



# MOTION PICTURE ASSOCIATION

## **SB 905 / HB 1425 Memorandum of Opposition February 24, 2025**

The Motion Picture Association, Inc. (“MPA”) respectfully opposes SB 905/HB 1425 (the “Bill”) and offers proposed changes to the Bill as described herein.<sup>1</sup>

The MPA’s members use computer-generated imagery for a wide array of purposes. They recreate historical events. They modify images, video, and audio to enhance news reports, aid viewers and listeners in understanding content, create interesting visual effects, and age and “de-age” actors. Moreover, some MPA members create satire, parody, and comedy and use altered images and audio for this purpose. It is well-established that the First Amendment protects these expressions. *See, e.g., New York Times v. Sullivan*, 376 U.S. 254 (1964); *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988).

While the MPA appreciates that there are harmful uses of “deepfake” technologies, which may be appropriately constrained through criminal statutes, efforts to regulate the use of such technologies must be crafted to avoid chilling protected and valuable creative speech and legitimate news coverage. However, the current draft of the Bill does not offer such protections. Instead, the Bill opens the door for private individuals—including public figures who may be the subject of a digitally altered rendering—to bring claims against media companies to stop them from publishing content that the individual claims will be “misleading.” For instance, a public figure who learns that they are the subject of a parodic “deepfake” in a movie or TV show, or the subject of a documentary that will use deepfake technology for certain representations within the film, could file a lawsuit to prevent the media from ever being released. This lawsuit may be without merit—as such representations are protected speech, and there may be no “fraudulent intent” in the decision to release the film or TV show—but that may not stop a motivated party from bringing litigation. Without a prosecutor acting as gatekeeper, the individual could rush to court with conclusory allegations of fraudulent intent, even where none exists. This would force a studio or broadcaster to engage in a costly legal battle to protect their First Amendment rights. By permitting such lawsuits to be brought even *before* the media is released, the Bill paves the way for courts to exercise a prior restraint on speech, which is particularly disfavored under the First Amendment. This also imposes substantial practical costs by disrupting carefully crafted release schedules, marketing plans, and promotional efforts.

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<sup>1</sup> The MPA is a not-for-profit trade association founded in 1922 to address issues of concern to the motion picture industry. Since that time, MPA has advanced the business and art of storytelling, protecting the creative and artistic freedoms of storytellers, and bringing entertainment and inspiration to audiences worldwide. The MPA’s member companies are: Netflix Studios, LLC; Paramount Pictures Corporation; Prime Amazon MGM Studios; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment, Inc. In addition, several of the MPA’s members have as corporate affiliates major news organizations (including ABC, NBC, and CBS News, and CNN) and dozens of owned-and-operated local television stations with broadcast news operations.

With no express protections for parody, satire, news reporting, and other protected speech, the Bill may force MPA's members and others to choose between foregoing such digitally altered representations altogether and defending against costly but meritless lawsuits.

To prevent this chilling effect, the MPA proposes a carveout that expressly exempts the kinds of speech that the First Amendment protects. *See Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 65 (1981) ("Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works fall within the First Amendment guarantee.").

The MPA proposes the following addition to the Bill as section (F)(3):

**(3) IT IS NOT A VIOLATION OF SUBSECTION (F)(2) OF THIS SECTION TO CREATE, USE, OR OTHERWISE DISTRIBUTE ANY AUDIO OR VISUAL CONTENT, REGARDLESS OF WHETHER IT IS COMPUTER-GENERATED, THAT RELATES TO A MATTER OF PUBLIC INTEREST, OR THAT IS PARODY, SATIRE, COMMENTARY OR CRITICISM, OR WHICH INVOLVES WORKS OF POLITICAL OR NEWSWORTHY VALUE.**

Notably, this exemption would bring the Bill's First Amendment protections in line with statutes passed in other states regulating deepfakes. *See, e.g.,* N.H. Rev. Stat. § 638:26-a(IV);<sup>2</sup> LSA-R.S. 14:73.13(C)(1).<sup>3</sup>

In addition, the MPA proposes to remove the private right of action in the Bill, striking the new proposed section (H). This will remove a substantial threat of frivolous litigation from individuals who may object to critical news coverage or satirized or parodic representations of them in the media, even if the digital representations at issue are not criminally fraudulent. Removing this provision will provide studios and broadcasters with the necessary assurances that

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<sup>2</sup> "This section shall not apply to any of the following:

- (a) An interactive computer service as defined in 47 U.S.C. section 230 for content provided by another party.
- (b) Any radio or television broadcasting station or network, newspaper, magazine, cable or satellite radio or television operator, programmer, or producer, Internet website or online platform, or other periodical that publishes, distributes or broadcasts a deepfake prohibited by paragraph II as part of a bona fide news report, newscast, news story, news documentary or similar undertaking in which the deepfake is a subject of the report and in which publication, distribution, or broadcast there is contained a clear acknowledgment that there are questions about the authenticity of the materials which are the subject of the report.
- (c) Any radio or television broadcasting station or network, newspaper, magazine, cable or satellite television operator, Internet website or online platform, or other periodical when such entity is paid to publish, distribute or broadcast an election communication including a deepfake prohibited by paragraph II, provided that the entity does not remove or modify any disclaimer provided by the creator or sponsor of the election communication.
- (d) A video, audio or any other media that constitutes satire or parody or the production of which is substantially dependent on the ability of one or more individuals to physically or verbally impersonate another person without reliance on artificial intelligence."

<sup>3</sup> "'Deepfake' does not include any material that constitutes a work of political, public interest, or newsworthy value, including commentary, criticism, satire, or parody, or that includes content, context, or a clear disclosure visible throughout the duration of the recording that would cause a reasonable person to understand that the audio or visual media is not a record of a real event."

they will not be subject to bad-faith lawsuits and can continue to publish protected speech without fear of being brought into court.

The MPA welcomes the opportunity to answer questions and provide additional input on the Bill. Legislators and staff seeking further information may contact the MPA's consultants in Annapolis, Nick Manis and John Favazza, at [nmanis@maniscanning.com](mailto:nmanis@maniscanning.com) and [jfavazza@maniscanning.com](mailto:jfavazza@maniscanning.com).

Sincerely,

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