden's executive order on AI, namely, what, if any, executive action can or should be taken related to NIL protections in the context of AI, and really especially interested in whether you have any recommendations for executive actions in that area.

Now, turning to the format for the virtual panel today, we ask that speakers address your comments to the moderator and really to the audience as you're out there in the virtual world. But each speaker will be given up to 10 minutes to deliver their remarks. My aim is to strictly enforce this time limit just an order to ensure that all speakers have an opportunity to provide the remarks that they've planned. And I'm going to be doing my best to let each speaker know when their time limit is coming to an end. This will give you an opportunity to wrap up your comments in an appropriate manner. So I'll be doing my best to hold each speaker to their time. So please keep that in mind. So we don't want to

have a situation where we have to force you off. All right?

I'm also going to start things off by announcing who the speaker will be. When you are recognized to deliver your remarks, please use your computer to unmute yourself and click the Start Video icon. And after each speaker concludes their remarks, I may ask a follow-up question as possible. So speakers, please keep this in mind as well.

Now, if time permits, after all speakers have provided their remarks, I also may have an opportunity for each speaker to make additional closing or sort of follow-up remarks. Again, this depends on our time. We did do this morning for the in-person panel, so it may happen again for this virtual panel.

Now, as a reminder, this roundtable is being live streamed and will be recorded and posted on the USPTO's website along with the transcripts of the roundtable. Remarks made today may be used by the USPTO in its reports and

potential recommendations to the President.

So with that, let's begin. Also, when each speaker begins their presentation, I just want to remind you, please identify yourself and your organization for the transcription that's being made, and that's also of benefit to our audience.

So our first speaker for this afternoon will be Beverly Macy, executive board member at Innovate@UCLA. So I'm going to turn this over to Beverly right now.

MS. MACY: Thank you so much. You can hear me, correct? I'm assuming you can.

MR. MARTIN: Yes.

MS. MACY: Okay, very good. As you mentioned, I am Beverly Macy, a member of the executive board of Innovate@UCLA, an organization composed of members in the technology companies in and around Southern California. I also lecture at UCLA Anderson and teach at UCLA Extension. Thank you so much for the opportunity today to speak, and I really enjoyed the morning session listening

in.

Today I speak as an independent consultant and I do not represent UCLA, although I will be talking about NIL and college athletics as I teach a course on the business of media, sports, and entertainment, and this is a very hot topic on campus. I also want to talk about remarks that would also be relevant to any and all digital content creators.

I focus on the convergence of AI, blockchain, and tokenization, or digital receipts. This conversion has the potential to redefine how intellectual property is protected, valued, and traded. Digital receipts underpin a new era of ownership and authenticity for AI-generated works and all NIL type work.

Just a little bit of background on the concept. Digital receipts can serve as verifiable records of transactions, ensuring transparency and authenticity. In the context of NIL, digital receipts can track the provenance of endorsements, sponsorships and other financial engagements,

especially in the NIL space. The implementation is through blockchain technology, which is particularly suited for creating digital receipts due to its immutable and transparent nature. Each transaction is recorded in a decentralized ledger, making it tamper-proof and easily verifiable. This ensures that all parties involved in NIL transactions can trust the authenticity of the records.

In the space of college athletics, there has been a transformational shift that now allows student athletes to monetize their personal brands through endorsements, sponsorships, selling merchandise, et cetera. And most importantly, fans can pay athletes directly, providing new revenue streams that is compliant with NCAA regulations. Concurrently, the concept of creating digital receipts to track provenance has emerged, especially in this area, to ensure transparency and security in these transactions. There are digital platforms, like MyNILpay, that allow fans to directly pay these athletes and this

provides these new revenue streams.

In the era of Web3 and Blockchain, these technologies, like Web3, enable athletes to tokenize their NIL, creating digital assets that can then be traded on decentralized platforms. This provides immediate income and also, in some cases, royalties. Obviously, the blockchain technology is excellent in this area.

Some of the benefits of the idea of creating provenance through digital receipts is the transparency that I mentioned. Digital receipts can provide a transparent record of all transactions, reducing the risk of fraud and ensuring parties are held accountable. And security, the blockchain's encryption ensures transaction data cannot be altered and, obviously, the efficiency.

I would also like to conclude; my remarks are brief today. I could talk about this for a very long time, but I want to ask everyone to imagine that everything in the real world and the digital world, land titles, tickets, voting,

all forms of entertainment, could have a receipt that represents proof of ownership, manages licensing of IP, provides social status, grants exclusive access, and certifies authenticity. This convergence of AI, blockchain, and tokenization prepares the way for digital ownership with all the rights and privileges of real world ownership.

The advent of NIL rights for student athletes represents a monumental shift in college sports, offering new opportunities in financial independence and personal branding. Concurrently, the use of digital receipts to track provenance will certainly help the security of these transactions. Together, these developments are reshaping the landscape of college athletics, aligning it more closely with professional sports industry and creating broader economic opportunities.

So I will conclude by saying the concept of this convergence, there's a lot of conversation today about AI in general, what it creates and

where the ownership lies, and obviously there's fraud and risk and lots of other issues that have been addressed today. I wanted to offer an opportunity to think about digital ownership and beyond and what that might look like not just in the college athletic environment, but for all IP that is out there. And I hope this will help contribute to the conversation.

Thank you again for the opportunity, and I look forward to hearing from everyone else.

MR. MARTIN: Beverly, thank you very much for those comments. I actually do have a question for you, so before you leave, I hope you're still on.

MS. MACY: I am.

MR. MARTIN: Okay, great. Obviously, you're deeply embedded in the world of NIL and athletes' use of their (inaudible) purposes, and maybe even for some non-commercial purposes. Are you aware of any particular instances that maybe stand out in which the unauthorized use of NIL via AI technology has had an impact, maybe a negative

impact, or maybe in this issue that's in this area that you could relate to us and to the audience?

MS. MACY: Well, it's a great question and I don't have a specific example to offer to you, but I can say that in the very beginning of when this first was announced by the NCAA, it was really kind of a free for all and athletes were excited and there was a lot of people doing a lot of different things to try to jump on board in different ways. And that created a lot of confusion. And what has begun to happen, at least in the college athletic environment, is kind of these pools of athletes that are working under either an investment organization of alumni, et cetera, or having agents now and working with entertainment and sports agents to really help monetize and protect the athlete and also maximize their opportunity. So we're seeing kind of a maturity, if you will, in the space as it comes together. And I think that's an interesting concept to think about any kind of affinity groups where they might want to monetize their NIL,

whether that's sororities. I mean, I'm thinking in the academic environment, but this could obviously be extrapolated to a larger environment. I think that we would see a lot of different opportunities.

Will there be regulation around the financial coming together of some of these investment groups, et cetera? Do regular financial regulations apply to them? That's a different topic. I know that's not part of your focus today, but I think that's another question around when we look at digital ownership in general, whether it's college athletes or anybody else, and you have some kind of a digital receipt or some kind of tokenization. We're also moving into the area of fintech because now we're looking at how people can then trade those assets or, you know, monetize them further, put them in games, et cetera. So it becomes very -- it's kind of a spider web that starts to spread out into other areas, if that makes sense. I could talk about that. I think it might be a specialized topic. I

could certainly elaborate more on that, but hopefully that's helpful for today's conversation.

MR. MARTIN: No, that's great. Thank you, Beverly. I think a whole other panel session we could devote to that, so, but thank you for those comments.

All right. So with that, we will move on then to our next speaker. I have Corynne McSherry. And correct me if I said that wrong, Corynne, I hope that's right. Okay. Legal director of the Electronic Frontier Foundation. So I will turn it over now to Corynne.

MS. McSHERRY: Okay. Am I coming through all right?

MR. MARTIN: Yes.

MS. McSHERRY: Okay, great. Thank you. All right. So thank you for giving me the opportunity to share EFF's thoughts on the issues that are before us today and very much in the headlines.

So, EFF, this is a new discussion to some extent, but these are not new issues for EFF.

We have been working to protect online expression for decades, more than three decades. And so we come to these questions with deep experience, and not just as litigators and advocates for the public interest, but also with many years of experience counseling artists, activists, filmmakers, podcasters, journalists, and others who have been improperly accused of violating the law and, as a result, seeing their perfectly lawful content taken down or being pressured to disable access to other people's work. These are people who don't have the resources to fight back and EFF does our best to help because we know there aren't a whole lot of pro bono IP lawyers out there. I think I know most of them, but our resources are also limited. So that's the perspective that I bring to this roundtable and to the various proposals that we've seen proliferating that are intended to address very legitimate concerns about digital replicas in the age of generative AI.

I want to focus my remarks this morning

or this afternoon on the proposed No Fakes Act, because I heard it discussed a fair bit in the session this morning. As currently drafted, we are worried that No Fakes is likely to lead to over-censorship because it will incentivize platforms that host our expression to be proactive in removing anything that might be a digital replica, whether its use is legal expression or nothing and even though those platforms are not best positioned to decide whether something is a replica or not. I say this because the No Fakes Act expressly describes the new right as a property right. And that matters because federal intellectual property rights are excluded from section 230 protections. So if courts decide that the replica is a form of intellectual property, No Fakes will give people the ability to threaten platforms and companies that host allegedly unlawful content, and because those people tend to have deeper pockets than the actual users who create the content. So again, what we have seen in that context, the copyright context, for

example, also trademarks, is over-censorship.

