



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:

H.B. NO. 2357, H.D. 1, RELATING TO ARTIFICIAL INTELLIGENCE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Tuesday, February 18, 2026 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Ashley M. Tanaka or Christopher J.I. Leong,
Deputy Attorneys General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) respectfully opposes this bill.

This bill adds a new chapter to the Hawaii Revised Statutes (HRS) to prohibit music streaming platforms from making available in the State music performed or attributed to an artificial intelligence music artist. This bill also assigns the Department exclusive enforcement and rulemaking authority over the new chapter added to the HRS by this bill and declares any violation of this new chapter to be an unfair method of competition and unfair and deceptive act or practice under section 480-2, HRS.

This bill may be subject to a legal challenge under the First Amendment of the United States Constitution, as the section -2 of the new chapter added by section 1 of this bill restricts expressive speech by prohibiting music streaming platforms from making available an entire category of music – music performed or attributed to an artificial intelligence music artist. As the U.S. Supreme Court stated in Brown v. Entertainment Merchants Assn., 564 U.S. 786 (2011), "whatever the challenges of applying the Constitution to ever-advancing technology, the basic principles" of the First Amendment "do not vary." *Id.* at 790. In this case, even though music streaming platforms and artificial intelligence music artists represent modern, ever-advancing technology, courts would still likely engage in a First Amendment analysis in

determining whether this bill is constitutional. In Moody v. NetChoice, LLC, 603 U.S. 707 (2024), the U.S. Supreme Court stated that "the government may not, in supposed pursuit of better expressive balance, alter a private speaker's own editorial choices about the mix of speech it wants to convey." *Id.* at 734. In Moody v. NetChoice, LLC, the Court considered social media platforms to be entities exercising editorial discretion in the selection and presentation of content and thus engaging in First Amendment-protected speech activity. When the government interferes with such editorial choices, the Court held that it alters the content of the compilation, and in overriding a private party's expressive choices, the government confronts the First Amendment.

In this bill, courts would likely treat music streaming platforms as entities exercising editorial discretion in the selection and presentation of music and hold that the government is violating such platforms' First Amendment rights by attempting to interfere with and override such platforms' expressive choices in prohibiting music performed or attributed to an artificial intelligence artist. As section -2 of the new chapter, on page 2, lines 4-8, is the substance of the new chapter, we do not support the passage of this bill in its current form.

We note, as an aside, that the new section -3(a) of the new chapter added by section 1 of this bill attempts to give the Department exclusive enforcement authority over this new chapter. Section -3(b), however, deems any violation of this chapter an unfair method of competition and unfair or deceptive act or practice in the conduct of any trade or commerce under section 480-2. Under section 480-2(d), HRS, the Office of Consumer Protection may also bring actions based upon unfair or deceptive acts or practices declared unlawful by section 480-2, HRS. Section -3(a) also refers to the purposes of the new chapter that the Department is charged with carrying out; however, the bill is silent as to what the new chapter's purposes are. To remove confusion as to who has enforcement authority over this chapter and what the chapter's purposes are, the Department recommends deleting section -3(a) on page 2, lines 9-12.

The Department understands and appreciates the challenges posed by artificial intelligence, but believes this bill presents significant adverse litigation risk and respectfully asks that it be held. Thank you for the opportunity to testify.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**
KA 'OIHANA HO'OMOHALA PĀ'OIHANA, 'IMI WAIWAI
A HO'OMĀKA'IKĀ'I

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

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Statement of

GEORJA SKINNER

Administrator, Creative Industries Division

Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

February 18, 2026

2:00 PM

State Capitol, Conference Room 325

In consideration of

HB2357 HD1

RELATING TO ARTIFICIAL INTELLIGENCE

Chair Tarnas, Vice Chair Poepoe, and members of the Committee. The Department of Business, Economic Development and Tourism (DBEDT) supports the intent of HB2357 HD1, which prohibits music streaming platforms from hosting, distributing, or otherwise making available in the State music performed or attributed to an artificial intelligence music artist. We defer to the Department of the Attorney General as to the aspects of their concerns regarding first amendment rights and their required enforcement as identified in this measure.

AI is a growing tool for creative artists and is increasingly central to Hawai'i's vision for economic diversification, particularly in music, film, and other media content. HB2357 HD1 establishes an important and timely consumer and cultural protection through prohibiting music streaming platforms from hosting, distributing, or otherwise making available in the State music performed or attributed to an "artificial intelligence music artist," which is defined in this measure as a persona that is not a natural person,

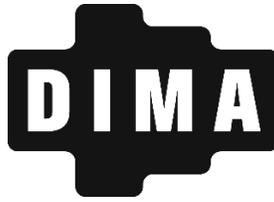
created through artificial intelligence, and marketed or promoted as a musical performer or recording artist.

While caution must be taken to protect Hawai'i based streaming businesses that operate platforms which are created, owned and operated such as mele.com, the measure does not restrict human Hawai'i artists from being on these sites.

We point out to the committee that Hawai'i music artists today may choose to utilize technology across recording, performing and digital distribution which including beat generation, looping in their final digital content. HB2357 HD1 as written does not restrict Hawai'i's human artists from using streaming platforms, nor does it prohibit musicians from using digital or AI-assisted tools in their creative process.

