



February 28, 2025

The Honorable C.T. Wilson
Chair, Committee on Economic Matters
Maryland House of Delegates
Room 230, House Office Building
6 Bladen Street
Annapolis, MD 21401

Re: Opposition to HB 1407

Dear Chair Wilson:

On behalf of the undersigned public interest organizations and trade associations, we write to respectfully **urge you to oppose HB 1407.**

Noting that HB 1407 is virtually identical to the federal NO FAKES Act as introduced (but subjected to no hearing) in the last Congress, we oppose HB 1407 for three principal reasons. Specifically, we believe the bill as written would:

- contravene the fundamentals of federal copyright law by unconstitutionally protecting facts, as courts consistently have held voices and likenesses to be. Its savings clause also may fail to permit conduct protected under the Copyright Act's fair use exception (17 USC §107). The bill is thus likely to be fully preempted;
- subject online service providers to liability from which federal law now productively shields them; and
- unconstitutionally interfere with all citizens' rights to free speech. Thus, as a broad restraint on speech, the bill is unlikely to survive the strict scrutiny test mandated by the Supreme Court for assessing such legislation having not been narrowly tailored to its objectives.

Finally, we also respectfully note that adopting HB 1407 may be unnecessary. We understand that while Maryland law contains no statutory right of publicity its courts recognize the common law appropriation invasion of privacy tort and follow Section 652C of the Restatement (Second) of Torts (1977). It states that an individual who appropriates another's name or likeness for personal benefit is liable for an invasion of privacy (*Lawrence v. A.S. Abell Co.*, 475 A.2d 448, 450-51 (Md. 1984)). Codifying this doctrine would appear to achieve the objectives of HB 1407.

For these reasons, we **respectfully urge you to reject HB 1407** at this time.

Sincerely,

Chamber of Progress
Electronic Frontier Foundation
Engine
Public Knowledge
Software Information Industry Association