Now, the bill proposes a variety of exclusions for news and satire and biopics and criticism that I think are intended to limit the impact on free expression. But one thing is certain, interpreting and applying those exceptions, one thing it will definitely do is make a lot of lawyers rich. In the meantime, those who can't afford to pay those lawyers will be missing from the discussion, and the work they want to share will be missing from the Internet.

In addition, the proposed digital replica rights, whether in No Fakes or No AI Fraud, effectively federalizes but does not preempt state laws recognizing the right of publicity. The trouble there is that in several states, the right of publicity has already expanded beyond its original boundaries. It was once understood to be limited to a person's name and likeness, but now it can mean just about anything that evokes a person's identity, especially in my home state of California. As a

result, the right of publicity reaches far beyond the realm of misleading advertisements, commercial exploitation, and courts have really struggled to develop appropriate limits. And in some states, your heirs can invoke the right long after you are dead, and presumably in no position to be embarrassed by any sordid commercial associations, which is the origination of the right, and in a position for anyone to believe that you've actually endorsed a product from beyond the grave.

No Fakes leaves all of that in place, and then adds a new national layer on top, one that will last for decades. It is entirely divorced from the incentive structure behind intellectual property rights, like copyrights and patents. Presumably no one needs a replica right, much less a post mortem one, to invest in their own image, voice, and likeness. Instead, it effectively creates a windfall with a commercially valuable persona or recent ancestor, I realize this reaches beyond to everybody, but a commercially valuable recent ancestor, even if

that value emerges long after they've died.

What is worse, it offers little protection for those who need it most. People who don't have much bargaining power, they agree to broad licenses not realizing the long-term risks. Savvy commercial players will build licenses into standard contracts, taking advantage of workers who lack bargaining power and leaving the right to linger as a trap for the unwary and for small time creators. A better way forward would be a limited federal right that protects against unfair commercial exploitation, does not disturb section 230 protections, and also preempts state laws that have gone too far in the direction of limiting speech and culture.

Thank you, and I'm happy to answer any questions.

MR. MARTIN: Thank you, Corynne. Very interesting comments, and we really appreciate that. And just maybe one question before we leave you. You talked -- you gave us your recommendation for a better way forward with a

limited federal right. Could you maybe flesh that out a little bit more? Because I think we were just getting to sort of maybe (inaudible) of your points you were making. And maybe you don't have anything to add to that, but if you do, we'd like to hear it. There's a little bit of time left over for that.

MS. McSHERRY: Sure. So I don't have draft legislation. EFF doesn't really do that. But what I think that what we would be very happy to work with folks on would be, you know, some form of limited federal protection that -- and it could be along the lines of amendments to the Lanham Act. It could take that form. It could take form of a species of publicity rights. And especially if it takes that form, I think there would be real value in having one federal right so that everybody knows what the rules are, but also one that doesn't just adopt all the sort of worst excesses of state publicity rights laws.

So there's sort of like a thin publicity rights approach that I think would be valuable in

the sense of federalizing things. Again, everybody's got the same rules and understands what the rules are and it doesn't vary depending on what state you're born in or reside in when you die, which is what currently happens now; has protections for people who aren't in a great position to bargain necessarily, depending on where they are in their career. So there's a version of this that could work really well and I think actually protects speech more than the mishmash we have right now, where we have sort of, you know, some outrageous claims under Tennessee law designed for Elvis Presley, California law designed for the many rich celebrities that have lived in California, and that is -- really truly seeks protection.

But the one key thing it also has to have is language that makes it clear that this is not intended to be a federal IP rights, which then makes trouble for section 230 protections, because that's really key to the whole thing. I know there's a lot of interest in encouraging, you

know, Big Tech, Facebook, YouTube, to take a stronger role in policing the content that they host. And I understand where that impulse comes from, but I think that people don't really understand is that section 230 protects far more people than just Big Tech. You know, Big Tech can afford to comply with whatever rules we throw at them. But all of the sort of smaller websites, people who may just be forwarding emails, those people are also protected by section 230, and we want them to be. It's really important that we keep those protections. And unfortunately, too often in these conversations, they just disappear and they're just not part of it. So they really need to be represented in any negotiations, and I'm afraid that that's not happening now.

Great. Thank you. That was (inaudible) like to hear more from (inaudible). Thanks so much, Corynne.

All right. With that, I will move on then to our next speaker. That will be Natalia Aranovich, founder of the Aranovich Law Firm, PC.

So, Natalia, I'm going to turn this over to you then.

MS. ARANOVICH: Hi, good afternoon, everyone. Thank you so much, Jeffrey, for the introduction. My name is Natalia Aranovich, I'm an attorney. I practiced 15 -- for 15 years in Brazil before practicing in the U.S. I became licensed here in 2015. And I hope to contribute today a little bit with the concept that I acquired back in Brazil.

So just before I start, just want to give a little bit of the Internet history and for context. So we first had the Web 1.0. So the Internet was mainly informational with a replacement of what we had of encyclopedia. Then I had Web 2.0 and when social media was created, and that was like in the 2000s. And what happened is like people overexposed themselves, gave a lot of content for free social media channels, and we create our personal brand, which does not have any place I can register.

So all the format of advertising was

changed, also. So people became the spokesperson for the brand and they were not only -- they don't need to be celebrities. The concept of influencer was created, followers. And people, like I said, became friends. And the only way to identify those persons, that real persons was using the checkmark, the blue checkmark that is given by social media channels that I even don't know how they grant us this checkmark. So that's a form of identity that is given by private companies to individuals.

And now we have the Web 3.0, first phase, explosion of NFTs and blockchain, cryptocurrency during the pandemic. And that turned now into the second phase. It's the AI explosion and regenerative AI. So Beverly touched a little bit about the digital receipt. That's something we could use in the new phase of the Internet to at least attest that something comes from the person. But that will take time.

So my contribution today, I'm going to answer question 5, letters A to E of the Federal

Register. I'm not going to have time to go all over it, and I'm just going to address that. I think it's more important that I bring for my -- when I was practicing law back in Brazil, because I was amazed to learn when I moved to the U.S. and started to practice IT here, that rights of publicity were considered intellectual property. Because in civil law countries in Europe and Brazil follows civil law, we have the concept of personality rights, which is under privacy and -- or personal rights, of rights as a persona, what here in the U.S. you call rights of publicity. But personality rights are way broader than that because it protects the development of my personality in the legal world.

You know, my own opinion after practice law in a foreign country for many times, I don't see how a person could be considered the same thing as an idea, because intellectual property protects ideas from our mind, and a person is not an idea. A person is a human being and deserves some protection, especially protection for the

reputation.

So I believe that current laws in the U.S., like rights of publicity, privacy laws, defamation, they don't protect this aspect of the personality. And I think new federal law should focus on that, because I think we already have a lot of laws, state laws regarding rights of publicity, and that's already consolidated. So we kind of know we don't need to reinvent the wheel here. I think we should be more concerned about the rights of a person that have its reputation damaged. Like some privacy laws, for example, they need to be highly offensive to characterize as a violation of one of those privacy torts. And sometimes a lie is not considered highly offensive. If someone puts me on saying something that I never say or endorsing a party that I never endorsed, that's a lie. And sometimes that's not going to be protected. And I think that's necessary, especially now that we have so much content for free. And people can use my voice to send voice message to my parents. That happens in

Brazil a lot, not a voiceover, but they use my picture and my image asking for money, you know. So I think that's what the new law should focus on that.

Also we have the concept of moral rights, and I think that's something we need to go also address in this new law, because it's recognized for -- under VARA for visual artists. And I think that should be something that should be recognized for human beings as well, who have their personality violated or reputation.

Also, I think, it should be focused on non-commercial use. We need to -- of course, there are some statutory damage that needs to be higher than the ones that are current in the copyright law. We have two bills, proposed bills. Those bills, I think establish statutory damage maximum of 50,000. So how come one's reputation worth less than a copyright, you know? So I think a copyright is 150,000 maximum; attorney fees, damage in general. And I think something that needs should be addressed, like take -- use some

take down notice similar to the one that's used at the DMV (phonetic) and Safe Harbor, because it's very difficult to communicate with social media companies, YouTube, Instagram, and Facebook. If something is placed, you can find an email, you can connect to the person to have the content removed. And even if you were the person and you are able to show your ID, that's very difficult to reach out to them. So I think that needs to be addressed.

Regarding preemption, I think -- I don't know if should preempt because I think federal law should focus on something different than commercial use only and which is already addressed by the publicity and law. So I have a lot of other things that I would like to discuss, but if I want to summarize something that my -- that I'd like -- that I said here is like, we should think of this notion of personality rights or rights of a persona, instead of only commercial rights that have a financial harm in the person's reputation. So thank you very much.

MR. MARTIN: (Inaudible). Thanks, Natalia.

MS. ARANOVICH: I can't hear you, Jeffrey. I can't hear you.

MR. MARTIN: Can you hear me now? Is that okay?

