February 28, 2025

House Creative Arts & Entertainment Committee
Georgia Legislature
434 Capitol Ave SE
Atlanta, GA 30334

RE: HB 566 – "NO FAKES Act of 2025" (Oppose)

Dear Chair Carpenter and House Creative Arts & Entertainment Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to raise several concerns regarding HB 566 in advance of the House Creative Arts & Entertainment Committee hearing on March 3, 2025. CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.[1] Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members.

HB 566, the Nurture Originals, Foster Art, and Keep Entertainment Safe (NO FAKES) Act, is well-intended but raises serious concerns about free expression and conflicts with federal law, as CCIA has explained about the identical version of this bill proposed by the U.S. Congress.[2] Legal experts have also detailed the constitutional concerns it poses.[3]

Responsible businesses understand the potential for misuse of 'digital replicas' and are committed to advocating for robust legal protections and frameworks that balance innovation with the safeguarding of personal rights. Unfortunately, this bill does not provide the right approach. As these comments explain, the bill's proposed text is extremely unbalanced and flawed, including its scope, knowledge standard, notice framework, and private right of action.

Liability should be limited to those who *knowingly* violate an individual's intellectual property rights.

Liability should be targeted to the individual(s) who committed intentionally or knowingly deceptive acts using a 'digital replica', rather than tying liability to a product or service that allowed the media to be generated or served as a means for the digital replica to be shared. This division of responsibility would ensure that liability lies in the most appropriate place — with the actor most capable of mitigating harm and responsible for any harm that ensues. It will ensure that other expressive uses — like those protected by the First Amendment — are protected while also holding bad actors accountable for the most high-risk, and likely most harmful, scenarios. For example, the bill's definition of "production" as the creation of a digital replica places AI model developers or system deployers in an untenable position, as they could

[1] For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at https://www.ccianet.org/members.
[2] CCIA, *Tech Industry Objects to NO FAKES Act* (July 31, 2014), https://ccianet.org/news/2024/07/tech-industry-objects-to-no-fakes-act/.
[3] Re:Create, *Constitutional Concerns with NO FAKES and Similar Acts* (Aug 20, 2024), https://www.recreatecoalition.org/constitutional-concerns-with-no-fakes-and-similar-acts/.

be held liable if a user utilizes their tool to create, distribute, or make unauthorized content featuring another individual—often without the service provider's knowledge.

This language is crucial because digital services do not know every nuance of every piece of content users post on their services. While HB 566 excludes from liability uses protected by the First Amendment, such as parody or news reporting, a service provider cannot generally determine if output will be used in an excluded manner or not. This will create a chilling effect, resulting in such tools not being made available at all in order to avoid liability for uses the operator could not possibly detect at the time of creation. Legislation should hold accountable bad actors who exploit a person's likeness without permission, ensuring that liability falls on them rather than intermediaries who lack knowledge or intent, especially when certain digital services may find it difficult or impossible to remove such harmful content. For instance, because an app store provider cannot remove a single video from an app available on its platform, it would have to remove the entire app in order to achieve compliance under this proposal. The responsibility and liability for removing allegedly offending content should lie with the party that knowingly posted the content. As explained below, establishing an actual knowledge standard here would address this issue effectively.

An effective notice and takedown framework should enable online services to remove digital replicas promptly upon being notified of specific instances on their services. The proposed framework is flawed and would stifle free expression.

The proposed statutory regime is not a balanced notice-and-takedown process, but effectively a notice-and-*staydown* process. Under the bill, an online service only has a safe harbor if it "removes, or disables access to, all instances of the material, or an activity using the material." This effectively imposes a requirement to monitor and filter and would likely result in many services erring on the side of removing legitimate user content to try to avoid overbroad liability. Additionally, the bill's proposed knowledge standard is too broad; it not only includes a willfulness standard in addition to actual knowledge, it also would further undermine the notice framework to establish that actual knowledge can be obtained through not only a compliant notice.

An online service should only be liable for hosting or publicly sharing a digital replica if it has *actual knowledge* of a specific instance of a specific digital replica. To obtain such knowledge, a court order or a compliant notice from the individual depicted in the digital replica or their authorized representative should be required. Under such a framework, if an online service promptly removes the digital replica identified in the notice or reasonably believes that the content qualifies for an exception or otherwise does not meet the definition of digital replica, it should not be liable for hosting that content. Allowing online services to make good faith determinations about whether content meets the statutory definition will help limit the misuse of the takedown mechanism to silence legitimate First Amendment-protected speech.

We also recommend establishing a counter-notice and appeal system to deter the abuse of takedown requests. The individual or entity whose content is subject to a takedown notice should have the right to provide a counter-notice if they believe that the content is not subject

to the takedown mechanism and thereby appeal its removal. The proposed provision on misrepresentation with statutory damages is appreciated but insufficient.

The private right of action would result in the proliferation of frivolous lawsuits and questionable claims, and exorbitant statutory damages.

HB 566 permits users to bring legal action against persons that have been accused of violating new regulations. By creating a new private right of action, the measure would open the doors of Georgia's courthouses to plaintiffs advancing frivolous claims with little evidence of actual injury. As lawsuits prove extremely costly and time-intensive, it is foreseeable that these costs would be passed on to individuals in Georgia, disproportionately impacting smaller businesses and startups across the state.[4]

The bill would enable damages of the greater of actual damages plus profits or statutory damages of $5,000 per "work embodying the applicable unauthorized digital replica" for an individual or "online service," $25,000 per work for "an entity that is not an online service," the opportunity to seek injunctive or other equitable relief, punitive damages if willful (if proven that "acted with malice, fraud, knowledge or willful avoidance of knowledge that the conduct violated the law"), and reasonable attorney's fees.

Further, because the term "violation" is defined as "each display, copy, transmission, and each instance of the unauthorized digital replica being otherwise made available on the online service," this provision creates potentially immense liability, with damages capped at $1 million only if an online service "has an objectively reasonable belief" that material does not qualify as a digital replica. There is a caveat in the definition of "violation," which is just for one subsection, stating "unless the online service has taken reasonable steps to remove, or disable access to, the unauthorized digital replica as soon as is technically and practically feasible for the online service upon acquiring knowledge". While appreciated, as with the rest of the bill, "reasonable" and "feasible" are undefined, which invites costly litigation over ambiguity and, as stated above, may lead to unnecessary suppression of users' free expression.

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CCIA acknowledges the significance of this policy issue and agrees that there is potential for misuse across various sectors. We welcome the opportunity to collaborate on refining the language of this proposal to establish a framework that our members can adhere to while ensuring strong protections are in place.

Respectfully submitted,

Tom Mann
State Policy Manager, South
Computer & Communications Industry Association

[4] Trevor Wagener, *State Regulation of Content Moderation Would Create Enormous Legal Costs for Platforms*, Broadband Breakfast (Mar. 23, 2021), https://broadbandbreakfast.com/trevor-wagener-state-regulation-of-content-moderation-would-create-enormous-legal-costs-for-platforms/.