

# NO FAKES Act

S.4875 Nurture Originals, Foster Art, and Keep Entertainment Safe Act of 2024 (NO FAKES)

## Background

Deceptive AI-generated replicas raise concerns for performers and other public figures, who receive compensation for certain uses of their likenesses, such as use in advertising. In a vast array of cases, however, use of other people’s images—in news articles, commentary, creative art, and elsewhere—is First Amendment protected speech of the user or publisher of the image.

These uses are part of the free flow of information in everyday American life, and do not require payment or even permission. While existing law addresses most of these image harms, Congress should consider narrowly targeted fixes for gaps where images are abused.

The NO FAKES Act, however, is neither targeted nor proportionate.

## Summary

Introduced by Sens. Coons, Blackburn, Klobuchar and Tillis, NO FAKES Act grants a brand-new federal intellectual property right to allow companies or individuals to sue anyone who makes or uses an image of them that they don’t like, AI-generated or not. It even allows a person’s heirs to sue, going out 70 years.

## Reduces Free Speech to Narrow Exemptions

NO FAKES flips our free speech rights upside down. Before Americans can talk about a famous person using images or videos, they would have to figure out if they can fit their speech into one of the narrow, unclear exemptions provided by NO FAKES.

The bill proposes exclusions for news, satire, biopics, and criticism to limit the impact on free expression, but their application is uncertain. For example, one exemption allows use of a replica for a “bona fide” news broadcast, if the replica is “materially relevant” to the subject of the broadcast. Will citizen journalism qualify as “bona fide”? And who decides whether the replica is “materially relevant”?

## DMCA Notice and Takedown Concerns

The bill also includes a safe harbor scheme modelled on the DMCA notice and takedown process. To stay within the NO FAKES safe harbors, a platform that receives a notice of illegality must remove “all instances” of the allegedly unlawful content—a broad requirement that will encourage platforms to adopt “replica filters” similar to the deeply flawed [copyright filters](#) like YouTube’s [Content I.D.](#)

All of this is a recipe for private censorship. For decades, the DMCA process has been [regularly abused](#) to [target lawful speech](#), and there’s every reason to suppose NO FAKES will lead to the same.

**Want more information?** Please contact Assistant Director of Federal Affairs Maddie Daly at [Maddie@eff.org](mailto:Maddie@eff.org).



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