

ALL SHOOK UP—THE IMPACT OF THE ELVIS ACT ON THE RIGHT TO PUBLICITY IN TENNESSEE

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INTRODUCTION

“From Beale Street to Broadway, to Bristol and beyond, Tennessee is known for [its] rich artistic heritage As the technology evolves with artificial intelligence, [Tennessee is] proud to lead the nation in proposing legal protection for [its] best-in-class artists and songwriters.”¹

Born among the neon lights of a classic Broadway honky-tonk, a bill became a law in a poetic ode to those it most aims to protect—the musicians of Tennessee.² On March 21, 2024,

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1. *Tennessee First in the Nation to Address AI Impact on Music Industry*, TN.GOV (Jan. 10, 2024), <https://www.tn.gov/governor/news/2024/1/10/tennessee-first-in-the-nation-to-address-ai-impact-on-music-industry.html> (quoting Governor Bill Lee).

2. See generally *ELVIS Act Becomes Law as Tennessee Leads the Nation*, RECORDING INDUS. ASS’N OF AM. (Mar. 21, 2024), <https://www.riaa.com/elvis-act->

Governor Bill Lee signed the Ensuring Likeness Voice and Image Security Act (“ELVIS Act”) into law.³ Both houses unanimously passed the ELVIS Act and signed it into law in just under three months, officially taking effect on July 1, 2024.⁴ Outside of the government, the ELVIS Act received astounding support from some of the most prominent songwriters, producers, musicians, and organizations in the music industry.⁵ The ELVIS Act is an amendment to Tennessee’s existing statutory right to publicity, which has not been substantially altered since the Personal Rights Protection Act of 1984, a forty year old act that addresses the unauthorized monetization of a musician’s name, image, and likeness.⁶ The ELVIS Act makes several amendments to Tennessee Code Annotated Title 47, Chapter 25 by expanding existing law dealing with “consignment of art,”⁷ but this Note will focus on three primary changes: (1) the establishment of “voice” as a property right and the protections thereby afforded to it, (2) the expanded scope of protection under the ELVIS Act, and (3) the expansion of liability for violation of the ELVIS Act.

becomes-law-as-tennessee-leads-the-nation/ (including photographs of the ELVIS Act bill-signing, featuring prominent country artists Luke Bryan and Chris Janson).

3. H.R. 2091, 113th Gen. Assemb., 2d Sess., (Tenn. 2024).

4. *Id.*

5. See *ELVIS Act Becomes Law as Tennessee Leads the Nation*, *supra* note 2 (providing quotes from and detailing involvement of various music industry leaders at the signing of the ELVIS Act).

6. The Personal Rights Protection Act of 1984 was passed, in large part, to address unauthorized monetization of the identity of Elvis Presley. Thus, the name of the ELVIS Act is more than just a cunning acronym—it is a fitting ode to the King himself, who has inadvertently shaped much of the right to publicity protections adopted in Tennessee. See Annie T. Christoff, *Long Live the King: The Influence of Elvis Presley on the Right to Publicity in Tennessee*, 41 U. MEM. L. REV. 667, 668 (2011) (discussing Elvis Presley’s influence on the right to publicity in Tennessee).

7. See generally TENN. CODE ANN. §§ 47-25-1001–1007; see also Kyle Jaher, *Elvis Inspires First State AI Protections for Musicians’ Voices*, BLOOMBERG LAW (Apr. 1, 2024) <https://news.bloomberglaw.com/ip-law/elvis-inspires-first-state-ai-protections-for-musicians-voices> (“[The ELVIS Act] goes beyond barring exploitation of celebrities’ voices, expanding the reach of Tennessee’s prior right of publicity law—which was also pushed to protect Elvis’ estate but had been limited to advertising.”).

