

February 12, 2025

Re: Concerns Regarding the TAKE IT DOWN Act

Dear Senator:

In advance of Senate consideration, the undersigned organizations write to express our concerns with [S.146](#), the Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks, or TAKE IT DOWN, Act. The nonconsensual distribution of intimate imagery (NDII), whether that imagery is real or generated with AI, is a profoundly harmful act and violation of victims' privacy and autonomy. While addressing NDII is a [laudable goal](#), the bill as currently drafted creates unacceptable risks to user speech that is *not* NDII and to users' privacy and security online. We urge the Senate to address the flaws in the bill's text to ensure that it protects users' free expression and privacy rights.

In its current form, the bill creates a notice and takedown (NTD) mechanism that would result in the removal of not just nonconsensual intimate imagery but also speech that is neither illegal nor actually NDII. This mechanism is likely unconstitutional and will undoubtedly have a censorious impact on users' free expression. While the criminal provisions of the bill include appropriate exceptions for consensual commercial pornography and matters of public concern, those exceptions are not included in the bill's takedown system. The text, therefore, creates an NTD mechanism for content that is not NDII as defined by the law, and that would result in the takedown of consensual, constitutionally protected speech. Because the bill mandates the takedown of content within 48 hours, and reasonable efforts to identify and remove known copies, it also heavily incentivizes the use of automated content detection and filtering techniques, which would be required for many platforms to comply with the NTD mandate at scale. These content filtering techniques have [significant limitations](#), tending to lead to the inappropriate takedown and [suppression of lawful speech](#). Moreover, the bill mandates this NTD regime without even the minimal guardrails that accompany the DMCA. Even with those guardrails, the DMCA is [routinely abused](#) to silence constitutionally protected information and criticism. The TAKE IT DOWN Act will cause similar, if not more, censorship of lawful user speech if it is not amended to address these concerns.

The bill also presents an existential threat to encrypted platforms. As currently drafted, the bill appropriately excludes email and other services that do not primarily consist of user-generated content from the NTD system. Direct messaging services, cloud storage systems, and other similar services for private communication and storage, however, could be required to comply with the NTD. These services are more akin to the private "email services" exempted from the bill. Without clarification, the bill incentivizes companies' use of invasive monitoring technologies on services where users rightfully expect their communications to be private.

This problem is particularly acute for users of services that are encrypted end-to-end (E2EE). As currently drafted, the bill would create takedown obligations for providers of E2EE services that

do not have access to the content that users share, store, or generate. The TAKE IT DOWN Act, therefore, either would create an obligation to take down content to which a provider has no access — an impossible obligation — or incentivize content filtering that would break encryption. To protect the privacy and security of users, including victims of NDII who rely on encrypted services to communicate [safely and securely](#), the TAKE IT DOWN Act should be modified to make clear that it applies only to forums where content is published to the public and does not apply to encrypted services or other services where users expect their communications and information to be private.

Thank you for your efforts to address the nonconsensual distribution of intimate images. We look forward to continuing to work with Congress to find speech- and privacy-protective ways to help victims of NDII.

Sincerely,

Center for Democracy & Technology
Authors Guild
Demand Progress Action
Electronic Frontier Foundation
Fight for the Future
Freedom of the Press Foundation
New America's Open Technology Institute
Public Knowledge
Restore The Fourth
SIECUS: Sex Ed for Social Change
TechFreedom
Woodhull Freedom Foundation