By setting boundaries that protect real people, real livelihoods, and real culture. HB2357 HD1 is a forward-looking bill that ensures our music economy does not become dominated by synthetic performers designed solely for profit. We must balance the opportunities AI presents with an appropriate regulatory framework, as digital distribution continues to provide significant revenue opportunities for resident creatives.

Thank you for this opportunity to testify.



February 18, 2026

Dear Chair and Members of the Legislature:

On behalf of the Digital Media Association (DIMA), which represents leading music streaming services operating nationwide and serving millions of consumers in Hawai‘i, we respectfully submit this letter in strong opposition to HB2357 in the 2026 legislative session before the Hawaii Legislature.

HB2357 represents a sweeping and constitutionally suspect restraint on lawful expressive content. As drafted, the measure is extraordinarily broad in scope and would impose government restrictions on protected speech without a clear, narrowly tailored justification. The First Amendment sharply limits the government’s ability to regulate lawful expression, particularly when the regulation is content-based. Courts have repeatedly held that such laws must satisfy strict scrutiny — a standard this bill is unlikely to meet.

Fundamentally, decisions about what lawful content to access belong to consumers and families — not the government. Adults have the constitutional right to access protected speech, and parents retain the authority to determine what is appropriate for their children. HB2357 substitutes a legislative judgment for individual choice and market-based solutions that already provide consumers with robust tools to manage content preferences.

In addition to its constitutional infirmities, HB2357 would operate as a substantial restraint on interstate commerce and digital trade. DIMA members distribute content nationwide through services that rely on uniform compliance standards. A state-specific and expansive content restriction would create significant compliance burdens, disrupt established distribution systems, and potentially require services to alter offerings in Hawai‘i alone. The practical effect would be to chill lawful content distribution and undermine Hawaii’s participation in the modern digital economy.

Notably, HB2357 attempts to regulate a category of perceived harm that is neither clearly defined nor demonstrably established. Legislating broad prohibitions in response to an undefined or speculative concern risks unintended consequences, including suppression of lawful, artistic, and socially valuable expression. Policymaking in emerging technological contexts requires careful, evidence-based deliberation — not sweeping prohibitions premised on uncertainty. To illustrate the overbreadth of this approach, one might imagine a law enacted in 1981 barring record stores from carrying albums that incorporated electronic instrumentation or sampling. Such a measure, driven by discomfort with new creative technologies, would have stifled entire genres of music before they were fully understood. HB2357 risks making a comparable error:

attempting to prohibit or constrain evolving forms of digital expression based on unfamiliarity rather than demonstrated harm.

DIMA and its member companies share the Legislature's interest in protecting consumers and promoting responsible innovation. We remain committed to constructive engagement and to solutions that respect constitutional boundaries while empowering individuals with meaningful choice.

For these reasons, we respectfully urge the Legislature to reject HB2357.

Sincerely,

A handwritten signature in black ink, appearing to read 'Graham Davies', with a long horizontal flourish extending to the right.

Graham Davies
President and CEO
DIMA



February 18, 2026

The Honorable David Tarnas, Chair
House Judiciary and Hawaiian Affairs Committee
State Capitol, Conference Room 325
415 South Beretania Street
Honolulu, HI 96813

Dear Chairman Tarnas:

I am the executive director of the Internet Coalition (IC), a national trade association that represents member companies in state public policy discussions. The IC serves as an informational resource, striving to protect and foster the internet economy and the benefits it provides consumers.

I respectfully urge you to **defer or reject HB 2357, HD1**, the proposed measure that would ban music streaming platforms from hosting, distributing or otherwise making available in Hawaii music “performed or attributed to an artificial intelligence music artist,” and would make violations an unfair method of competition or an unfair and deceptive act or practice.

While I recognize and appreciate your interest in protecting artists and ensuring responsible development of artificial intelligence technologies, this measure raises serious constitutional, practical and economic concerns. It contains sweeping prohibitions that restricts constitutionally protected expression, overrides private editorial discretion, relies on overbroad and ambiguous definitions and risks economic harm to Hawaii’s creative and technology sectors.

The bill imposes a content-based ban on protected expression. It singles out a specific category of expressive content, banning distribution on streaming platforms in Hawaii. Music is considered a protected expression under the First Amendment. A categorical prohibition such as this bill proposes and based solely on the identity or nature of the performer constitutes a content-based restriction that is presumptively unconstitutional. Courts have consistently held that the government may not suppress an entire category of protected speech unless it can demonstrate a compelling governmental interest and ensure the restriction is narrowly tailored to achieve that interest. This bill satisfies neither requirement. It broadly prohibits all AI-generated musical personas, regardless of whether the content is deceptive, harmful, infringing or otherwise unlawful.

The result would be a sweeping ban on lawful expressive works, including experimental music, parody, satire, collaborative human-AI compositions and other emerging creative forms.