MS. ARANOVICH: Yeah. Yeah.

MR. MARTIN: Okay, I guess -- sorry, we had a little technological glitch here that somehow we were able to fix. So thank you for your patience.

No, I just was saying, Natalia, thank you very much for those comments and so I think they took an approach different from some of the other speakers that we've heard today. So that's much appreciated.

With that, we do have a little bit of time. I know that you had mentioned you had some other issues that you wanted to touch on. If you would like to touch on those, that's possible, we have the time, but if not, I'm going to go to the next speaker. So you have roughly two minutes.

Would you like to use that?

MS. ARANOVICH: Just one thing that I'd like to address that I think, before also talking about a new law, I think we should launch an educational campaign about the fakes. Because a lot of people, they don't understand what is happening. They download apps from all sources and create the fakes without knowing they are -- like, that could hurt someone's reputation. And I see, I was present in the beginning of the Internet when everything happened, and I was involved in the conflict between domain names and Internet. And also, people are using copyright content, thought they were there for free. And I think we are seeing the same thing over again. And we need to educate people about that, maybe launch a hashtag campaign or something that deep fakes are not something that -- you should worry about. And I think a national educational campaign should come first. Thank you.

MR. MARTIN: Great. Very helpful. Thank you for that. With Natalia being done, we

will move on then to our next speaker. That will be Duncan Crabtree-Ireland, national executive director, chief negotiator for SAG-AFTRA. And I see that you're ready to go, so I'm going to turn it over to you then. Thank you.

MR. CRABTREE-IRELAND: Well, thank you so much for the opportunity to be part of this roundtable, not only to you, Jeffrey, but also to Director Vidal and Ann Chaitovitz and for all your attention to these issues.

And just for anyone who isn't familiar with us, SAG-AFTRA is the labor union that represents performers, recording artists, and broadcast and online journalists. And so far as I know, we are the first union to address these aspects of name, image and likeness rights and collective bargaining, particularly with respect to digital replication of performers and film, television, streaming, animation, and music. And, in fact, we're currently on strike against all the major video game companies over this very issue. So this is a very timely discussion from the

public policy side.

In the notice that you put out, there was a sort of threshold question which was asked, which I feel like people have sort of assumed the answer, and I hope that's the case, but I'll just explicitly address it, which is, does unauthorized name, image, and likeness content harm individuals? Yes, it absolutely does. It harms individuals, it harms institutions. It even harms our political and economic system through the creation of deep fakes and the reduction and erosion of trust in what people actually see or hear with their own eyes and ears.

And while our members, while SAG-AFTRA members, and there's over 160,000 of them, are on the front lines of experiencing the negative impact of unauthorized name, image, and likeness use, especially with respect to AI, this is something that affects everyone. And it ranges from deep fake pornography to deep fake content that affects the public perception of an individual. It can affect their work

opportunities. And, of course, as other panelists have remarked, it can affect their persona value.

There's also concerns with respect to the unauthorized use of name, image, and likeness in commercial projects and even the creation of explicitly misleading content. I mean, I myself, not a celebrity by any stretch, but I myself was deep faked last year during the contract ratification campaign after our four-month strike against the studios and streamers by some unknown individual who created a deep fake video of me saying false things about our contract and attempting to encourage people to vote against it in my voice and using my face, even though those are things that were anathema to me. So this is something that affects regular people, it's something that affects our members, it affects everyone.

From our point of view, the fundamental principles that should underlie both contractual relationships and also public policy in this area are the idea that individuals should have a right

of informed consent over the use of any replica of their face, their voice, their body, their movement, et cetera. Some people call that consent and control. We call it informed consent because we think there is a need for that to come with information about what those uses are going to be. And of course, from a union perspective, there should be fair compensation for that use as well.

And to answer another question that was in the notice, with those principles firmly established, yes, of course, AI tools can provide legitimate and valuable uses, not just for companies, but also for individuals, if those principles are respected. But the current legal protections in this country are woefully inadequate, especially at the federal level. The Lanham Act, which is mentioned in the notice, is just far too limited in its application. It's really not useful for the vast majority of people who are impacted by all of those types of unauthorized uses that I mentioned. And state

protections don't work for many reasons. They're very limited in many cases to commercial misappropriation, which is no longer really an acceptable limitation. And, of course, as has been referenced by other panelists, the lack of clear protection because of section 230 of the Communications Decency Act for state-level intellectual property protections make the state (inaudible) and difficult to use.

So we do strongly support a new federal right, and we think the No Fakes Act, which was introduced last week, strikes the right balance in this area in a host of areas of concern. Certainly plenty of time has been put into the process of putting that language together, lots of consultations and discussions, including formal hearings. And we think that it addresses the First Amendment issues and the duration of transfer issues, among others, in a very balanced but successful way, and we strongly support that approach.

I think the reality is anybody who

believes that these rights should be limited to commercial uses is really living in the past. The abuse of people's names and likeness rights are rampant and they are not commercially limited. As the example that I gave of the deep fake of me myself, it's just one of endless examples of this, including I'm sure people are aware of the example of middle school teachers being attacked through the use of unauthorized digital replicas on social media. These are things that are not protected under the First Amendment and should not be subject to a lack of a remedy.

Really, section 230 is not something that, in this day and age, fundamentally protects individuals. It's a protection of Big Tech. It's a Big Tech talking point that it protects individuals. But individuals' right of freedom of expression and freedom of association is being abused by the misuse of AI technology today, right now. And this is a real challenge that needs to be addressed. And it can be addressed through providing at least some sort of right as like the

ones referenced in the No Fakes Act.

You know, I think that we need to recognize that we are in new territory with respect to the First Amendment, because we're talking about technology here that lets someone force someone else to speak their message. And we need to recognize the negative free speech and associational impacts that occur if we don't provide any kind of remedy for that. Because free speech is not only about having the freedom to say what you want to say, it's also about the freedom to not associate yourself with messages that you don't agree with and about making sure that other people can't force you to do so.

So I think we need to really reconsider, because things have changed in this world. There's no longer a practical veto over what people do. I mean, this is something that, you know, prior to the advent of this technology, you could prevent these things from happening by simply refusing to do it. Now if someone can create a replica of you, whether you choose to do

it or don't choose to do it doesn't stop them from putting words in your mouth. And that is a very serious problem.

As far as identification of deep fakes goes, we think that there needs to be -- this needs to be addressed on both sides of the issue, not only using the technology that's been put out there, one of the major tech companies has said they have a tool that's 98 percent successful in identifying deep fake videos, but also in supporting content authentication initiatives to help make sure that trusted and reliable content can be seen, viewed, and understood by the public. This is particularly important for our broadcast journalist members, although it's important for all of our members, and it's important for all of us as a society, because if we cannot authenticate the information and content that's coming to us, if we can no longer trust our eyes and our ears, and we have no other way of authenticating that information, it undermines the ability to maintain a democracy where the public is engaged in

important public policy discussions.

So on that note, I just want to wrap it up and thank you so much for the opportunity to share these remarks, and I look forward to the continuing discussion that I think we'll all be having with respect to addressing the impact of this technology. Thank you.

MR. MARTIN: Duncan, thank you very much. Incredibly interesting comments, as usual. We really appreciate you taking time out of what I know you have as a busy schedule to be with us here this afternoon and to also provide comments to all of our listeners around the country. So we really appreciate that. Thank you.

With that, I'm going to move on to our next speaker. And, Duncan, we may come back to you, So I hope that's okay since we may have some follow-up comments. All right.

So with that, we will go on to the next speaker, who is Nick Garcia. That's what I have listed here, Nick Garcia, senior policy counsel for Public Knowledge. So with that, Nick, I'm

going to turn it over to you. All right.

MR. GARCIA: Thank you very much. It's great to be here with you today. As was just said, my name is Nick Garcia. I'm a senior policy counsel at Public Knowledge. Public Knowledge is a nonprofit, nonpartisan public interest organization, and our mission is to promote freedom of expression, an open Internet, and access to affordable communications tools and creative works. My work there in particular focuses on how AI and other emerging technologies present both obstacles and opportunities for advancing that expression (phonetic). As a result, I believe that AI can be a powerful tool for enhancing communication, comprehension, and creativity, but there are, of course, challenges, too.

One of the most disconcerting advances unlocked by machine learning, I think, has been the replication of real or even completely synthetic human voices and likenesses. There's something fundamentally unsettling to us about the

quality and ease through which these new AI-powered digital replication technologies can literally put words in someone's mouth or show them doing something that they never did. This technology is also undoubtedly going to have profound and disruptive implications for certain industries like voice acting, the music industry, and others. I think we heard a little bit of that from Duncan just now from SAG-AFTRA.

So the main thrust of my comments, though, is that today these are not wholly new challenges that we're confronting. If we look back into the not too distant past, it's easy to find similar concerns regarding misinformation, deception, economic catastrophe as a result of other kinds of advances in technology, like digital image editing, innovations in home recording technology, and so on. And I say that not to minimize the potential impact of this new wave of AI technology, but really to offer up some reassurance that we have experiences, structures, and existing protections that we can draw upon and

learn from as we're addressing these challenges now.