I. ISSUE

The ELVIS Act is Tennessee’s modern answer to an ever-changing issue facing the music industry—one that now presents itself in the form of AI-generated reconstructions of artists’ voices. As technology has evolved, so too have the benefits and challenges of its use. For decades, many artists have used non-generative AI⁸ and other technology in music, such as autotune, pitch correction, and track mixing.⁹ Generative AI, however, creates a new and unique problem.¹⁰

Generative AI models can be “fed” an artist’s discography and learn patterns in that artist’s word use, tone, and more. As a result, some of these models can create music that *sounds* exactly like a specific artist. For example, before the release of Taylor Swift’s highly anticipated *Midnights* album in 2024, a TikTok user uploaded a sound on TikTok claiming to be a leak of the lead single “Fortnight,” featuring Post Malone.¹¹ The version went viral on social media, with many believing it was an actual leak of Swift’s “Fortnight.”¹² The AI song got heavy traction because it seemed to feature Swift’s and Malone’s voices and was lyrically and productionally complimentary to some of Swift’s previous pop hits. However, when the actual version of “Fortnight” was released, it became evident that the viral TikTok song was

8. See generally Bernard Marr, *The Difference Between Generative AI and Traditional AI: An Easy Explanation For Anyone*, FORBES (July 24, 2023), <https://www.forbes.com/sites/bernardmarr/2023/07/24/the-difference-between-generative-ai-and-traditional-ai-an-easy-explanation-for-anyone/> (explaining the difference between generative and non-generative AI).

9. See Adam Clair, *What AI in Music Can—and Can’t—Do*, VOX (Aug. 5, 2024), <https://www.vox.com/the-highlight/358201/how-does-ai-music-work-benefits-creativity-production-spotify> (“Musicians, producers, and others have been using non-generative AI tools for years.”).

10. See *id.* (discussing the “categorical difference” between use of non-generative and generative AI in music and containing an in-depth explanation of their mechanics).

11. See Abdul Azim Naushad, *Taylor Swift: Is the ‘Fortnight’ Song Leak Real? Is It AI?*, YAHOO ENTERTAINMENT (Feb. 16, 2024), https://www.yahoo.com/entertainment/taylor-swift-fortnight-song-leak112353770.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAA0uD9G4i_ALNj0Q34nbGzRvzGTrBOvc9i47pLNNm6Ts3SqHwMf0a2Xi321tHYUs0ZHISBE2A7_EzBf1xnD8KtHwJq6CkSgy8CruGxEtRqqdqB_8mSs8X_fz7k92hig7Uhx11OULHkMVnCMgDywal-k2qNFI-RiiiDtSZOXNlru.

12. See *id.*

nothing more than AI-generated content. Nevertheless, it continually sparked debate online, with many people questioning which version of the song they prefer.¹³

This example illustrates many problems arising from AI's use of an artist's voice.¹⁴ Without protections for artists, generative AI could be used to create and profit from music based on an individual's unique sound and style, without the involvement or consent of the artist. In turn, these uses could inhibit artists' ability to profit from their music. The risk also exists beyond the music industry. In May 2024, OpenAI released a voice assistant resembling the voice of actress Scarlett Johansson, who had previously declined the offer to voice the bot herself.¹⁵ While OpenAI claimed it used a different voice actor, it quickly removed the voice from its platform.¹⁶ Similarly, in January 2024, AI-generated "robocalls" were placed to New Hampshire voters before the state's Democratic primary.¹⁷ The calls used a voice

13. See Navy (@lxv.swift13), TIKTOK (Apr. 19, 2024), <https://www.tiktok.com/@lxv.swift13/video/7359438933672906017?lang=en> (containing a side-by-side comparison of parts the AI "Fortnight" and the real version); see also r/SwiftlyNeutral, REDDIT, https://www.reddit.com/r/SwiftlyNeutral/comments/1chojnk/do_you_prefer_real_fortnight_or_ai_fortnight/ (discussing preferences between Swift's "Fortnight" and the AI version); Alexis Rose (@travelingnurse), TIKTOK (Apr. 18, 2024), <https://www.tiktok.com/@travelingnurse/video/7359253167294549294?lang=en> (praising the AI version of "Fortnight").

