



DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-C-2024-0024]

Public Roundtable on Protections for Name, Image, Likeness, Other Indicia of Identity, and Reputation

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of public roundtable.

SUMMARY: The United States Patent and Trademark Office (USPTO) will hold a roundtable to seek public input regarding: whether existing laws protecting an individual’s reputation and existing laws prohibiting unauthorized use of an individual’s name, image, voice, likeness, or other indicia of identity (collectively referred to within this Notice as “NIL”) are sufficient given the development and proliferation of artificial intelligence (AI) technology. The USPTO will seek this input to assist in its ongoing work to shape intellectual property (IP) policy, including NIL policy, and to assist in its work related to President Biden’s Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.

DATES: The USPTO will hold a public roundtable, titled *Protecting NIL, Persona, and Reputation in the Age of Artificial Intelligence*, on August 5, 2024. The roundtable will consist of an in-person session and a separate virtual session. Individuals who wish to participate as a speaker at either session of the roundtable must submit a request to the email address below (at the **ADDRESSES** section of this Notice), and such requests must be received by 11:59 p.m. Eastern Time on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The in-person session of the roundtable will be held at the USPTO’s headquarters, 600 Dulany Street, Alexandria, VA 22314. The virtual session of the roundtable will be conducted using the Webex videoconferencing platform. Requests to participate as a

speaker at either session of this roundtable must be submitted via email to NILroundtable@uspto.gov and must be received by the date listed above (at the **DATES** section of this Notice).

Individuals submitting a request to participate must include in their request: their name, professional affiliation, contact information, a clear indication of the roundtable session in which they seek to participate (individuals may participate in either the in-person or virtual session, but not both), and a short – no longer than one page – summary of what they intend to address at the roundtable. Requests to participate as a speaker at the roundtable made in any other format will not be considered. If an email submission of a request to participate as a speaker is not feasible, please contact the USPTO using the contact information below for special instructions.

Members of the public interested in viewing the livestream of the roundtable must register using this link: <https://www.uspto.gov/about-us/events/public-roundtable-ai-and-protections-for-use-of-individuals-name-image-or-likeness>.

FOR FURTHER INFORMATION CONTACT: Jeffrey Martin, Trademark Attorney-Advisor, USPTO, jeffrey.martin@uspto.gov, 571-272-9300.

SUPPLEMENTARY INFORMATION:

I. Background

To advance its mission, the USPTO monitors and studies emerging technologies, including AI, evaluates whether current IP policies and protocols continue to encourage the development of new creations and technologies without unnecessarily locking up innovation or otherwise impinging on the rights of others, and analyzes how emerging technologies impact IP rights. The USPTO engages with stakeholders, collaborates with other Federal agencies, and solicits views from the public to conduct this work. As appropriate, the USPTO develops new protocols, guidance, and policies, as well as policy recommendations for the Executive and Legislative Branches of the United States government, that incorporate input received during this process.

In June 2022, the USPTO established the Artificial Intelligence and Emerging Technology (AI/ET) Partnership to further elevate its engagement with stakeholders, government agencies, and the public on these issues. For more information on the AI/ET Partnership, visit <https://www.uspto.gov/artificial-intelligence>. The AI/ET Partnership has conducted numerous listening sessions on AI and IP issues, including a symposium in Los Angeles, California in March 2024, on AI's implications for patent, copyright, and NIL laws and policies.

The USPTO, through the Department of Commerce, is also the primary advisor to the President on IP policy matters. On October 30, 2023, President Biden issued the Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, which is available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>. This Executive Order, in part, charges the USPTO with providing guidance to stakeholders and recommendations to the President regarding AI's impact on IP rights.

AI technology enables new and efficient ways to create digital media, including images, audio, and video. AI can be used to generate digital media that incorporates individuals' NIL or impacts individuals' reputations, with or without appropriate authorization. The unauthorized use of AI-generated NIL content can implicate Federal trademark and copyright laws, as well as state NIL laws.