So, in short, what I'm saying by way here of introduction is don't panic. We should not be massively reinventing legal regimes, and we should have humility about our ability to predict the future course and shape of technology lest we wind up with some oversight and laws and policies that will hamstring technological development and innovation, and also limit our free expression online. So to this end, our host from USPTO wisely polls three questions for us: Whether existing legal protections for name image likeness are sufficient, how those interact with other IP laws, and how AI technology impacts existing legal protections. There are many more learned legal scholars than I on these questions, so what I hope to offer from a public interest perspective here are just some quick answers and important frames for considering these questions.

First, I think it's essential to note there's broadly two kinds of harms when we're

thinking about protections. And so I want to take that first question about existing legal protections and also kind of that last question about how AI impacts existing legal protections together. Because I think what we want to think about is there are both dignitary harms and there are commercial harms, and in many ways existing image and likeness rights, Lanham Act claims, state-level right of publicity, all of these things are focused around commercial harms. Even the dignitary aspects of existing protections are usually oriented around the idea of preserving the economic value of reputation for people. So I can say a whole bunch more on the commercial harm element here, but in short, our recommendation is a federal preemptory right of publicity to simplify the patchwork of existing law. We need a statutory right to address commercial use that's accessible, easy to navigate, works all across the country, and is going to protect both the biggest celebrities and also everyday working professionals.

What I'm more worried about in terms of this question of gaps of protections and what AI changes is how do you (inaudible) ease of use of deep fake technologies exacerbating harms so ordinary people? Most prominently, I'm deeply concerned about the spread of new synthetic forms of non-consensual intimate imagery, and how it can be used to abuse, harass, and denigrate people online.

I think overall the harms to ordinary people are going to be these kind of dignitary and reputational harms, and that forecloses them from using these existing protectionist things. It's not to say that celebrities and public figures are left out here. Obviously both kinds of protections are important for them. I think everyone is familiar with how public figures, especially women, have been subjected to attacks on their dignity through things like non-consensual intimate imagery and other abuses of their name, image, and likeness.

But as we're considering how to close

the gaps in these protections, the main concern I want to highlight is that if we're going to be doing this, we have to be laser focused on what harms the proposals are actually (inaudible), whether it's those dignitary ones or it's those commercial ones. And we want to ensure that any new protections are really protections that work for everyone.

So that brings me to the second thing, which is how these legal protections intersect with other intellectual property laws. And I want to address two things. First, really quick talk about the intersection sections of the (inaudible) law. Name, image, and likeness rights run the risk of spilling over into the domain of copyright right now, especially in terms of how there's so much conversation about the copyright in the AI context as well. We need to ensure that fair uses of existing material are protected, such as the ability to adapt existing works, and that using an AI tool to do that doesn't suddenly violate maybe new AI-focused name, image, likeness rights if

there's existing audio recordings or images being used.

We also want to make sure that name, image, likeness rights aren't used to create a kind of new aura around name, image, likeness and create something like a protection for style or something like this that has been discussed in terms of especially how people use names in the context of many of these AI tools.

There's always been a strong sense in the realm of copyright that what we're protecting are specific forms of expression, specific instances of expression, and we're not protecting whole styles or genres or forms of work. And we don't want those things to become locked away by the first (inaudible) to them or by the biggest companies that control the most things in those areas.

The other main intersection with other IP laws that I want to address goes back to the first point, and about that balancing between both celebrities and professionals and ordinary people.

And like some of the other folks here, I want to talk a little bit about proposals to new IP rights, including things like the No Fakes Act, which create new intellectual property rights in order to protect name, image, likeness rights in the context of digital replicas. We think that this legislation has to be really carefully considered and calibrated when you're going to create a new kind of intellectual property right. And right now, something like No Fakes in its current form, and we hope that there's still room to change and adapt and work on this bill because it doesn't really strike that right balance.

There's a notice and take down element here that recreates parts of things from the Digital Millennial Copyright Act without fixing many of the problems that we know already exist with that kind of notice and take down regime. We know that that's going to lead to over enforcement. We know it's going to lead to limitations of free expression online. I want to lift up and echo the comments of the Electronic

Frontier Foundation on that regard.

We also can see that in this kind of thing, that there's way too easy access for broad licenses for ordinary people to accidentally or incidentally sign away the rights to their name, image, and likeness. And most importantly, it's clear that something like No Fakes was highly engineered around the complexities of commercial use. And it's thinking mostly about sophisticated actors or people who are well represented in the industry, not really considering how something like this is going to affect ordinary people. And it's not particularly focused on those kinds of dignitary harms that we know are going to be the most important things for regular people.

So in closing, I just kind of want to return to my first point, which is that AI is accelerating and exacerbating some of these challenges, but these challenges aren't new. There's always been rights of publicity violations. We've always struggled with misinformation, with abusive conduct online.

These things are not new. We have some existing tools and protections, and we have the ability to close gaps in some of them to apply to AI specifically.

And we also know that there's long overdue policy interventions that can help in some of these areas. We need comprehensive privacy laws. We need other kinds of information environment intervention in order to help address misinformation, like better support for local news.

And we should also be at the same time imagining how this new technology requires new solutions. So we should be thinking about how to create long-term structures, expert AI regulation and governance that's going to be flexible and adaptable over time without limiting ourselves to some laws that we're going to be stuck with for many years and that may not strike the right balance. I think if we do that, if we have some humility about how this technology may change and adapt and if we take a real focus on how ordinary

people and users are going to be affected by this technology and what we need to do to protect them, and that leads us to a more creative and connected future for all of us.

MR. MARTIN: Great. Nick, thank you so much for those comments. Appreciate that. One quick question. I know that you focused quite a bit on sort of the two types of harms that you perceive as coming out from these developments in AI generative technology at the current time and ways to address those. Legislatively speaking, would it seem that you are promoting maybe two different types of legislation that are needed to address those two types of harms or were you maybe perceiving one type or piece of legislation that might be able to address both? Just curious about that.

MR. GARCIA: Yeah. I think it's possible, of course, that you could get exactly the right piece of legislation that is tuned in the right way that could handle both of these challenges and do that in a comprehensive way. I

will say that I do think that things like notice and take down regimes can be really important for making enforcement accessible to ordinary people. Ordinary people aren't going to have the ability to, like, for example, go into court and do commercial litigation to protect their dignitary rights. Something like a notice and take down regime would be very helpful there. But we want to make sure that that notice and take down regime is one that is carefully tuned to avoid harms to free expression, that it's not going to exacerbate something like misinformation by letting people take down things that aren't really digital replicas.

We want to make sure that there are pathways to make sure that content is reposted back if it was taken down mistakenly, and that there are ways to make sure that we hold people accountable for filing false notices. So all of those kinds of things would be important things. But notice and take down regimes are like a good example of something from No Fakes that could be

quite important for helping to address some of those dignitary harms. And we know that there are other kinds of bills and legislative solutions out there that might be super laser focused on some of those dignitary harms.

So it is possible that you can have kind of pretty comprehensive legislation that addresses things all at once if it gets everything really right. Or maybe we want to think about how to have maybe a federal right of publicity law that is different, that doesn't create new intellectual property rights, and combine that with some targeted legislation, including things like the Defiance Act or some of the other bills that have been proposed specifically focused around non-consensual, intimate imagery to address some of those dignitary harms that we want to address.

MR. MARTIN: Thank you so much, Nick. Appreciate that. With that, then, we will move on to our next speaker. We have Sivonnia DeBarros from the SL DeBarros Law Firm. Sivonnia, are you ready to go?

MS. DeBARROS: I am.

MR. MARTIN: Great. So we'll turn it over to you then. Thank you so much.

MS. DeBARROS: You're welcome. Hello, everyone. As you said, I'm Sivonnia DeBarros, also the owner of the SL DeBarros Law Firm, and I help first generation, million dollar creative enterprises and athletes protect, leverage, and monetize their NIL rights. So today I will discuss issues of unauthorized NIL, the harm it can cause, whether the law is sufficient to protect such rights, and how should reputations be considered with the new rules around name, image and likeness in the collegiate space, athletes are not being properly educated on their NIL rights, which is also a huge problem for many creators, which is one of the reasons why I believe we are all here today.

And so I will come straight out with a question of how does the use of unauthorized NIL harm individuals and whether AI technology exacerbates these issues? So, as we know for

years, and some of my panelists have also discussed that the law that exists now, there's just so many gaping holes, right? So, for a long time, we've had the opportunity to file suit for infringement of our brand and or the services that are being proffered to the community based on a particular name. Right? And we've been able to sue for certain commercial unauthorized use of one's right of publicity. But here's the problem. Not all states one, have a right of publicity statute, which also leaves individuals hoping to fall back on certain IP rules, trademark and copyright, primarily, but also potentially, you know, having to figure out where can they fall in with regards to the FTC for false endorsement claims. And lastly, contract rules. So if an individual has not engaged in the deal making process around their NIL, they're out once again around the law. And so it harms the owner of NIL by not having an actionable claims for use of their NIL or persona, as one panelist mentioned earlier today. If they have not used their name,

image and likeness in a way that is protected by IP law or contrary law, or covered by the federal rules, as it stands now, they will be out. They will not have a cause of action to bring in front of a judge and or a jury.

