



March 20, 2007

The Honorable Andrew McDonald  
Senate Judiciary Chairman

The Honorable Michael Lawlor  
House Judiciary Chairman

Members of the Judiciary Committee

Judiciary Committee  
Legislative Office Building  
Hartford, CT 06106

RE: RIAA LETTER IN OPPOSITION TO RAISED COMMITTEE BILL 6818

Dear Chairman McDonald, Chairman Lawlor, and Members of the Judiciary Committee:

On behalf of the Recording Industry Association of America (RIAA),<sup>1</sup> I write to respectfully oppose House Bill 6818. This legislation would severely regulate and restrict creative expression in works such as sound recordings, audio-visual works including music videos and content displayed at live performances, and visual material accompanying commercial musical products. We believe this legislation is unnecessary, contrary to established law regarding right of publicity, and in direct violation of the First Amendment and Commerce Clause of the U.S. Constitution.

HB 6818 would prohibit the use of someone's persona for a commercial, advertising, or fundraising purpose, or the alteration of someone's image, voice, likeness, performance or appearance so as to (A) cause him to speak or appear to speak words he did not, or (B) place him or appear to place him in a place or circumstance in which he did not agree to be placed. It is not clear why this bill is necessary given the current right

---

<sup>1</sup> The Recording Industry Association of America (RIAA) is the trade group that represents the U.S. recording industry. Its members create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States.

of publicity found in Connecticut common law, protecting name or likeness in connection with a promotional purpose. See Venturi v. Savitt, 191 Conn. 588; 468 a.2d 933. In any case, the bill expands considerably beyond the standard found in other states for name and likeness used in works for promotional purposes.

HB 6818 would touch upon all manner of creative works used in a commercial (and non-commercial) setting, including the sound recordings and music videos produced by our member companies and their artists. As such, the bill does precisely what the First Amendment prohibits – chilling the free expression of artists and other creators.

The First Amendment to the United States Constitution and the Connecticut Constitution protect creators of expressive works. The Supreme Court has consistently held that music is “speech” protected by the First Amendment. See Ward v. Rock Against Racism, 491 U.S. 781, 790 (1989) (“Music, as a form of expression and communication, is protected under the First Amendment.”). HB 6818 would directly contravene the First Amendment by forcing creators to censor the content of their works, including those of our member companies and their artists, and subjecting the use of uncensored material in the state to millions of dollars in civil liability.

The exclusions in Section 6 do not solve these problems. First, it is not clear that sound recordings or their accompanying music videos are covered. While “musical compositions” are excluded, that term does not normally include the separate copyrighted sound recordings embodying a particular artistic version of the composition. Moreover, “film and radio and television programs” does not necessarily cover the short audio-visual works found in music videos.

Second, in any event, the exclusion does not apply if:

“the individual’s image, voice, likeness, performance or appearance of an individual (other than an elected or appointed public official) is modified electronically, digitally or by other means so as to (A) cause the individual to speak or appear to speak words that the person did not speak, or (B) place the individual or appear to place the individual in a place or circumstance in which the individual did not agree to be placed”

This provision applies whether or not the work was used for a commercial purpose. Such modification, however, is often used in works that offer comment, criticism and parody on public figures and personalities, expression that is protected by the First Amendment and essential to the existence of a free society. But again, music has always played an important role in communicating statements on people, society, and world affairs. To prohibit artists’ ability to make such statements is to stifle their fundamental right to voice discontent or desire for change.

Certainly, there may be responsible limitations placed on the use of an individual's persona, but, as mentioned above, such limitations are already in place in Connecticut's common law protection of name and likeness. To the extent this Legislature feels it must codify such protections, we would suggest working with parties such as the RIAA to ensure that any language does not have the unintended consequences of the current bill and reflects the concerns of those who may be unintentionally harmed. For example, the California legislature worked together with the Motion Picture Association of America and the Screen Actors Guild to amend the state's right of publicity statute. The result – in the state perhaps most notorious for public persona – was legislation that serves to protect appropriately individuals' rights while preventing a system that harms businesses by inviting abuse of the legal system.

Another cause of concern regarding this bill is that it effectively establishes a worldwide venue for civil legal action, unprecedented among any other state statute of this nature. By expanding the right to persons domiciled outside of Connecticut, in contravention of customary law that the domicile of the complainant determines "rights of publicity," the bill would create impediments to the importation and exhibition of non-Connecticut works in Connecticut, violating the Commerce Clause. The net result of the bill would be to discourage creative work production, generating a "chilling effect" on freedom of speech by interfering with a creator's ability to tell a story or express a point. The United States Supreme Court has ruled many times that laws that promote self-censorship because of the fear of legal consequences violate the First Amendment as much as laws that directly ban certain speech. See Smith v. California, 361 U.S. 147, 154 (1959).

The bill would also have a severe economic impact on the state of Connecticut. The threat of suit by anyone – in or outside of Connecticut – whose persona is used in commercial context or is digitally altered would discourage a large number of productions and activities in the state. HB 6818 therefore would discourage producers recording the music of artists or filming (or showing) accompanying music videos in Connecticut, and would very likely discourage performers from bringing their multimedia shows to the state. At the same time, Connecticut's citizens would be denied access to recordings that are available everywhere else in the United States.

For the aforementioned reasons, we respectfully submit that HB 6818 should be rejected.

Sincerely,



Steven M. Marks

Executive Vice President and General Counsel