



April 29, 2024

TO: Asm. Ash Kalra, Chair, Assembly Committee on Judiciary
Asm. Diane Dixon, Vice Chair, Assembly Committee on Judiciary
RE: Assembly Bill 1836 – OPPOSE UNLESS AMENDED

Dear Chair Kalra and Vice Chair Dixon:

California is a cradle of innovation and home to an American technology sector that is the envy of the world. This is no accident. The engineers and programmers who built this ecosystem were able to thrive because of a light-touch regulatory approach that focused on targeting true harms without stifling innovation.

In recent years, however, California has trended toward reactive, prescriptive, and precautionary regulation that seeks to eliminate every hypothetical harm that could arise from a new technology. Gone, it appears, is the California that fostered continued innovation to the benefit of the state and its residents. A recent example of this mindset is AB 1836, which seeks to regulate so-called “digital replicas.”

To be clear, the bill addresses legitimate concerns. As with any technology, Artificial intelligence (AI) can be used for good or ill. While AI has the potential to increase productivity and improve so many aspects of life, bad actors can use generative AI tools to create real harm. Policymakers have rightfully noted the problem of AI being used to create deep fake porn. Many in the creative community worry that digital replicas will be used to replace artists entirely.

These concerns aren’t meritless; targeted legislation could address these harms. But as drafted, AB 1836 will stifle expression and innovation by creating liability for legitimate, First Amendment-protected uses.

We appreciate that members of the Committee on Privacy and Consumer Protection have worked to narrow the definition of “digital replica” in AB 1836. These important revisions now distinguish between cartoon depictions of individuals and those that a reasonable person would find indistinguishable from a real-life individual. Further, the bill now recognizes the difference between a digital replica that is used to *replace* a performer and one that is simply used to tell a story *about* a performer.

But these changes aren’t enough. As drafted, AB 1836 will still harm creators and infringe on the speech rights of all Californians. Lawmakers should amend AB 1836 to provide safe harbors for constitutionally protected use of digital replicas to spare creators, particularly smaller and independent ones, from crippling litigation that would bankrupt creators and lead to self-censorship.

Exemptions included in the bill must be clear and certain. For instance, the phrase “to the extent protected by the First Amendment” should be deleted. Without that change, creators will be deterred from investing tens and even hundreds of millions of dollars in projects where they might be sued only to determine whether the project falls within one of the exceptions and is protected by the First Amendment.

We appreciate lawmakers’ interest in protecting consumers and performers from harms enabled by the availability of generative AI tools. But California must avoid knee-jerk legislation that would curtail free speech and economic activity. The California Policy Center stands ready to work with lawmakers on legislation that narrowly targets harmful and illegal uses of AI while maintaining the pro-innovation environment that has powered the Golden State economy.

Sincerely,

Will Swaim
President

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