And AI exacerbates this issue tremendously, as we've heard before, that individuals are creating these fakes, people's reputation are being ruined, and so we have to also understand that the owner of the NIL, if someone is utilizing AI to benefit from this person's name, image, likeness, well, then the owner is not receiving any commercial benefit, typically, right? Or their voice, their image, and their likeness is being used in some form or fashion that they have not authorized at all. And so other individuals may purchase services and or products thinking that the owner of NIL has actually said or did or taking us back to this idea of endorsement. And so this unauthorized use can deter this person's moral standing or reputation, which could also ruin any type of

income that they may have received or could stand for deceased.

One thing or example that I am aware of is that, and I'm sure everyone here knows about Taylor Swift, and there were so many different photos that were created. One was pornographic pictures that flooded the Internet and flooded it through the platform ad formerly known as Twitter. And what the media says is that there was a message board called 4chan where people created these types of images. And this message board is known for sharing hate speech, conspiracy theories, and increasingly racism and offensive content created using AI. And so when we look at everything as a whole, right, whether someone is -- if their intention is not to use a person's name, image, and likeness for commercial profit, what are they using it for? Because if their use is extending to a level of creating detrimental harm, well, then we have a huge problem. But our law does not necessarily protect the needs of rights, okay?

And so I want people to also think about unauthorized use of art by artists. It's no secret that artists have struggled, many of them for many years, to have their work be widely known and appreciated and respected. And so, as AI continues to learn how we communicate and compile images that we share and pose, it's also possible that an artist's true work is being used or copied for the benefit of others, but at their detriment. And there was a federal law dispute against an AI company called Stable Diffusion, where there's an issue of whether this company actually used the images that particular artists had created in order to support a claim for copyright. And so, as it stands right now, copyright law may not even be the proper avenue for artists to protect their work.

We heard about deepfakes. There was a C-suite executive whose voice was cloned, and he joined the meeting, his colleagues, to wire large funds to another bank account. Right? And so here we have the intersection of AI, which can be

a great benefit in helping individuals, and especially those who are just getting started, not really well known, don't have a stable income at their disposal to hire teams to be able to do things at a faster rate. But on the other side is the detrimental issue of people having that opportunity to nearly clone a person to their detriment.

And so how can AI be used as a legitimate tool in circumstances where individuals grant permission to a third party? Well, one of the things that I think could happen is setting clear parameters of specific AI tools. And so we are educating the public on -- on what are some tools that are already out there in the public. Well, now you want to also think about what are the terms of the license that you're going to provide to that person, to use their name, image, and likeness as they create these things through this AI platform. Creating parameters around what type of images or types of sounds, statements, general statements, that can be created within

this ranking of the permission to use one's name, image, and likeness.

But I also believe that having some parameters around a code of ethics, for instance, should be considered. A code of ethics is essentially a bedrock for any successful business. Most businesses have their vision, their mission, and their goals, and thus there are parameters in place on what they will have someone in house, or as a third party or licensee to any product or services that they have. So we should be thinking about that as individuals, when we grant a certain right to someone, don't just assume that if I grant someone the right to use their name, image, and likeness in some form or fashion, that AI won't be utilized. And so we should keep that on the forefront of our mind about what are the parameters that we want to set around the use of AI as an individual or company, and move forward in leveraging those rights under that particular agreement.

So what limits, if any, should be placed

on the voluntary transfer of rights concerning name, image, and likeness to the third party? And one of the questions that was raised, for instance, should there be limits on the duration of such transfers? Well, as I thought about this question, I thought deeply about minors. We don't necessarily think about children when we're dealing with name, image, and likeness. So in cases of minors, especially child actors, the student athletes, and now, of course, you guys know we are dealing with names in the collegiate space in many states. Also at the high school level. Sometimes parents are negotiating rules for their child. And so the duration -- one of the recommendations that I would make is that the duration of negotiating an NIL bill for their child should not extend beyond that child. So we don't want children to suffer bad business decisions of their parents.

Furthermore, in cases of minors, parents should be required to see an attorney prior to executing said bills and be supported by the

government in having attorneys to help them negotiate and close that deal if their household income falls below a particular level. We have seen recently a popular football player out of Florida get taken advantage by a large company. And I'm not sure if he had representation, but had he had some form of representation I doubt the duty he would have fallen into, would have even been made. All right?

And so another recommendation that I would consider is when we're looking at the general landscape of name, image, and likeness, where the law does not support any protection, we should treat it somewhat like property rights, like a state law. Right? If an individual transfers their rights during their lifetime, any language around perpetuity should be considered preempted by national law, meaning that once that person passes away, those rights should revert back to their original owner's estate. Giving their heirs the ability to leverage and monetize that person's NIL however they see fit. Okay?

And so, as I wrap up, I want people to really consider the reputation of individuals and creators. You know, there's an adage that says, don't do in the dark what you won't do in the light. And it's critical for us to think about that in a digital age. Sometimes we think if we sit behind a computer or keyboard that no one will ever figure us out. You know, folks are using AI to promote or use one's name, image, and likeness to clone their image, their text, you know, the way that they -- they speak inside of text or statements, their voice, or just even cloning videos of a person. But we have to be considerate about how our creation, by utilizing AI, will impact the NIL owner's reputation and that character of that person. For many businesses, your reputation is your currency. And so before we decide to disseminate anything, we must think about the other person. We must think about the impact that it would have on us individually, our community, and society as a whole, as the one who have created something that could be considered

controversial and detrimental to another. At the end of the day, what benefit would you receive from creating something that is detrimental? Likely nothing.

And so, in closing, federal rules should definitely focus on national regulation of collegiate name, image, and likeness, national NIL rights of publicity, not just leaving it to the state level or having people try to find a way to fit inside of patent, trademark, or copyright law, and not be solely based on commercial use. But also provide a right of action for those who have seen their name, image, and likeness being improperly used through unauthorized use and seeing a huge impact on their ability to commercialize their name, image, and likeness, if they choose.

MR. MARTIN: Great. Thank you, Sivonnia. That was incredibly helpful. One follow up question. I think you mentioned the use of creating parameters. I know we had some other speakers earlier in the day talk about parameters

for types of images or sounds that were created, and you also mentioned parameters for a code of ethics. And I was just wondering, for both of these sets of parameters, have you considered how those would be enforced? Would they be enforced? Are these voluntary parameters that entities or individuals would follow?

MS. DeBARROS: I think it could be both. I know that a code of ethics could mean something different to different people. But I do believe that as the federal government gears up to create a set of rules on how individuals utilize AI, I do believe that there could be guidelines on, you know, if we list out what the code would be. Let's just say Section A would be, someone mentioned, like, informed consent. Did you get informed consent? Does it paint this person in a provocative way? You know, so certain things like that.

But I also believe that there could be that individual aspect of a code of ethics, just to make sure that one, as the owner of NIL, you

thought long and hard about what your brand is, and so you know how you want your character to be portrayed. Well, now that you -- you have that set of ethics for yourself, then you can pass that along to the other party. Not assuming that they're going to do what you would do for yourself. Right? But you pass that along to them through now your deal, your contract to make sure that you have bolstered any type of right that you would have at law.

MR. MARTIN: Okay, thank you so much for that. We will now go on to our next speaker. So that is Tom -- Tom Clees, Senior Vice President of Federal Public Policy for the Recording Industry Association of America. So, Tom, I'll turn it over to you now. Thank you.

MR. CLEES: Thank you, Jeffrey. And thank you so much to your team and to Under Secretary Vidal for holding this panel. I'm really -- I really appreciate the opportunity to speak here, and I'd also like to associate myself with a lot of the remarks made by my fellow

panelists. This has been a great discussion. I particularly like to thank Duncan Crabtree-Ireland for his remarks. A lot of what he's going to say is what I'm going to say. And so because of that, I think I keep my remarks relatively mercifully short.

So my name is Tom Clees, and I'm the senior vice president of federal public policy for the Recording Industry Association of America. RIAA represents hundreds of music companies of all sizes that together create, manufacture, and distribute the majority of all recorded music consumed in the United States. In addition to creating the songs and shows that we all love, the music industry contributes hundreds of billions of dollars to our national GDP and supports millions of jobs across all 50 states. Because of our connection to virtually every technology for consuming entertainment media, we've also been at the forefront of developing policy and fighting IP infringement since the creation of the World Wide Web.

From the invention of the phonograph to the streaming and social media age, the music industry has quickly adapted to technological disruption. In just the past decade, our companies have reoriented their business models around the streaming revolution. This industry, which evolved from a physical distribution to a digital distribution in just my lifetime, and I'm not that old now, licenses content on free market terms to hundreds of streaming services around the world. Artificial intelligence has been integrated into music production and engineering for years before AI policy issues were top of mind in Washington.

Our companies continue to embrace new breakthroughs in AI every day. Engineers are creating new and immersive audio experiences that will change how we listen to and experience music. Artists are using digital replicas to cut versions of their songs in every language and enable them to connect with fans around the world. And performers who have lost their voices altogether,

like Randy Travis, can use this technology to keep their sound alive. But neither these innovations nor the value of a songwriter or artist's work is sustainable in the absence of clear and enforceable intellectual property protections against unlicensed and infringing digital replicas.