14. See Andrew R. Chow, *AI's Influence on Music Is Raising Some Difficult Questions*, TIME (Dec. 4, 2023) ("If an AI can create a 'Charlie Puth song' instantaneously, what does that mean for Charlie Puth himself, or all the other aspiring musicians out there who fear they are being replaced? Should AI companies be allowed to train their large language models on songs without their creators' permission?").

15. See Dan Milmo, *Scarlett Johansson's OpenAI Clash Is Just the Start of Legal Wrangles over Artificial Intelligence*, THE GUARDIAN (May 27, 2024), <https://www.theguardian.com/technology/article/2024/may/27/scarlett-johansson-openai-legal-artificial-intelligence-chatgpt> (discussing Johansson declining to voice the AI bot).

16. See *id.* (detailing OpenAI's response to Johansson's vocal similarity claim).

17. See Ali Swenson & Will Weissert, *AI Robocalls Impersonate President Biden in an Apparent Attempt to Suppress Votes in New Hampshire*, PBS (Jan. 22, 2024), <https://www.pbs.org/newshour/politics/ai-robocalls-impersonate-president-biden-in-an-apparent-attempt-to-suppress-votes-in-new-hampshire> (describing the AI-generated calls).

belonging to President Joe Biden and seemingly featured him encouraging voters to refrain from voting.¹⁸

These concerns fall under the general but widely recognized legal concept that individuals have the ability to control the use of their identities. Known most commonly as the “right of publicity,” the general theme of these statutory and common law rights to one’s name, image, and likeness is made up of two primary concepts: “(1) famous people have a commercial interest in what makes them valuable; and/or (2) people have a right of broadly defined privacy that should allow them to dissociate from certain companies or causes.”¹⁹ The right to publicity is a state protection; therefore, there are variations in what is protected and the limits of that protection in each state.

Tennessee sets itself apart with the ELVIS Act. Traditionally, most states protect rights to an individual’s name, image, and likeness, with varying definitions of the words and their protections. Gradually, a handful of states have chosen to include voice protections in those rights, both statutorily and through judicial interpretations.²⁰ The ELVIS Act does not make Tennessee the first to provide voice protections. However, the ELVIS Act makes Tennessee a trailblazer on the issue because it is the first legislation explicitly protecting against AI renditions.

18. *See id.*

19. *OpenAI v. Scarlett Johansson? Georgetown Law Professor Answers Legal Questions on AI-Generated Content*, GEORGETOWN UNIVERSITY (June 4, 2024), <https://www.georgetown.edu/news/ask-a-professor-openai-v-scarlett-johansson/>.

20. *See, e.g.*, ARK. CODE. ANN. § 4-75-1111; CAL. CIV. CODE § 3344; IND. CODE ANN. § 32-36-1-6; NEV. REV. STAT. § 597.780; N.Y. CIV. RIGHTS LAW § 50-f; OKLA. STAT. tit. 12 §§ 1448–49; WASH. REV. CODE § 63.60.010; *see also* *Midler v. Ford Motor Co.*, 849 F.2d 460, 463 (9th Cir. 1988) (holding that unauthorized imitation of the distinctive voice of a professional singer for commercial purposes violates California’s right to publicity statute).

II. ANALYSIS: A HISTORY OF THE RIGHT OF PUBLICITY IN TENNESSEE AND THE IMPACT OF THE ELVIS ACT

Recognition of the right of publicity in the United States began as a common law right, gaining traction in the 1950s.²¹ In its earliest stages, it was recognized as part of the right to privacy. During the mid-twentieth century, common law across the country slowly evolved to recognize the right to publicity as an independent right. Then, in 1977, the Supreme Court held that a right to publicity was distinct from a right to privacy, paving the way for the rest of the country to follow suit.²²

