

Alert

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New California AI Laws Protect Against Unauthorized Use of AI Replicas

California Governor Gavin Newsom has recently signed into law two bills seeking to address the use of Artificial Intelligence (AI)-created digital replicas of individuals. In his signing statement, Governor Newsom explained, “[w]e continue to wade through uncharted territory when it comes to how AI and digital media is transforming the entertainment industry, but our North Star has always been to protect workers. This legislation ensures the industry can continue thriving while strengthening protections for workers and how their likeness can or cannot be used.”

Under both of the two new laws, AB 1836 and AB 2602, a digital replica is defined as a “computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that is embodied in a sound recording, image, audiovisual work, or transmission in which the actual individual either did not actually perform or appear, or the actual individual did perform or appear, but the fundamental character of the performance or appearance has been materially altered.”

AB 2602 will amend the California Labor Code to include a new Section 927, which will render unenforceable contract provisions relating to the use of a digital replica of an individual in certain circumstances. Notably, Section 927 includes carve-outs for union workers who are covered by a collective bargaining agreement that explicitly addresses the use of digital replicas and for cases in which legal counsel negotiated the licensing of digital replica rights on an individual’s behalf and “the commercial terms are stated clearly and conspicuously in a contract or other writing signed or initialed by the individual.”

Because Section 927’s prohibitions concern the use of digital replicas the user “would otherwise have performed in person,” its protections will not apply as to for-profit digital replicas created after a performer’s death. Those instances would be subject to AB 1836, which will amend Section 3344.1 of the California Civil Code to generally prohibit the commercial use of digital replicas of deceased performers in expressive audiovisual works or sound recordings without first obtaining the consent of the relevant performer’s estates. AB 1836 also contains several exceptions, including where the use is done in connection with news, public affairs, or sports broadcasts; where the use is for purposes of comment, criticism, scholarship, satire or parody; where the use is fleeting or incidental; and in documentaries and biographical works (“unless the use is intended to create, and does create, the false impression that the work is an authentic recording in which the individual participated”). Violations of AB 1836 may entitle the impacted decedent’s estate to the greater of \$750 or actual damages, as well as “any profits attributable to the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages,” along with attorneys’ fees and costs and, potentially, punitive damages.

According to Screen Actors Guild-American Federation of Television and Radio Artists President Fran Drescher, who attended Governor Newsom’s signing of the new laws, “AI poses a threat not just to performers in the entertainment industry, but to workers in all fields, in all industries everywhere.” While these new laws have primarily been recognized as providing protection to actors, their scope is not limited to performers in the entertainment industry. Accordingly, California employers – regardless of industry – should use caution and consider these new laws



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Related Practice Areas

- Artificial Intelligence
- Labor & Employment

when using digital replicas of employees in advertising, marketing materials, or internal communications.