By now, it is well understood that there has been an exponential rise in unethical AI voice and likeness clones that steal the fundamental aspects of an artist's individuality and autonomy. It's difficult to overstate the harm posed to an artist when anyone with a laptop can auto generate an album in their voice, plug the market with rip-offs, and use deepfakes to portray them in deeply offensive or even sexually explicit contexts. Existing law is not sufficient to prevent these harms.

Fortunately, leaders in Congress are forging bipartisan consensus around effective solutions. Last week, Senators Coons, Blackburn, Tillis, and Klobuchar introduced the NO FAKES Act,

which creates enforceable new federal intellectual property rights, allowing victims of non-consensual deepfakes and voice clones to have them quickly taken down and recover damages. This legislation's thoughtful, measured approach preserves existing state causes of action, including the Elvis Act in Tennessee, and outlines carefully calibrated exceptions to protect the public's genuine interest in free expression. RIAA is proud to join the growing coalition of content and tech stakeholders endorsing this bill, including the Human Artistry Campaign, SAG-AFTRA, the Motion Picture Association, OpenAI, and IBM. We hope that Congress can act quickly to pass this bill.

Now, some stakeholders have argued that the existing state of right of publicity laws, or the Lanham Act, are sufficient to address the spread of unauthorized digital replicas and deepfakes. Respectfully, I would suggest that a simple Google search or a swipe through social media should make it clear that these are not

entirely fit to purpose. State publicity laws are wildly inconsistent across the country and were not developed with AI in mind. Many of them are privacy based laws that cannot be used to enforce takedowns on major online platforms because of Section 230 of the Communications Decency Act. In California, where many major platforms reside and where publicity rights are based in intellectual property, the 9th Circuit has interpreted Section 230 to shield platforms from state IP claims. Even with states like Tennessee taking major steps to update their laws for AI, we need a solution grounded in federal intellectual property law for it to be effective.

Trademark law, while potentially helpful in some circumstances, is also too limited in scope to address the full breadth of harms posed by unauthorized digital replicas. When a producer creates a perfect replica of Elvis' voice and releases an album of new "AI Elvis songs" that are labeled as such, they can eliminate the potential for consumer confusion while still diminishing the

market for Elvis' original works. And this does not even begin to address the harms posed to artists and everyday Americans by deepfakes that cross the line into the offensive or into exploitative material.

Our companies alone have sent tens of thousands of notices of this kind to try to take this kind of content down, and most of them have been ignored. Again, the exponential proliferation of unauthorized replicas and the tools to create them, and the fact that major platforms are choosing to leave the vast majority of them online, should be proof enough that the law needs to be updated for the age of AI.

Thank you again for this opportunity to join this discussion, and I'm happy to answer any questions.

MR. MARTIN: Thank you, Tom. I think that was very clear, very precise. So, much appreciated. We will move on then, to our next speaker. That will be Jill Crosby, Policy Analyst for Engine Advocacy and Foundation. Jill, I'll

let you take it away then.

MS. CROSBY:: Good afternoon. Thank you for the opportunity to participate today. As you said, my name is Jill Crosby, and I'm a policy analyst at Engine, a nonprofit that works with thousands of startups across the country to advocate for pro-startup, pro-innovation policy. I appreciate the opportunity to discuss how a federal name, image, and likeness law would impact the startup ecosystem and the most appropriate mechanisms to address such content without showing startup innovation.

Section 230 protects online service providers from having to aggressively filter user generated content and face costly litigation. Considering a new federal NIL role as intellectual property for the purposes of Section 230 would make it risky for startups to offer services and host content which undermines both speech and competition. Startups do not have the resources to pre-screen all user content or face costly, time consuming lawsuits over their moderation

decisions and liability. The Copyright Office advised in the first part of the recently released report on copyright and artificial intelligence that new federal legislation on digital replicas should be excluded from Section 230, and all of this further explain that OSPs are best positioned to prevent the continuing harm from the availability of such unauthorized content. This reasoning overlooks the startup ecosystem and smaller technology companies who do not possess the same extensive resources as larger companies when it comes to filtering and restricting content. Ultimately, a federal NIL law should not be considered intellectual property for the purpose of exclusion under Section 230.

Still, if there is a Section 230 carve out for NIL content, bright line rules would be necessary to eliminate the steep obstacles that startups often face as key innovation drivers in the industry. We do agree with the Copyright Office report that liability should only attach where the distributor, publisher, or displayer

acted with actual knowledge that content was a digital replica of a real person and it was unauthorized, rather than a "should have known" standard. Requiring actual knowledge creates certainty for providers. So it would not be feasible for startups to investigate or predict whether users would use their platform to post unauthorized NIL content.

With startups lacking the resources to address every instance of posted NIL content, the notice-and-takedown rather than a notice-and-stay-down system is the preferred framework. The notice-and stay-down framework would lead to over filtering. As the Copyright Office report suggested, Section 512 does not need to be mimicked here. Although it is important to still note that there are instances of improper reporting under Section 512's notice-and-takedown framework that protections here should address under the new federal NIL law, such as requiring more than just a good faith belief that there being unauthorized content or financial penalties

for a false or deceptive notice.

Engine strives to bridge the gap between policy makers and startups. The Copyright Office report addressing digital replicas and recent legislative proposals takes into account larger companies regulations of digital replicas. But both ends of the innovation ecosystem must be considered when drafting federal NIL laws. We asked for a thoughtful approach in formulating a federal NIL law to avoid harming startups access to the innovation ecosystem.

Thank you again for the opportunity.

SPEAKER: We can't hear you.

MR. MARTIN: Can you hear me now? Okay, great, thanks. Sorry about that. Jill, thank you so much for those comments. I appreciate the diving into the different frameworks for notice-and-takedown, as well as the potential that has for impacts on startups. So thank you for that.

We will now go on to our next speaker. That will be Joe Whitlock, the Executive Director

of Policy at the Business Software Alliance. Joe, are you ready to go?

MR. WHITLOCK: Yes. Can you hear me?

MR. MARTIN: Yes, we can. Thank you very much. I'll give it over to you then.

MR. WHITLOCK: Great. Thanks so much, Jeff. So thank you very much for the opportunity to testify today before the U.S. Patent and Trademark Office. I'd like especially to thank Director Vidal for her leadership, and Jeff Martin, Ann Chaitovitz, Linda Quigley, Lakeisha Harley and Kia Belk, and everyone else who helped organize today's event.

My name is Joe Whitlock. I am the director of policy for the Business Software Alliance. BSA represents copyright and patent holders who publish enterprise software solutions. This includes, for example, digital tools that are used for chemical, electrical, civil, and mechanical engineering. It includes industrial, cloud, and computer aided manufacturing tools. Tools for human resources, retail management,

accounting and actuarial risk assessment, and ERP logistics and supply chain and database management tools. For more relevant for today's discussion, enterprise software also includes digital tools used by creators to develop their craft, give expression to their ideas, and develop new artistic works and performances. Across the visual and fine arts, the applied arts, the performing arts, and the literary arts, generative AI tools in particular are opening up new approaches, in the words of Grammy award-winning violinist Hilary Hahn, to "cross pollinate between AI and creativity." This includes the use of AI enhanced special effects and sound mixing in film and music production, as well as AI enhanced computer aided design tools in sculpture, architecture, and applied arts, such as vehicular or interior design. It also includes AI enhanced drafting tools that writers use in the development of new literary expressions.

However, as has been discussed today, generative AI tools also can be misused for the

wrongful and intentional commercial dissemination of unauthorized digital replicas of an artist's name, image, likeness, or voice. This improper activity is particularly detrimental to artists who depend upon their reputation and public recognition for their livelihood.

As a strong supporter of a robust U.S. framework for IP protection and enforcement, BSA urges Congress to take steps to protect artists from this wrongful activity. I'll discuss four main points: first, rights and standing; second, predicate offenses; third, safeguards; and fourth, legal coherence. In terms of rights and standing, actors, athletes, musicians, and other performers and artists should have the right to prevent the unauthorized commercial dissemination of any digital replicas that is so realistic that a reasonable observer would believe it is the actual artist's name, image, likeness, or voice.

Second, predicate offenses. Congress should do two things in this space. First, deter the intentional dissemination of unauthorized

replicas, and second, deter technologies that are primarily designed to disseminate unauthorized replicas. To elaborate, Congress should impose liability on those who create and disseminate for commercial purposes a digital replica, knowing that the replica was not authorized by the artist at issue. Second, Congress should impose liability on those who commercially traffic in an algorithm, software, tool, or other technology, service, or device that has the primary purpose of creating and disseminating digital replicas with knowledge that the act was unauthorized.