Perhaps the most notable case involving Tennessee's state right to publicity came ten years later in *State ex rel. Elvis Presley Int'l Mem'l Found. v. Crowell* where the plaintiffs argued that Tennessee did not have a descendible right to publicity.²³ Thus, the plaintiffs asserted that they should be allowed to use Elvis Presley's name in their corporations after his death.²⁴ Upon examination of the foundation of property rights traditionally recognized under Tennessee common law and state constitutional provisions, the court found that the right to publicity is a type of property right in Tennessee.²⁵ This generally affords one "(1) the right of possession, enjoyment and use; (2) the unrestricted right of disposition; and (3) the power of testimonial disposition."²⁶ Following the court's recognition of a right to publicity, it found that the right was descendible, stating that "[i]f a celebrity's right of publicity is treated as an intangible property right in life, it is no less a property right at death."²⁷

21. See *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866, 868 (2d Cir. 1953) (discussing prior decisions recognizing a right to publicity).

22. See *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 571–74 (1977).

23. *State ex rel. Elvis Presley Int'l Mem'l Found. v. Crowell*, 733 S.W.2d 89, 92 (Tenn. Ct. App. 1987).

24. *Id.* at 89.

25. *Id.* at 97 ("[T]he right of publicity takes on many of the attributes of personal property. It can be possessed and controlled to the exclusion of others. Its economic benefits can be realized and enjoyed. It can also be the subject of a contract and can be assigned to others.").

26. *Id.* at 96.

27. *Id.* at 97–98 (citation omitted).

Thus, the court solidified the common law right to privacy and extended it beyond the subject's lifetime.

Common law is not the sole foundation of the right to publicity in Tennessee. In 1984, the General Assembly passed The Personal Rights Protection Act of 1984 (TPRPA).²⁸ The TPRPA provided the scope of the right of publicity and was the primary basis of the right for the next forty years.²⁹ TPRPA established that “[e]very individual has a property right in the use of that person’s name, photograph, or likeness in any medium in any manner.”³⁰ Thus, under the statute, three main categories of identity were protected: (1) name, (2) photograph,³¹ and (3) likeness.³² The scope of liability afforded under the TPRPA was one of the key features of the legislation. Under the statute, the protected identity categories were protected only against commercial use.³³ A violation of the TPRPA only occurred if there was some kind of commercial or monetary gain devised from using an individual’s name, image, or likeness.³⁴

28. See generally TENN. CODE ANN. §§ 47-25-1102 to -1108 (2014).

29. Several federal courts have considered the TPRPA to be “coextensive” with the common law right to publicity, when applicable. See *Moore v. Weinstein Co.*, No. 3:09-CV-00166, 2012 WL 1884758, at *30 (M.D. Tenn. May 23, 2012) (“Tennessee recognizes a statutory right of publicity under the TPRPA (as well as a coextensive common law right) . . .”); *Gauck v. Karamian*, 805 F. Supp. 2d 495, 500 n.5 (W.D. Tenn. 2011) (“Tennessee’s common law and statutory rights of publicity are coextensive and limited to commercial use for purposes of advertising or soliciting a product or service.”); see also *Marshall v. ESPN Inc.*, 111 F. Supp. 3d 815, 824 (M.D. Tenn. 2015) (discussing the “coextensiveness” of the common law and statutory rights in Tennessee).

30. TENN. CODE ANN. § 47-25-1103 (2014).

31. *Id.* § 47-25-1102(5) (defining a photograph as “any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any individual, so that the individual is readily identifiable”).

32. TENN. CODE ANN. § 47-25-1102(3) (2014) (defining likeness as “the use of an image of an individual for commercial purposes”).

33. *Id.* § 47-25-1105.

34. Compare *Apple Corps Ltd. v. A.D.P.R., Inc.*, 843 F. Supp. 342, 349 (M.D. Tenn. 1993) (finding a violation of the TPRPA occurred when a music group used “the likenesses of the Beatles to promote their shows”), with *Gauck v. Karamian*, 805 F. Supp. 2d 495, 502–03 (W.D. Tenn. 2011) (holding that there was no violation of the TPRPA when a gossip website published an article about a local news anchor, finding no “causal connection . . . between Defendants’ use of [Plaintiff’s] name and image and an increase in visitors to the site or advertising revenue”).

