

Reintroducing the No FAKES Act

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bipartisan Bill aiming to protect individuals from having their voice and visual likeness used without their consent was reintroduced in Congress earlier this month. The Nurture Originals, Foster Art, and Keep Entertainment Safe (No FAKES) Act, was first introduced last year as a response to various celebrities having their image and voice used by generative artificial intelligence (AI) without their consent. The Bill is currently still in

committees of both houses of Congress. If passed, the Bill would be historic, as it would create the first ever federal right of publicity. The federal right of publicity would allow individuals to hold other individuals and companies liable if they distribute any unauthorized digital replicas of an individual's voice or image likeness. This legislation would also act as a carve out to Section 230 of the Communications Decency Act, thus allowing platforms to be held liable for failing to remove unauthorized digital replicas quickly when they have had sufficient notice of a deepfake.

The recent reintroduction of the No FAKES Act coincided with GRAMMYs on the Hill Advocacy Day, hosted by the Recording Academy, on April 9th. This is a day for music makers and industry leaders to meet with lawmakers in Washington, D.C. to advocate for musicians' interests. The Bill was reintroduced and sponsored by Senators Chris Coons (D-DE), Marsha Blackburn (R-TN), Amy Klobuchar (D-MN), and Thom Tillis (R-NC) and Representatives Madeleine Dean (D-PH) and Maria Salazar (R-FL). The legislation has been endorsed from various stakeholders from the music and movie industries including the Recording Industry Association of America, Motion Picture Association, SAG-AFTRA, the Recording Academy, Warner Music Group, Universal Music Group, among others. Perhaps more notably, the Bill has also been supported by technology platforms such as YouTube and OpenAI.

The No Fakes Act was originally introduced in the Senate on July 31, 2024, and in the House of Representatives on September 12, 2024, as an attempt to respond to a growing number of deepfake creations. A deepfake is an artificial image or video of a person where their face, body, or voice appears real but has been created and/or manipulated with AI.

Deepfakes can appear in various ways. In January 2024, a deepfake of Taylor Swift advertising Le Creuset Cookware appeared online. Drake and The Weeknd appeared to release a viral song titled "Heart on My Sleeve," only for the music community to later find out the song itself was a deepfake. In the past two years, there has been an increasing number of stories where celebrities have had their visual and vocal likeness used in sinister ways. For example, various celebrities were the targets of visual deepfake photographs, that had the celebrities wearing a shirt that endorsed hate speech. Other celebrities have unknowingly been subjected to deepfake pornography being released.

The legislation does not require a deepfake to involve a celebrity or notable figure for a person to have protections. The legislation would entitle every individual to a federal right of publicity so as to have control over their voice and image. For example, the press release for the Bill's reintroduction discusses how a Maryland athletic director was arrested and charged after creating a deepfake voice recording of his boss, the high school principal, that included racist and derogatory comments that the school's principal never actually made. This demonstrates how everyday individuals could be impacted and protected by the legislation as well.

A draft of the Bill was circulated in late 2023 and at the time there was concern that the Bill could incidentally inhibit free speech rights. Critics voiced concerns that by holding

platforms liable for hosting deepfakes, the Bill could incentivize over-removal of content and stifle creativity. Critics voiced further concern that content creators would not know when the Bill applied versus when it did not. For example, if an individual created a parody of a popular figure, critics were concerned this could violate a celebrity's voice and visual likeness. Many of these concerns were addressed in the version of the Bill that was introduced in 2024, carving out exclusions for digital replicas that are consistent with the public interest such as commentary, criticism, satire, or parody.

Following its introduction in July 2024, the Senate Bill went to the Senate Committee on the Judiciary. After the House Bill was introduced in September 2024, it went to the House Committee of the Judiciary. Currently, the No FAKES Act is still before both committees with an uncertain timeline for review.

The Bill's reintroduction is not due to changes to it or the Bill making it out of committee. Rather, the reason for the Bill's reintroduction was likely two-fold. First, announcing the reintroduction of the bill on GRAMMYs on the Hill Advocacy Day helped to underscore its importance to artists and celebrities. Second, the reintroduction came with the newly announced support of technology companies like YouTube and OpenAI. While the legislation was largely supported by the music industry when it was first introduced, the support from key players in the technology sector could propel the Bill forward this year.