Third, safeguards. I'll discuss three safeguards: one, incentives to quickly remove unauthorized replicas; second, protecting third parties lacking knowledge; and third, safeguarding constitutionally and statutorily protected uses. So, in the first bucket, to protect artists. Service providers should be encouraged to remove unauthorized digital replicas expeditiously, consistent with the requirements of 17 U.S.C. 512. The Section 512 provisions, however, should

apply without regard to whether the unauthorized replica infringes copyright. Second, protecting third parties lacking knowledge. Congress should protect third parties that do not have knowledge that the digital replica at issue is not authorized. And third, safeguarding constitutionally and protected uses, statutory protected uses. Congress should shield from liability the use of a digital replica for statutorily permitted uses such as criticism, comment, news reporting, teaching, scholarship, or research. Any use that's covered by the First Amendment of the U.S. Constitution, and any use that is de minimis, transient, or incidental. We'd note, for example, in the NO FAKES Act, which contains many positive elements, that the Act does omit protections for teaching, for scholarship, and for research, and we think those beneficial societal uses should be protected.

The last major topic I'll discuss is coherence within the U.S. legal system. Within that, I've got two issues to discuss. First,

avoiding overlap with other U.S. laws, and preemption. In terms of avoiding overlap with other laws, this is -- the issue we're discussing today is a distinct and separate cause of action from bills such as the DEFIANCE Act, the TAKE IT DOWN Act, and the Preventing Deepfakes of Intimate Images Act. These bills, some of which have already passed Congress, address different challenges from those being discussed today, namely, non-consensual intimate imagery, deepfakes, and other wrongful acts that properly have distinct legal standards and remedies from those that apply in this context. In the right of publicity and related context. We urge Congress to allow these issues to be addressed through these other legislative vehicles, while ensuring that legislation such as the NO FAKES Act focuses on fully protecting artists and performers who depend upon their name, image, likeness, or voice, or their livelihood.

And finally, preemption. Right of publicity laws and practices exist across all of

the states of the union. Some would argue that these laws should be preempted in respect of right of publicity causes of action in -- excuse me, I should restate that. Some would argue that these laws should not be preempted in respect of right of publicity causes of action in an analog context. Conversely, however, many would also take the view that federal legislation should preempt state law with respect -- with respect to digital replications in a right of publicity context. To give full force and effect in interstate commerce to a federal law on digital right of publicity, a robust standard of preemption should exist for the dissemination of unauthorized digital replicas of an artist's name, image, likeness, or voice.

And with that, I conclude my remarks. Thank you.

MR. MARTIN: All right. Thank you, Joe. I think I do have one question for you as well. If I can just get to it -- and thank you for your patience. I know that you had talked a little bit

about imposing liability on software, rather, primary purpose of possibly creating digital replicas, along with the knowledge that the act was unauthorized is a situation where liability should be imposed. Is that correct, or am I misquoting you, misreading, or mishearing what you said?

MR. WHITLOCK: Yes, there's a section in the -- in the NO FAKES Act that speaks to this broadly. And while we're still looking at how that is drafted, we do think that secondary liability should exist, consistent with the Sony v. Universal Supreme Court case, for those who create tools whose primary purpose is to create or to disseminate unauthorized digital replicas with knowledge.

MR. MARTIN: Okay. I just want to be clear, because it seems that maybe some software packages would have huge capabilities, but sort of defining that and detecting where the primary purpose is for creating these unauthorized replicas may be a bit tricky. But maybe this is

something that you're also further going into?

MR. WHITLOCK: Yes, this is -- this is something that -- that we've given a lot of thought to. We think the Supreme Court jurisprudence is helpful. This is something we've discussed with other -- not everyone -- but some of the other stakeholders on, you know, who are participating in this listening session, and we think it's an important issue to consider.

MR. MARTIN: Okay, great. I think we did have another question from one of my colleagues, which I will bring up since we have a minute here. As far as possible fair use exceptions that you were talking about, would those overlap entirely or to a large degree with typical fair use exceptions for copyright, or are there some stark differences there?

MR. WHITLOCK: Yeah, that's a great question. Thank you. So looking at the exceptions that have been written into, for example, the NO FAKES Act, we noticed that exceptions that would cover teaching, you know,

research and scholarship were not specifically referenced. And so we do not feel that it should be a predicate to find a, you know, potential violation of copyright to apply those very important fair use safeguards in this context. So we think that the fair use safeguards, all categories of fair use safeguards, should also apply in the context of digital replicas of name, image, likeness, voice, but they should apply without regard to whether there is a copyright violation or -- or not.

MR. MARTIN: Okay, thank you for that. Okay, we will go on then to our next speaker. That will be Brandon Butler. He is executive director for the Re:Create Coalition. And Brandon, I see you're already ready to go, so I will turn it over to you now. Thanks.

MR. BUTLER: Good afternoon, everybody. Thank you so much to the USPTO for this opportunity to share my views on NIL and digital replicas, and to Jeff and his colleagues for facilitating this event and for their patience

with my email hiccups as we worked to get me on the agenda.

So, as Jeff mentioned, I'm the executive director of the Re:Create Coalition. I'm also an attorney in private practice. My clients in that context are primarily independent creators who make documentary films, television series, web video series, and podcasts, almost all of which tell stories about real people and increasingly many of which, as you can imagine, are bringing artificial intelligence tools into their workflows, if they hadn't already. So thanks for this opportunity, again.

Let me say a little bit about Re:Create. Re:Create is a coalition of nonprofit organizations committed to balanced copyright, including cyber civil liberties groups, library groups, advocates for fan works, startups, and open scholarships, as well as technology trade associations with member companies, both big and small. Several Re:Create member organizations have taken part in today events, and of course, I

endorse all of their comments, and I applaud their charm and wit.

So Re:Create recognizes that creativity is cumulative and conversational, and the technology makes creativity more accessible to more people. Enabling more people than ever before to create, comment, study and build on culture, and then to share their work with friends and family and with the wider world. A lot of the conversation about deepfakes has been about the ease of making and sharing digital media, and it's worth noting that in many contexts and in many ways, this is not a bug in the 21st century creative ecosystem. It's a feature. We've heard a lot about, sort of the dark side of digital technology. But it's worth remembering that people can and do use these kinds of tools to express themselves, to create and share knowledge, and to promote things and people and causes that care about using their own sort of lawful expressive work.

Earlier today, Ben Sheffner of the MPA

mentioned the 1994 film Forrest Gump to illustrate how technology has long enabled major motion picture studios to include realistic depictions of historical figures in major films. Like so many technological advances, what the wider availability of AI technology can do is allow more people to create more stories that are compelling to watch, in the same way that Forrest Gump was, without needing the money and technology and power that were at the disposal of the studio that made that film. Now, independent documentarians or educational filmmakers can recreate or speculate about history with the same production values that used to be reserved for only the biggest entertainment studios.

And in fact, when this call's over, I'm going to run upstairs and ask my kids how their day went. And what they did today was go to special effects camp, which is a summer camp that they can go to at the local art house movie theater here in Charlottesville. And at that camp, they have more editing firepower at their

fingertips on the, you know, IMAX in there -- in their classroom than Francis Ford Coppola had at his fingertips when he made The Godfather. Right? So it's kind of amazing, and it is worth dwelling for a minute on how cool and powerful that is. That's a win for creativity, the access to technology that we have.

I also wanted to mention, because I haven't heard too much about it yet, digital scholarship and teaching. Although I appreciated, actually, I appreciated just now Joe's mentioning, you know, scholarship and teaching is something that was missing from NO FAKES, and I think that's right. That's a major oversight in the, sort of, No FAKE's system, is that scholarship and teaching aren't figured into the carve outs in that bill. In many ways, a digital replica is just a way to talk about somebody, right? Scholarship and teaching are often, especially in the humanities, where I live and have lived for most of my life, about people, about their ideas, about their histories, and to depict them and say something

about them, to illustrate their life, to communicate their ideas.

So down the street at the University of Virginia, where I used to work, the English department is a pioneer in what's known as the digital humanities. And the scholars lab in the library -- some of my all-time favorite people -- every year they have seminars and courses for graduate and undergraduate students, where they teach humanists how to use digital technology to do humanities scholarship. And again, a lot of that -- and pedagogy, by the way -- and a lot of that scholarship and pedagogy involves processing digital work, text, and so on, analyzing it with digital tools, and then creating new ways of presenting information about those works, about novels, about films, and so on. And if digital replicas are not already being used in this kind of work, it is a matter of time. It is just a matter of time before you know -- right now, one of the most popular digital scholarship projects at UVA is called Digital Yoknapatawpha. And if

you are a Faulkner fan, you got to Google it and check it out. It's a really incredible way to explore that, you know, fictional world that Faulkner created in Yoknapatawpha, Mississippi. And it involves representing a lot of facts and ideas about Faulkner and his works. Again, in ways that I think some of the folks like the Authors Guild earlier this afternoon when they talk about, you know, unauthorized biography, it sounds like they might make the digital Yoknapatawpha project illegal, which I think would be a real problem.

Back to Re:Create. Our mission in Re:Create is to ensure that policy conversations about copyright and related issues like these take account of essential balancing elements and fundamental principles in the law that favor broad access to creativity and reuse of existing creative materials. And so this includes protecting a rich public domain by maintaining reasonable limits on the scope of rights, and then, recognizing that even where rights do apply,

there must be breathing room for creativity, critique, scholarship, and other culturally beneficial practices through specific exceptions, as well as broad general user rights like fair use. We're here, I'm here, because concepts and mechanisms from copyright are among the most commonly suggested ways of addressing the perceived shortcomings in existing NIL regimes. And some of the bills we've seen so far are, I think, partake in a kind of switcheroo where their sponsors talk about privacy and fraud and misinformation. But the bill then turns out to just be about creating a new economic right that's licensable, like property, and useful primarily to folks who make their living from selling their image. Which is not necessarily what all those other things are about, which, as I think Ms. Garcia from Public Knowledge pointed out.

