



HB 1062 – FAV (support passage) – Jason Green-Lowe – Center for AI Policy
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Prepared for the **Maryland General Assembly**

Committee on the Judiciary

Hearing on HB 1062, an Act concerning Criminal Law – Harassment – Digitally Altered or Generated Representations

Tuesday, February 20, 2024

I thank Judiciary Chair Luke Clippinger, Vice Chair J. Sandy Bartlett, and the other Members of this Committee for the opportunity to testify today in support of your bill to criminalize the use of deepfakes for sexual harassment.

My name is Jason Green-Lowe, and I am the executive director of the Center for AI Policy, a non-partisan, non-profit advocacy organization that works to raise awareness of the increasing dangers of artificial intelligence and to build support for legislative solutions to those dangers.

The danger from sexual harassment from deepfakes is clear: [over 90%](#)¹ of all deepfake videos posted online are nonconsensual pornography, often of underage victims, and the total number of deepfake videos posted online has more than doubled every year since the technology debuted, growing from [7,964 videos](#)² in 2018 to [500,000 videos](#)³ in 2023. These videos are typically created using "[generative adversarial networks](#),"⁴ i.e., a pair of software programs that work in tandem to create the most realistic images possible. While one program generates fake images, the other program attempts to guess whether the image is real or fake. If the second program correctly spots a fake image, then the first program adapts its techniques so that future fake images will be harder to detect. As you might imagine, after this process has been run several thousand times, the resulting images can be extremely convincing. This sometimes

¹ Karen Hao, *MIT Technology Review* (2/12/2021), "Deepfake porn is ruining women's lives."

² Sensity.ai, (2/8/2021) "How to detect a deepfake online."

³ Alexandra Ulmer and Anna Tong, *Reuters.com* (5/30/2023), "Deepfaking it: America's 2024 election collides with AI boom."

⁴ Wikipedia, "Generative adversarial network," accessed 2/15/2024.

makes it difficult to convince friends or colleagues that the videos were artificially generated, exacerbating the [trauma](#)⁵ faced by the victims of this harassment.

Without legislation like HB 1062, Marylanders would have [few legal protections](#)⁶ against these videos. Although copyright law makes it illegal to literally copy a photo of a victim's face, a deepfake is by definition not just a faithful copy – instead, a deepfake involves substantial changes to the source material. This means that courts are likely to rule that a deepfake video is [“transformative”](#)⁷ and therefore not a violation of copyright. Similarly, a victim who tried to sue the creator of a deepfake for defamation or invasion of privacy would encounter obstacles based on the limited definitions of these torts. For example, suing for [defamation in Maryland](#)⁸ requires either (1) proof of actual malice by clear and convincing evidence, or (2) proof of damage to the victim's reputation, which is typically measured in terms of lost business opportunities. A teenage girl who is suffering from anxiety and panic after being targeted by deepfakes may suffer severe harm and still not be in a position to demonstrate any direct financial losses.

It is therefore entirely appropriate that Maryland is poised to pass special legislation to protect the victims of this harassment. In so doing, Maryland will join a growing list of [other states](#)⁹ who have concluded that this harassment is unacceptable, including California, Florida, Georgia, Hawaii, Illinois, Minnesota, New York, South Dakota, Texas, and Virginia.

Unfortunately, the dangers of deepfakes will not be confined to sexual harassment. The neural networks that are used to create deepfakes are becoming more affordable, more powerful, and more widely available every year. According to one study by Epoch AI, it takes less than three years of progress for [the cost of computing power to get cut in half](#)¹⁰. If anything, this severely understates the problem, for two reasons.

First, ongoing algorithmic progress means that the same microchip will be able to get more work done in the future – not only will that microchip be cheaper to rent or buy, but it will also be more efficient.

Second, ongoing software development means that computing power will have a wider range of applications. When ChatGPT was first released, it had essentially no ability to

⁵ Janya Nickert, *Healthnews.com* (11/16/2023), “The damage caused by deepfake porn.”

⁶ Caroline Quirk, *Princeton Legal Journal* (6/19/2023), “The High Stakes of Deepfakes.”

⁷ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

⁸ *People's Law Library of Maryland*, “Defamation Law in Maryland.” Accessed 2/15/2024.

⁹ Elliott Davis Jr., *US News & World Report* (1/30/2024), “These States Have Banned the Type of Deepfakes that Targeted Taylor Swift.”

¹⁰ Marius Hobbhahn and Tamay Besiroglu, *Epoch AI* (6/27/2022), “Trends in GPU Price-Performance.”

interact with anything beyond its standard text box. Within a few months after its release, GPT was [also](#)¹¹ [connected](#)¹² to Gmail, Excel, Powerpoint, the Internet, music composition software, software coding tools, speech synthesizers, the Instacart grocery service, and the Kayak travel agent. What at first appeared to be a simple and harmless chatbot has already gained the ability to book your vacation, stock your fridge, and email your coworkers to let them know you'll be out of the office.

There's no particular reason to expect these 'upgrades' to stop. Over the next decade, the same neural networks that generate nonconsensual porn are likely to gain access to [mechanical arms](#)¹³ that allow them to [design new viruses](#)¹⁴ in a wet lab, or to be programmed to operate [autonomous drones armed with lethal weapons](#)¹⁵, or to learn how to [hack into millions of bank accounts](#)¹⁶ on the same day.

If artificial intelligence were inherently benevolent, it would not be committing a million acts of sexual harassment each year. To be clear, artificial intelligence offers great benefits to our society, and we should seize those benefits – but we must do so carefully, and we must rapidly and rigorously update our laws to take account of the new dangers brought by this powerful new technology.

Passing HB 1062 is an important first step toward enacting those protections. By offering useful and appropriate remedies to victims of AI-enabled sexual harassment, this legislation will put Maryland on the right path forward for a safer future.

I thank the Committee for the opportunity to testify, and I look forward to any questions you may have.

¹¹ Upanishad Sharma, *Beebom.com* (11/20/2023) "15 Best ChatGPT Plugins You Should Use Right Now."

¹² Matt Crabtree, *Datacamp.com* (October 2023), "10 of the Best ChatGPT Plugins to Get the Most from AI in 2023."

¹³ Scarlett Evans, *IOT World Today* (8/4/2023), "Generative AI-Powered Robotic Arm is Self-Learning, Adaptive."

¹⁴ Amanda Miler, *AirandSpaceForces.com* (9/12/2022), "Bioweapons Designed by AI: a 'Very Near-Term Concern,' Schmidt Says."

¹⁵ Eric Lipton, *New York Times* (11/21/2023), "As A.I.-Controlled Killer Drones Become Reality, Nations Debate Limits."

¹⁶ Jeff John Roberts, *Fortune.com* (2/6/2024), "The next wave of fraud should frighten banks and crypto firms alike."