

Honolulu, Hawaii

, 2009

APR 30 2009

RE: S.B. No. 1005  
S.D. 2  
H.D. 2  
C.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam and Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1005, S.D. 2, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PUBLICITY RIGHTS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to encourage and protect artists and other persons in Hawaii's performing arts and related industries for an unspecified number of years after death by:

- (1) Establishing a property right in the commercial use of a person's name, voice, signature, or likeness;
- (2) Providing remedies for infringements on the right;
- (3) Providing for an unspecified amount for a minimum damages award for infringement upon the right granted by this measure;



- (4) Requiring all transferees of publicity rights to register with the Department of Commerce and Consumer Affairs; and
- (5) Providing that common law rights or other statutory rights, whether derived from state or federal law.

Your Committee on Conference finds that protecting an individual or personality's publicity rights will be invaluable to writers, composers, and recording artists in Hawaii. These individuals deserve to have confidence that the laws of Hawaii protect the commercial value of their name, voice, signature, photograph, or likeness. Your Committee on Conference also finds that this measure tempers the exploitation of the names, voices, signatures, photographs, and likenesses of a deceased individual or personality without any compensation to their heirs.

This measure is based upon a law in the State of Washington that has sustained minimal challenges in its enforcement over the past decade. As such, as your Committee on Conference sought to address various concerns raised by representatives of the recording and motion picture industries, as well as those involved in online commerce, and your Committee on Conference believes that it has balanced the interests of performing artists and their heirs against the commercial needs of well-established music, film, digital media and other Internet-based industries.

Your Committee on Conference has amended this measure by:

- (1) Adding a definition for "characteristic";
- (2) Amending the definition of "likeness" to include a photograph;
- (3) Adding a definition for "photograph";
- (4) Adding a definition for "publicity rights trade name registration", which exempts any potential liability or duty for the Department of Commerce and Consumer Affairs related to a trade name registration;
- (5) Adding that the individual's rights protected in this measure are exclusive to the individual, or other entitled persons, for a period of seventy years after the death of the individual;



- (6) Clarifying that the statutory damages for the infringement of a right protected in this measure to be the greater of \$10,000 or the actual damages sustained from the infringement;
- (7) Providing that the search of an individual's name on an internet search engine shall be exempt from statutory damages;
- (8) Providing that a court may order the impounding, destruction, or reasonable impounding of all materials used in violation of the injured party's rights pursuant to Rule 65 of the Hawaii Rules of Civil Procedure;
- (9) Providing that the property of a common carrier, internet service provider, internet search engine provider, or other similarly situated entity shall be exempt from the destruction or reasonable disposition requirements, unless that entity receives written notice of the infringement, pursuant to 17 United States Code section 512(c), and fails to remove the material expeditiously after receipt of the written notice;
- (10) Adding that the use or authorization to use a display in a certain manner shall be exempt from the restrictions provided for in this measure;
- (11) Deleting the registration requirements with the Department of Commerce and Consumer Affairs for transferees to bring an action or recover damages from an infringement action;
- (12) Deleting the requirement for the Department of Commerce and Consumer Affairs to maintain a registry of all transferees;
- (13) Adding the requirement for a licensee to use the publicity rights trade name registration of another individual or personality, for the licensee to first inform the individual or personality in writing of the pending assignment or license to use their publicity rights trade name registration;
- (14) Providing a licensee with a complete defense to an infringement action if the licensee receives a bona-fide publicity rights trade name registration;



- (15) Deleting section -9, pertaining to common law rights or other statutory rights, whether derived from state or federal law;
- (16) Changing the effective date to upon approval; and
- (17) Making technical, nonsubstantive changes for the purpose of clarity.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1005, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1005, S.D. 2, H.D. 2, C.D. 1.

Respectfully submitted on behalf of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE



ANGUS L.K. MCKELVEY, Co-Chair



CAROL FUKUNAGA, Chair



JOEY MANAHAN, Co-Chair




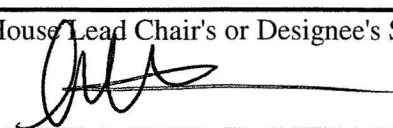
BRIAN T. TANIGUCHI, Co-Chair



BLAKE K. OSHIRO, Co-Chair



**Record of Votes of a  
Conference Committee**

Bill / Concurrent Resolution No.: <b>SB 1005, SD 2, HD 2</b>					Date/Time: <b>4/30/09 4:25 pm</b>				
<input checked="" type="checkbox"/> The recommendation of the House and Senate managers is to pass with amendments (CD).									
<input type="checkbox"/> The Committee is reconsidering its previous decision.									
<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure					<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.				
Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
FUKUNAGA, Carol, Chr.	✓				MCKELVEY, Angus L.K., Co-Chr.	✓			
TANIGUCHI, Brian T., Co-Chr.	✓				MANAHAN, Joey, Co-Chr.	✓			
SLOM, Sam	✓				OSHIRO, Blake K., Co-Chr.	✓			
					CHOY, Isaac W.				✓
					TOKIOKA, James Kunane				✓
					WARD, Gene	✓			
<b>TOTAL</b>	<b>3</b>				<b>TOTAL</b>	<b>4</b>			<b>2</b>
A = Aye		WR = Aye with Reservations			N = Nay		E = Excused		
Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted					House Recommendation is: <input type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Senate Lead Chair's or Designee's Signature: 					House Lead Chair's or Designee's Signature: 				
Distribution:		Original	Yellow	Pink	Goldenrod				
		File with Conference Committee Report	House Clerk's Office	Senate Clerk's Office	Drafting Agency				