Now, happily, I've heard several folks today, and I've listened to all the sessions since 9:00 this morning, representing a fairly diverse cross-section of stakeholders, reject this

approach, at least in theory. Lots of folks in this conversation have rightly argued, I think, that we should resist creating a sort of single broad IP like right that would try to solve everything in one fell sweep, when in fact there is a diverse set of challenges here, most of which don't necessarily have to do with commercial activity or the kinds of activities that are usually regulated by intellectual property rights.

In fact, I'm sort of excited to say this. You know, the MPA, the ESA, DEMA, SIAA, among others, all sort of agree with Re:Create and our members that the right approach is to slow down, look very carefully at the specific harms associated with some uses of digital replicas, examine existing laws to find what gaps exist, if any, and only then to propose targeted fixes that bring those laws up to speed, and only if need be, only if the First Amendment in particular is respected. So I really appreciated that. I think that was, sort of, a three part thrust of Ben's argument this morning from the MPA. You know,

pause and ask whether current law will suffice.

And that connection, I mean, I think, I hope it's not obvious, but fraud with AI is fraud. False endorsement with AI is false endorsement. Extortion with AI is extortion. Voter suppression with AI is voter suppression. You know, each of these laws already exist, and each of these regimes has a clear connection to a compelling government interest and has been tested against the First Amendment. And so we know that when deepfakes are used in connection with these kinds of activities, their regulation is not going to pose the First Amendment problem. We also are seeing some of the notorious cases, for example, the sort of Biden deepfake robocalls in New Hampshire. That guy has been indicted. He's facing a $6 million fine from the FCC and like 13 felonies for voter suppression in New Hampshire. So it is worth pausing and looking and seeing what plays out in these cases where AI is used to commit things that are already crimes. When we look at whether there's a gap in the law, it's

important to look at scoping any response only to fill that gap.

I see my time is running low. So let me say one more thing that I wanted to be sure to say, which is that no one yet has mentioned under the heading of post mortem rights, an interesting thing. If an estate possesses a postmortem, a valuable postmortem sort of publicity, right, there will be a lot of tax pressure to monetize that right. And I haven't heard that come up yet. I've heard it in other conversations about this topic, that is, you know, you can imagine, for example, MCA from the Beastie Boys, who sort of famously does not want to be commercialized, did not want to be commercialized, and now his estate very actively pursues people who use his art in advertisements. But that estate would face a lot of tax pressure, and other estates would face a lot of tax pressure to commercialize that likeness, lest they, you know, be taxed for its value and not be able to afford it.

So I will leave it off there. Thanks,

Jeff.

MR. MARTIN: Thank you. Thanks, Brandon. Thanks very much for those comments. Then moving on then to our next presenter, just to keep our flow moving here. So that will be Jonathan Band with policybandwidth. Jonathan, I see you're ready, so I'll turn it over to you. Thank you.

MR. BAND: Thanks, Jeff. I just want to make sure that you can hear me.

MR. MARTIN: Yes, we can.

MR. BAND: Great. Thank you. So thanks to you and to the USPTO for this roundtable. It's been a very long day, and I'm not going to repeat what other people have said. I just wanted to add a very specific point. So I represent the Library Copyright Alliance, which includes the American Library Association and the Association of Research Libraries. And I agree with a lot of the comments that people have been made, in particular what Brandon just said and how it reflects in the agreement of his position with what a lot of other

people have said earlier today.

But I'm going to just take a slightly different direction and just emphasize that we've, you know, seen the introduction of the deep -- the NO FAKES Act, we've seen the Copyright Office report all last week. But both of those ignore the fact that Congress simply does not have the authority to grant broad IP rights in name, image, and likeness. And I'll just walk through some of the steps. I mean, this is a little technical, but hopefully it'll be clear. So, under the IP clause, as interpreted by Feist versus Rural Telephone, Congress cannot grant IP protection to unoriginal subject matter such as facts. Now, name, image, likeness, those are facts. This is my face. This is my voice. Facts.

Now, under Railway Labor versus Gibbons, Congress can't rely on the Congress to protect unoriginal subject matter. In other words, you can't rely on the Congress clause to protect something that cannot be protected under the IP clause. And Dastar --Justice Scalia's decision --

and Dastar confirms this by saying that Congress cannot rely on the copyright law -- on the Commerce clause to create a mutant copyright law. That's Justice Scalia's term.

An individual's voice and likeness, as I said, are facts. So Congress can't grant IP protection under them, for them, either under the IP clause or the Commerce clause. Now, even though Congress can't grant, can't enact a broad IP right in NIL, anything like the NO FAKES Act, it still does have the ability to enact specific laws preventing the use of deepfakes for specific things. So, for example, to deceive consumers or protect privacy. You know, so certainly they could have a law that targets the specific harms that people have identified in the context of this roundtable, which is that Congress can't create a broad property right in unprotectable subject matter such as an individual's voice or visual likeness.

Now, LCA raised this issue in the context of the press publisher rights discussion a

couple of years ago, and the Copyright Office sort of dismissed it by saying, oh, you know, there's case law challenging the anti bootlegging laws. And those cases said that that's okay, that's constitutional. But I want to point out that those cases said that Congress could enact anti bootlegging laws which dealt with unfixed performances because they were not giving a property right in those -- on six performances, but they were simply giving the government the ability to bring criminal charges. And as such, were not, again, it wasn't the kind of circumvention relying on the Commerce clause to protect something that is unprotectable under copyright because they weren't granting a -- they weren't granting a property right. Here, if you look at the NO FAKES Act, it explicitly says this is a property right. And many of the speakers today who are supporting the NO FAKES Act all said that they support a IP right in NIL.

So just as a technical matter, you know, we can -- it's just worth pointing out that there

are serious constitutional problems with the approach followed by both the Copyright Office and the NO FAKES Act. And the way to approach this is instead, kind of, you know, in a much more targeted manner rather than creating a broad IP right. Thank you very much.

MR. MARTIN: Jonathan, thanks very much. You brought up some points and even some topics that I don't think were addressed by our other speakers. So we appreciate that.

I'm going to move on then to our next and last speaker, and this speaker just came on at the last minute. So please forgive me for people who have the final agenda because this person has just been added, but this is Aden Hizkias, Policy Analyst for -- and I hope I get this right, Aden -- Chamber of Progress. Is that correct?

MR. HIZKIAS: That's correct. Thank you.

MR. MARTIN: Okay, great. So I'm going to turn it over to you then. Thank you.

MR. HIZKIAS: Thank you. My name is

Aden Hizkias, and I'm a policy analyst at Chamber of Progress. And 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 today to share this response on the public roundtable on protections for name, image, likeness, and other indica of identity and reputation.

Artificial intelligence technology holds potential significant benefits regarding the use of individuals likeness. AI can enhance user experience in various fields, including entertainment, marketing, and personalized services. For instance, AI-driven tools can be -- create realistic avatars for virtually reality experiences, allowing users to engage in immersive environments that are more interactive and enjoyable. Additionally, and as mentioned by a few folks here today, 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 and educational tools can create more dynamic and compelling learning experiences catering to diverse educational needs.

Today, I'll be focusing on questions three and five that are raised to the Federal Register. On three, 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? And what other types of

mechanisms or protocols exist? To that, we would point to watermarking and digital signatures, which 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. Collectively, these approaches may help manage and address the unauthorized use of digital likeness content. Content watermarking is an evolving space, and there's not yet a single agreed industry standard for watermarking. As such, policymakers should not mandate a specific watermarking technology at this time.

On question five, 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. We would suggest that Congress

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. 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. 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. This means that individuals can enforce their rights against unauthorized uses of their likenesses captured and creative works. Together, these

legal frameworks offer comprehensive coverage for addressing unauthorized likenesses issues and ensure that individuals have recourse against misuse without the need for a new federal legislation.

The tech industry is increasingly adopting self-regulation and ethical guidelines to manage likeness 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.

Thank you for your time.

MR. MARTIN: Aden, thank you very much. Greatly appreciated. I was hoping to have a little bit of extra time at the end, just for all of our speakers. I have one final comment, but unfortunately, as everyone can see, we have reached our limit for the day. So just a closing

comment of saying thank you to all of our speakers today. We greatly appreciate you taking time out of your, I'm sure, very busy schedules to be here, to provide comments on this timely topic, and to really supplement what we heard earlier today at the in person panel. Also, want to thank our Gipa (phonetic) IT team. We did have some difficulties here today, so we want to thank them as well. And with that, we will say goodbye to all of you. I appreciate you taking the time to join us today. Thank you.

(Whereupon, at 4:04 p.m., the PROCEEDINGS were adjourned.)

* * * * *

CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Mark Mahoney, notary public in and for the Commonwealth of Virginia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Mark Mahoney

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: August 31, 2025

Notary Public Number 122985