With the addition of the ELVIS Act in 2024, Tennessee's right to publicity now goes a step—or a few—further. As discussed earlier, the primary purpose of the ELVIS Act is to protect from AI voice appropriation. While primarily composed of amendments to the Act's predecessor, the TPRPA, the Act makes several key changes to the state of the right to publicity in Tennessee. Notably, this includes the addition of “voice” as a protected property right, the expansion of the scope of the right to publicity, and the extended liability provided under the language of the Act.

A. *“Voice” As a Property Right*

One of the primary changes stemming from the ELVIS Act is the addition of “voice” to the property rights statutorily protected.³⁵ The Act defines “voice” as “a sound in a medium that is readily identifiable and attributable to a particular individual, regardless of whether the sound contains the actual voice *or a simulation of the voice of the individual*.”³⁶ This careful drafting of the definition of “voice” shows the driving force behind the ELVIS Act—protection against even simulation of a clearly identifiable voice. Naturally, this will apply to musicians, whose voices are the primary focal point of their public identities. Take Elvis Presley, for example. There is no mistaking his voice. When you hear an authentic or AI-generated voice, you know immediately if it is or seems to be Elvis Presley's. However, the ELVIS Act may extend to protect the voices of private and public citizens and those with undeniable voice recognition.

This is in part because of the vagueness of the terms “readily identifiable and attributable to a particular individual.” While a court has yet to provide guidance on interpreting this phrase, a plain language reading indicates that the ELVIS Act's readily identifiable “voice” protections

35. See TENN. CODE ANN. § 47-25-1103.

36. *Id.* § 47-25-1102(6) (emphasis added).

may extend to anyone.³⁷ For example, if an AI-generated tape was made using the voice of David Carroll, a longtime radio and television personality in Chattanooga, the tape would likely be “readily identifiable and attributable” to him, at least by those in the greater Chattanooga area. This seems to pass muster under the plain language of the Act. A wholly private citizen’s voice appears protected under the act, too; if a co-worker produced an AI-generated tape using your voice and distributed it around your workplace, the voice would likely be easily identified by co-workers as belonging to you. This interpretation of “voice” also appears to line up with the legislative intent, as several individuals have made statements in drafting and passing the legislation stating that *all* Tennesseans have the right to control their protected attributes.³⁸

B. *Scope of the ELVIS Act*

Prior to the ELVIS Act, the focus of the right to publicity protections was primarily on those whose identity held some commercial value.³⁹ As stated by one of the sponsors of the TPRPA, it was intended to “create an inheritable property

37. “Readily” is defined in relevant part as “without much difficulty: easily.” *Readily*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/readily>; “identifiable” is defined as “capable of being identified” *Identifiable*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/identifiable>.

38. See Audrey Gibbs, *TN Gov. Lee Signs ELVIS Act into Law in Honky-tonk, Protects Musicians from AI Abuses*, THE TENNESSEAN (Mar. 21, 2024), <https://www.tennessean.com/story/entertainment/music/2024/03/21/elvis-act-tennessee-gov-lee-signs-act-musicians-ai/73019388007/> (“This bill is so much bigger than just the music community. . . . This bill protects all Tennesseans.”); Audrey Gibbs, *ELVIS Act Protecting Tennessee Musicians Against AI Abuse Advances in the House*, THE TENNESSEAN (Feb. 14, 2024), <https://www.tennessean.com/story/entertainment/music/2024/02/14/elvis-act-protecting-tennessee-musicians-against-ai-abuse-advances/72598673007/> (“It is worth emphasizing that the ELVIS Act applies to everyone. All Tennesseans deserve to have their voices and likenesses protected and this bill will ensure just that.”).

