MOTION PICTURE ASSOCIATION

HB 1425
Memorandum of Opposition
March 7, 2025

The Motion Picture Association, Inc. ("MPA") respectfully opposes HB 1425 (the "Bill") and offers proposed changes to the Bill as described herein.[1]

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 of MPA's members create satire, parody, and comedy, and use altered images and audio for this purpose. It is well-established that these expressions are protected by the First Amendment. *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. The current draft of the Bill, however, 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.

[1] 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.

To limit the impact of this Bill to uses of deepfake technology that are akin to identity fraud, and without impairing legitimate First Amendment-protected creative expression, the MPA proposes the following addition to the definitions in the Bill.

(4) "FALSELY DEPICT" MEANS THE USE OR DISTRIBUTION OF A DEEPFAKE REPRESENTATION WITH KNOWLEDGE OF THE FALSITY THE REPRESENTATION AND WITH THE INTENT OF MISREPRESENTING THE AUTHENTICITY OR PROVENANCE OF THE REPRESENTATION.

Additionally, the MPA proposes the following revision to Section (F)(2) to the Bill, which will remove the ambiguous term "mislead," which has the potential to encompass a wide range of protected speech, including parody and satire.

(2) A PERSON MAY NOT KNOWINGLY, WILLFULLY, AND WITH FRAUDULENT INTENT USE ARTIFICIAL INTELLIGENCE OR A DEEPFAKE REPRESENTATION TO:

(I) IMPERSONATE, FALSELY DEPICT, OR CLAIM TO REPRESENT ANOTHER PERSON WITH THE INTENT TO DEFRAUD~~, MISLEAD,~~ OR CAUSE HARM TO THAT PERSON OR ANY OTHER PERSON;

Additionally, 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 is protected by the First Amendment. *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.

Such categorical exemptions—rather than protections specific to certain kinds of entities or industries—are in keeping with the principles of the First Amendment. And indeed, this language would bring the Bill's First Amendment protections in line with statutes that have passed regulating deepfakes across the country. *See, e.g.*, Arizona (Az. Stat. § 16-1024(B)),[2] Delaware

[2] "This section does not apply to . . . satire or parody."

(Del. Stat. Title 15 § 3145),[3] Idaho (Id. Stat. § 18-6606(5)),[4] New Hampshire (N.H. Rev. Stat. § 638:26-a(IV));[5] Louisiana (La. Rev. Stat. 14:73.13(C)(1)),[6] Mississippi (Miss. Stat. § 97-13-47),[7] and New York (N.Y. Civ. Rts. L. § 52-c(4)).[8]

The MPA understands that the Bill is in part drawn from legislation that was introduced in New Jersey—though the MPA notes that the New Jersey bill is not law (and indeed, the proposal to amend the state's identity fraud statute has never even been subject to a committee vote). *See* N.J. A. 3912 (2024-2025). In any event, that legislation includes a definition of "falsely depict" comparable to the one proposed by the MPA above.[9]

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

Absent striking the private right of action in its entirety, the MPA proposes limitations on the private right of action that will prevent unconstitutional prior restraints from being imposed on First Amendment-protected content based on frivolous lawsuits. This would include fee-shifting

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[3] "The prohibition . . . does not apply to . . . (1) A radio or television broadcasting station . . . that broadcasts a deceptive and fraudulent deepfake prohibited by this section as part of a bona fide newscast, news interview, news documentary, or on-the-spot coverage of bona fide news events, if the broadcast clearly acknowledges through content or a disclosure . . . that there are questions about the authenticity of the materially-deceptive audio or visual media, or in cases where federal law requires broadcasters to air advertisements from legally-qualified candidates; . . . (3) An internet website . . . if the publication clearly states that the materially deceptive audio or visual media does not accurately represent the speech or conduct of the depicted individual; (4) Materially-deceptive audio or visual media that constitutes satire or parody."

[4] "Subsection (1)(a) of this section shall not apply when: . . . (c) The explicit synthetic media relates to a matter of public interest . . ."

[5] "This section shall not apply to . . . Any radio or television broadcasting station or network . . . that publishes, distributes or broadcasts a deepfake . . . 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 [or] A video, audio or any other media that constitutes satire or parody."

[6] "'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."

[7] "This section does not apply to . . . A radio or television broadcasting station that broadcasts any digitization prohibited by subsection (2) of this section as part of a bona fide newscast, news interview, news documentary, or on-the-spot coverage or a bona fide news event [or] Content that constitutes satire or parody."

[8] "A person is not liable under this section if (ii) the sexually explicit material is a matter of legitimate public concern, a work of political or newsworthy value or similar work, or commentary, criticism or disclosure that is otherwise protected by the constitution of this state or the United States; provided that sexually explicit material shall not be considered of newsworthy value solely because the depicted individual is a public figure."

[9] Other New Jersey proposed legislation that we also understand served as inspiration for the Bill has likewise not been enacted into law, and in some cases involved meaningfully narrower proposals than the Bill. *See* N.J. S 3926 (2022-2023); N.J. A 2818 (2024-2025); N.J. S. 736 (2024-2025).

provisions that would permit defendants to seek reimbursement for costly and frivolous litigations and limitations on injunctive relief courts could issue prior to a hearing.

(H) (1) A PERSON WHO IS THE VICTIM OF AN ACT THAT WOULD CONSTITUTE A VIOLATION OF SUBSECTION (F)(2) OF THIS SECTION MAY BRING A CIVIL ACTION AGAINST THE PERSON OR PERSONS WHO COMMITTED THE ACT IN A COURT OF COMPETENT JURISDICTION.

(2) THE COURT MAY:

(I) ISSUE AN INJUNCTION TO PREVENT OR RESTRAIN AN ACT THAT ~~WOULD CONSTITUTE~~ IS A VIOLATION OF SUBSECTION (F)(2) OF THIS SECTION, PROVIDED THAT NO SUCH INJUNCTION MAY BE ISSUED PRIOR TO THE ACT OF DISTRIBUTION AT ISSUE AND ANY INJUNCTION ISSUED PRIOR TO A FINAL JUDICIAL DETERMINATION ON THE MERITS SHALL BE LIMITED TO THE SHORTEST FIXED PERIOD COMPATIBLE WITH SOUND JUDICIAL RESOLUTION; AND

(II) GRANT ANY OTHER APPROPRIATE RELIEF, INCLUDING ATTORNEYS FEES AND LITIGATION COSTS TO THE PREVAILING PARTY.

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

Sincerely,

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