



January 28, 2025

The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
Maryland General Assembly
2 East Miller Senate Office Building
Annapolis, Maryland 21401

Re: Opposition to SB 362 Concerning Forged Digital Likenesses

Dear Chair Smith:

On behalf of the undersigned public interest organizations and trade associations, we write to respectfully urge you to oppose SB 362 concerning forged digital likenesses and to request that this letter be included in the record of tomorrow's scheduled Judicial Proceedings Committee hearing. We do so because, as written, SB 362 is vague, overbroad, and facially unconstitutional under the First Amendment.

The bill imposes criminal liability on any person found to be "distributing" a "forged digital likeness." That liability applies to any individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, partnership, firm, association, corporation, or other entity."

Neither that standard nor the meaning of "distribution," however, are defined in the bill. The statute thus will chill speech by individuals, satirists, teachers, online service providers and others that a judge or jury could determine knew – or, critically, "should have known" – that the image was not genuine. Those subject to the bill have no notice of when (or if) their speech would be implicated and, consequently, when or if they would be subject to fines and imprisonment. That is a severe – and constitutionally impermissible – effect on a broad range of protected expressive activity.

We appreciate that the bill contains what is intended to be a savings clause. That language, mandating consistency with the Maryland and federal Constitutions, is circular and will not cure the bill's fundamental, constitutionally fatal infirmities. That is true because the legislation will likely be subject to strict scrutiny under the First Amendment, and thus must be narrowly tailored to achieve a compelling state interest. Even if such an interest is demonstrated, which is open to serious question, the bill remains both over and under inclusive.

Moreover, in addition to chilling multiple kinds of lawful speech, it appears to be subject to circumvention by simply labeling all images posted as potentially ungenune, thus assuring the insulation from liability for such disclosure explicitly included in the bill.

For all of the foregoing reasons, when this legislation faces First Amendment scrutiny it is thus unlikely to survive.

We appreciate the legitimacy of concerns surrounding deep fakes and the misuse of multi-purpose technology for undesirable purposes. This legislation, however, is an unconstitutional and ill-advised approach to solving that problem.

We urge you and your colleagues to proceed cautiously and without haste to best balance protecting Maryland consumers and industry. We respectfully urge you to reject SB 362 at this time.

Sincerely,

Chamber of Progress
Engine
Public Knowledge
Software & Information Industry Association