

NO FAKES Act

Nurture Originals, Foster Art, and Keep Entertainment Safe Act (NO FAKES)

Background

Deceptive AI-generated replicas can cause real harms, such as leading the public to think an individual has endorsed a product or engaged in unsavory conduct. In many cases, however, the use of a replica—in news articles, commentary, art, and so on—is First Amendment protected speech. Existing law addresses many harms caused by deceptive images, balancing competing interests as needed. But Congress may consider targeted, proportionate fixes to fill in any gaps.

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

Summary

NO FAKES Act creates an expansive new federal intellectual property right that allows companies or individuals (or their heirs) to sue anyone who makes or shares an image they don't like, or builds products and services that help others do so.

Takedown and Filtering Requirements

The bill 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 deeply flawed [copyright filters](#) like YouTube's [Content I.D.](#)

This sweeping new property right, backed with expansive enforcement mechanisms, creates a higher barrier to entry for new products and services, discouraging newer, smaller innovators.

Broadened Liability

Updated text of the bill radically expands its reach, sweeping in a broad range of service providers, such as apps, search engines, cloud storage, app stores and more, and targeting not just images themselves but any product or service that might have been used to generate such images. The bill goes even further by applying removal requirements to not just specific instances of images, but any *similar* instances.

This dramatic shift in liability for a wide array of services goes well beyond state law and will chill speech and concentrate power into a few large companies that have the technological capability to meet these obligations.

NO FAKES is an overbroad bill that is ripe for abuse.

Want more information? Please contact Assistant Director of Federal Affairs Maddie Daly at Maddie@eff.org.



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