The bill interferes with platforms’ editorial discretion. Music streaming services exercise editorial discretion in curating, organizing, recommending and presenting content to users. By dictating that an entire category of content is prohibited, the bill directly overrides those editorial judgments. Recent Supreme Court precedent makes clear that government may not alter or override a private entity’s expressive choices about the content it distributes. By compelling

platforms to exclude AI-attributed music, the bill intrudes upon protected editorial decision-making and exposes Hawaii to significant constitutional litigation risk.

The definitions remain overbroad and indeterminate. The bill defines an “artificial intelligence music artist” as a persona that is not a natural person, created through artificial intelligence and marketed or promoted as a musical performer or recording artist. However, modern music production often incorporates AI-assisted tools in songwriting, composition, mastering, sound design, or vocal modeling. The bill does not clearly distinguish between fully autonomous AI-generated personas, human artists using AI tools, collaborative works blending human and AI elements or stylized virtual performers backed by human creators. Given the rapid evolution of technology, platforms would be placed in the untenable position of determining whether a particular act qualifies as an “AI music artist” creating uncertainty and encouraging over-removal of lawful content to avoid liability.

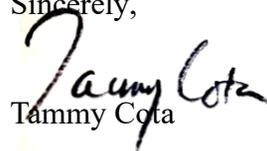
Rather than supporting innovation, this bill would isolate Hawaii from rapidly developing sectors of the creative and technology economy and could harm Hawaii’s creative economy. Hawaii’s music community increasingly relies on digital distribution to reach global audiences. Streaming platforms are a primary revenue source for local artists and independent creators. A state-specific prohibition creates the risk of geoblocking content in Hawaii, could reduce availability of innovative creative works, would create compliance burdens that disproportionately impact smaller platforms and would deter technology and media investment in Hawaii.

Existing laws already address fraud and deception including the Lanham Act ([15 U.S.C. § 1125\(a\)](#)), the Federal Trade Commission Act ([15 U.S.C. § 45](#)), Hawaii’s UDAP statute ([HRS § 480-2](#)) and [criminal impersonation and fraud statutes](#) which prohibit false endorsement, deceptive marketing and fraudulent impersonation. To the extent Hawaii seeks to prevent misleading AI-generated works or false attribution, targeted enforcement of these existing laws provides a constitutionally sound and narrowly tailored approach without imposing a categorical ban on protected expression. If lawmakers believe that additional clarity is needed in existing laws, targeted amendments addressing fraudulent impersonation or misrepresentation would achieve that goal, but in a narrowly tailored way that would avoid an unconstitutional categorical ban.

In conclusion, HB 2357, HD1 contains sweeping prohibitions that restricts constitutionally protected expression, overrides private editorial discretion, relies on overbroad and ambiguous definitions and risks economic harm to Hawaii’s creative and technology sectors. For these reasons, we respectfully urge you to **defer or reject HB 2357, HD1**.

Thank you for your time and consideration. I look forward to working together to craft a balanced and constitutionally sound approach to artificial intelligence policy.

Sincerely,



Tammy Cota

HB-2357-HD-1

Submitted on: 2/14/2026 9:26:35 AM

Testimony for JHA on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Randy Wong	Individual	Support	Written Testimony Only

Comments:

As a professional musician who has put thousands of hours into the perfection of my craft, I strongly support the prohibition of AI generated music in Hawai‘i, and think that this bill is a step in the right direction.

The public often misunderstands music on streaming services, as something effortless or innate. In reality, the music found on streaming services is the result of thousands of hours of disciplined craft: listening, technique, ensemble training, and emotional intelligence. Recording music for broadcast or streaming requires significant time, effort, money, and passion.

Musicians are working **human** professionals: performers, educators, composers, contractors, and cultural workers. Supporting **human-created** music means supporting jobs, career pathways, and retaining talent locally. AI generated music threatens all of these careers.

Earlier this year, I personally fought to remove AI-generated music that unlawfully spoofed my own music from a streaming service. The AI-music even titled its album similar to mine, and released it the day before my album released online. This caused significant confusion, resulting in lost sales, etc. etc. It was difficult to remedy, with no clear course of action. I wish a bill like this had already been enacted, as it would provide artists like me with some form of protection. Hawai‘i can lead in this regard, and doing so would be supportive of our many talented, hard working, **human** musicians who passionately dedicate their lives to the craft of music.

Thank you for your consideration.

HB-2357-HD-1

Submitted on: 2/15/2026 9:58:08 PM

Testimony for JHA on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
M. Leilani DeMello	Individual	Support	Written Testimony Only

Comments:

Aloha,

I KĀKO‘O this bill. The laws are so far behind the technology at this point and AI needs to be regulated. I appreciate this effort and look forward to more meaningful ways in which we can protect humans from unintended consequences that the application of artificial intelligence may have.

Mahalo,

M. Leilani DeMello

‘Ōla‘a, Puna, Hawai‘i

HB-2357-HD-1

Submitted on: 2/18/2026 8:48:39 AM

Testimony for JHA on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Susan Browne	Individual	Support	Written Testimony Only

Comments:

I am in favor of prohibiting using AI in music streaming platforms that create, host, distribute or otherwise make available music. Hawai‘i has a rich history of amazing music created by real people. Do not let AI in!

Susan Browne