39. See TENN. CODE ANN. § 47-25-1105(a) (2014) (“Any person who knowingly uses or infringes upon the use of another individual’s name, photograph, or likeness in any medium, in any manner directed to any person other than such individual, as an item of commerce . . . shall be liable to a civil action.”).

right for those people who use their names or likenesses in a commercial manner, such as an entertainer or sports figure—someone who uses his or her name for endorsement purposes.”⁴⁰ Under that scope, plaintiffs had to show some commercial value existed within the use of their identities.⁴¹ The ELVIS Act amends this, likely awarding protections to a broader class of persons.⁴² It does this in two significant ways: (1) removing the “item of commerce” requirement in Tennessee Code Annotated section 47-25-1105(a),⁴³ and (2) adding subsections (2) and (3) to the same section, which provide that an individual can be liable for a civil or criminal action if they have knowingly contributed to the unauthorized use of another’s voice or likeness.⁴⁴

These changes indicate that the protections in the ELVIS Act likely extend to private citizens, particularly in instances involving voice or likeness. While AI appropriation may be most common for celebrities, its use is becoming more

40. *Wells v. Chattanooga Bakery, Inc.*, 448 S.W.3d 381,390 (Tenn. Ct. App. 2014) (citing *Apple Corps Ltd. v. A.D.P.R., Inc.*, 843 F.Supp. 342, 348 (M.D. Tenn. 1993)).

41. *Id.* (“Celebrity or average Joe, the key is that ‘to assert the right of publicity, a plaintiff must demonstrate that there is value in associating an item of commerce with his identity.’”) (citation omitted).

42. Some individuals have raised First Amendment concerns regarding this provision of the ELVIS Act. Though beyond the scope of this note, these concerns are worth monitoring as the law continues to develop. *See generally* Hannah Cox, *AI Should Not Undercut Content Creators’ Wages, but the ELVIS Act Is the Wrong Solution*, THE TENNESSEAN (Mar. 1, 2024), <https://www.tennessean.com/story/opinion/contributors/2024/03/01/artificial-intelligence-tennessee-elvis-act-threatens-first-amendment/72774507007/> (“The bill lacks the stringent, clear exceptions typically found in right of privacy laws. Existing laws only apply to advertising, merchandise, and fundraising purposes. And they include exceptions for ‘newsworthy’ images in content that provides a ‘public interest,’ which encompasses everything from hard news to celebrity gossip. The ELVIS Act does not restrict itself in these ways.”).

43. TENN. CODE ANN. § 47-25-1105(a)(1) (“Any person who knowingly uses or infringes upon the use of an individual’s name, photograph, voice, or likeness in any medium, in any manner directed to any person other than such individual, for purposes of advertising products, merchandise, goods, or services, or for purposes of fundraising, solicitation of donations, purchases of products, merchandise, goods, or services, without such individual’s prior consent, or, in the case of a minor, the prior consent of such minor’s parent or legal guardian, or in the case of a deceased individual, the consent of the executor or administrator, heirs, or devisees of such deceased individual, is liable to a civil action.”).

44. *Id.* § 47-25-1105(a)(2), (3) (establishing parameters for liability under this section).

accessible. Though we are yet to see the application of the ELVIS Act by a Tennessee court, those changes seem appropriate amidst the ever-changing landscape of AI. For example, in April 2024, a high school athletic director in Maryland was arrested for allegedly creating and distributing an AI-generated audio clip that seemingly contained racist and anti-Semitic statements made by the school's principal. He was charged with several crimes in Maryland, including theft and disrupting school activities, but many of the charges carried minimal penalties. The Baltimore County state's attorney called the case the "first of its kind" and said, "Maryland's Legislature may need to update state laws to catch up with the nefarious possibilities of the new technology."⁴⁵ Had the case occurred in Tennessee post-ELVIS Act, the athletic director would possibly be subject to a class A misdemeanor under Tennessee Code Annotated section 47-25-1105 and civil liability.

