

July 8, 2025

Senator Chuck Grassley
Chair, Senate Judiciary Committee
135 Hart Senate Office Building
Washington, D.C. 20510

Senator Dick Durbin
Ranking Member, Senate Judiciary Committee
711 Hart Senate Office Building
Washington, D.C. 20510

Dear Chair Grassley and Ranking Member Durbin:

We, the undersigned civil society organizations, write to express our concerns with the Nurture Originals, Foster Art, and Keep Entertainment Safe, or NO FAKES, Act of 2025. We all share the goal of maximizing AI's benefits while minimizing harms to artists, creators, and the general public. While we appreciate revisions made to the bill to reduce some of its potential negative effects, the NO FAKES Act still misses the mark by endangering wide swaths of non-commercial, First Amendment-protected speech and increasing the risk that both ordinary Americans as well as performers and their heirs could lose control over their existing rights. Rather than advance the NO FAKES Act, we urge the Committee to examine ways that existing law can address potential harms from generative AI and pursue narrowly targeted legislation only where needed to fill any gaps.

The NO FAKES Act may purport to protect First Amendment-protected expression but, in practice, it would run roughshod over fair use and other protected speech online and fail to appropriately account for users' constitutional rights. While the NO FAKES Act requires those submitting takedown requests to perform a "good faith review" to determine whether the imagery constitutes a "digital replica," the definition of "digital replica" does not exclude replicas created and used in First Amendment-protected expression, such as satire, parody, or other commentary. Further, NO FAKES does not require either the "good faith review" or a takedown notice to be objectively reasonable, fatally undermining the effectiveness of both the bill's already weak accountability mechanisms and its purported exclusion of activity that might qualify as "bona fide satire, commentary, scholarship, or parody." Indeed, at no point in the notice and takedown process are users' First Amendment rights meaningfully considered. Rather, complainants and intermediaries are empowered to determine the rights of users, with no regard for whether users' speech may be protected by Federal law.

As such, the NO FAKES Act would endanger online expression by creating a heckler's veto, doubling down on the worst takedown abuses perpetrated under the Digital Millennium Copyright Act, and endanger speech wholly unrelated to digital forgeries. By creating an exception to the platform protections in Section 230, the NO FAKES Act would pressure platforms to err on the side of censorship, lest they risk liability for speech that may or may not be a wrongful digital replica. This incentive to censor is made all the more troubling by the NO FAKES Act's broad definition of "digital replica," which includes imagery that is "highly realistic" but not necessarily deceptive, let alone harmful to the person depicted; provisions allowing individuals to unmask anonymous speakers without any meaningful judicial process, based on

nothing more than an allegation; and provisions requiring that all kinds of service providers not only take down content, but ensure that it stays down, presumably through the use of filters

Consider, for example, the AI-generated video President Trump posted to X during the 2024 campaign, purporting to depict Vice President Kamala Harris speaking to a Chicago-area arena in front of a representation of the State Flag of the Union of Soviet Socialist Republics, featuring a hammer and sickle.¹ The NO FAKES Act could empower Kamala Harris, her representative, or any member of the public willing to submit a report, to demand the takedown and stay down of President Trump's parody and potentially subject X to liability for failing to do so. Reasonable people may disagree whether this, or any, post falls under the NO FAKES Act's definitions or would ultimately be protected by the Constitution. Notice and stay down regimes, however, are not built with constitutional or statutory nuance in mind. Rather, they are blunt instruments that favor censorship over due process. As a result, this and many other posts like it could be censored or self-censored under the NO FAKES Act.

The NO FAKES Act's digital replica right could also be easily abused to promote unfair exploitation of performers and regular people of all ages. A digital replica right that can be licensed or transferred without substantial limits threatens the liberty and autonomy of the right's intended beneficiaries. While NO FAKES includes some limitations on license and transfer, it still leaves ample room for abuse. Professional performers and regular people alike could find themselves separated from power over their own likeness for up to a decade, required to engage in extensive litigation to prevent or respond to the inappropriate use of their likeness after a license is granted. This could be particularly exploitative for children, whose likeness could also be licensed under the NO FAKES Act, presumably under their parent or guardian's permission. Without strong safeguards built into the law, people might even find that they had unwittingly licensed away their right to create their own digital likenesses. In all these respects, rather than just narrowly protecting performers, the NO FAKES Act would risk everyone's control over their performances, likenesses, voices, and other intellectual property.

As written, the NO FAKES Act would undermine key protections for free expression. It would thus struggle to survive constitutional review, but in the meantime could do substantial damage. We urge the Committee to carefully examine ways that existing state and federal law already protects performers and regular people alike and to then pursue narrowly tailored solutions to address recognized gaps. We would welcome the opportunity to assist the Committee in that endeavor.

Respectfully,

American Civil Liberties Union
Center for Democracy & Technology
Copia Institute
Defending Rights & Dissent
Electronic Frontier Foundation

¹ Donald J. Trump, <https://x.com/realDonaldTrump/status/1825138139502878806>.

Fight for the Future
The Organization for Transformative Works
Public Knowledge
Woodhull Freedom Foundation

CC: Members of the Senate Judiciary Committee