Many state legislatures and courts have either enacted laws or established judicial precedents that protect individuals' NIL or reputations. In addition, some Federal statutes address certain misuses of NIL or reputation. For example, section 43(a) of the Lanham Act (15 U.S.C. 1125(a)) contains a Federal cause of action that individuals can use to address unauthorized uses of their NIL in certain commercial circumstances.

II. Roundtable

In support of its ongoing work to shape IP policy and evaluate emerging technologies' implications for IP rights, the USPTO will hold a roundtable to solicit input from the public on 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. The roundtable will consist of an in-person session and a separate virtual session.

Members of the public interested in participating as a speaker at either session of the roundtable must submit such a request to NILroundtable@uspto.gov and provide their name, professional affiliation, contact information, a clear indication of the roundtable session in which they seek to participate (individuals may participate in either the in-person or virtual session, but not both), and a short – no longer than one page – summary of what they intend to address at the roundtable. Such requests must be submitted by the dates listed above (at the **DATES** section of this Notice). The USPTO will make every effort to accommodate requests to speak at the roundtable, subject to time limitations.

The roundtable will be livestreamed. The USPTO will post additional information about the roundtable, including a tentative agenda and instructions for members of the public to register to view the livestream, at <https://www.uspto.gov/about-us/events/public-roundtable-ai-and-protections-for-use-of-individuals-name-image-or-likeness>.

The USPTO will also record and transcribe the roundtable and will make available copies of the recording and transcript on the USPTO website at <https://www.uspto.gov/about-us/events/public-roundtable-ai-and-protections-for-use-of-individuals-name-image-or-likeness>.

The USPTO welcomes remarks from roundtable speakers on any issues relevant to the subject matter of this roundtable and is particularly interested in the following questions.

1. How does the use of unauthorized NIL content harm individuals? Does AI technology exacerbate the creation and use of unauthorized NIL content and harm to individuals? If so, how?

2. How can AI be used as a legitimate and constructive tool in circumstances where individuals grant permission to a third party to use their NIL?
3. 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? What other types of mechanisms or protocols exist, or should exist, to identify AI-generated NIL content or address unauthorized NIL content?
4. Currently, NIL is primarily protected via state law. In addition, some Federal statutes also address certain misuses of NIL. For example, the Lanham Act includes a provision – 15 U.S.C. 1125(a) – that can be used to bring a Federal cause of action in certain circumstances involving NIL misuse. Are current legal protections for NIL rights sufficient? Why or why not?
5. 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? If so:
 - a) Should current state NIL laws, such as state right of publicity laws, be preempted if a new Federal NIL law is enacted?
 - b) What key elements should be incorporated in a new Federal NIL law?
 - c) Should any new Federal NIL law protect against all unauthorized replicas of an individual's NIL or focus on unauthorized AI-generated replicas?
 - d) Some state laws addressing NIL protect only well-known individuals. Likewise, many Federal circuit courts require a showing, among other elements, that a plaintiff is famous or recognizable by the public in order to succeed on a claim

under 15 U.S.C. 1125(a). Should this requirement of fame or recognizability be included in a new Federal law protecting NIL rights? Why or why not?

- e) Should a new Federal law prohibit non-commercial uses of unauthorized NIL content, such as political deep fakes and revenge pornography?
 - f) What types of enforcement mechanisms should be included in any new Federal NIL law?
 - g) What elements should be included in a new Federal NIL law to help ensure it does not become obsolete due to rapid changes in AI technology?
 - h) Section 230 of the Communications Decency Act states: “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” Section 230 also expressly provides that “[n]othing in this section shall be construed to limit or expand any law pertaining to intellectual property.” Should any new Federal NIL law be considered an “intellectual property law” for purposes of Section 230 of the Communications Decency Act?
 - i) How should Congress address First Amendment considerations in any new Federal NIL law?
 - j) Should any new Federal NIL law be incorporated into the Lanham Act?
6. What limits, if any, should be placed on the voluntary transfer of rights concerning NIL to a third party? For example, should there be limits on the duration of such transfers?
7. Questions 1-6 above relate to individuals’ NIL. How should these questions be answered in the context of individuals’ and creators’ reputations?

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