C. *Liability Under the ELVIS Act*

The last major significant change introduced by the ELVIS Act—and perhaps the most controversial—is the seemingly expanded liability. Traditionally, right to publicity violations were actionable against the users themselves. That has not changed under the ELVIS Act—anyone who knowingly “uses or infringes upon” the publicity rights of another may still be held liable both civilly and criminally.⁴⁶ The ELVIS Act does, however, expand this liability.⁴⁷

The ELVIS Act now establishes criminal and civil liability for anyone who, knowing the use was unauthorized, “publishes, performs, distributes, transmits, or otherwise makes available to the public an individual’s voice or likeness

45. Ben Finley, *Athletic Director Used AI to Frame Principal with Racist Remarks in Fake Audio Clip, Police Say*, AP NEWS (Apr. 25, 2024) <https://apnews.com/article/ai-artificial-intelligence-principal-audio-maryland-baltimore-county-pikesville-853ed171369bcbb88eb54f55195cb9c>.

46. TENN. CODE ANN. § 47-25-1105.

47. See TENN. CODE ANN. § 47-25-1107 for exemptions.

. . . .”⁴⁸ This differs from the preceding subsection of the statute, as it further specifies what actions are a violation and creates some expanded liability through the “knowledge” standard. Under the ELVIS Act, liability extends not only to the original creator, but likely also to those who contribute to sharing the product, if they knew of the unauthorized use. These additional actions may be used to combat the spread of AI-generated material, giving rise to possible liability for those who share or further distribute unauthorized material.

Legislative intent suggests that this expanded liability was a key aim of the ELVIS Act. Notably, Senator Heidi Campbell recently encouraged this expanded liability, stating, “Tennessee law is clear: any person who infringes upon an individual’s name, photograph, voice, or likeness without prior consent is liable to a civil action and may even face criminal charges.”⁴⁹

Still, the most significant change is the creation of civil and criminal liability for those who “distribut[e], transmit, or otherwise mak[e] available an algorithm, software, tool, or other technology, service, or device, the primary purpose or function of which is the production of an individual’s photograph, voice, or likeness without authorization from the individual”⁵⁰ A plain language reading of this section indicates that companies that produce AI could be held liable for their very creation. This, of course, substantially affects AI-centered companies, such as Open AI. However, the specific wording of the statute may open the window of liability to several non-AI-centered companies, such as Google and Facebook. While their platforms are not focused on AI, both companies, as well as most other large search

48. *Id.* § 47-25-1105(a)(2).

49. Heidi Campbell, *ELVIS Act Tested by Trump’s Reckless AI Images of Taylor Swift*, KNOXVILLE NEWS SENTINEL (Sep. 15, 2024), <https://www.pressreader.com/usa/knoxville-newssentinel/20240915/282565908525242?srsId=AfmBOopXOFtSL4Bb-B5J69soD3CQ8-N6hhfGKuLiJWgnhNe2xdh2U>. Senator Campbell encouraged Taylor Swift to pursue legal action in Tennessee due an allegedly AI-generated photo that implied Taylor Swift’s support for President Donald Trump in the 2024 presidential election. *Id.* Senator Campbell noted that if Taylor Swift sought legal action, it would mark the “first legal test” of the ELVIS Act. *Id.*

50. TENN. CODE ANN. § 47-25-1105(a)(3).

engines and social media sites, at least feature an AI tool, which, in theory, could be used in a way that violates the ELVIS Act. It remains to be seen whether a court would enforce these provisions of the ELVIS Act, and if so, how strictly.

CONCLUSION

The ELVIS Act shakes up the right to publicity in several major ways, though it is yet to be determined how a court will interpret pieces of the statute. At a minimum, the ELVIS Act indeed aims to protect Tennessee musicians from AI-generated use of their voices. However, the ELVIS Act may go several steps further, affording much greater protection to all Tennesseans regarding their names, images, likenesses, and voices. As AI use becomes more integrated into everyday life, the need for these protections grows daily.⁵¹ While the growing presence of AI has many benefits, it also poses a new realm of risks to all individuals. The ELVIS Act paves the way for protecting all Tennesseans from that risk.

51. See generally Dorothy Atkins, *Calif. Gov. Signs Suite of Bills Combatting AI Deepfakes*, LAW 360 (Sep. 18, 2024), <https://www.law360.com/ip/articles/1879784> (discussing several of the new California laws designed to address growing AI concerns).

