



July 9, 2025

Senator Chuck Grassley  
Chair, Senate Judiciary Committee  
135 Hart Senate Office Building  
Washington, D.C. 20510

Senator Dick Durbin  
Ranking Member, Senate Judiciary Committee  
711 Hart Senate Office Building  
Washington, D.C. 20510

Re: The NO FAKES Act of 2025

Dear Chairman Grassley and Ranking Member Durbin:

The Library Copyright Alliance (“LCA”) consists of the American Library Association and the Association of Research Libraries. These two library associations represent the interests of over 100,000 libraries in the United States employing more than 250,000 librarians and other personnel.

We share many of the concerns expressed in the July 8, 2025 letter<sup>1</sup> from civil society organizations on the impact the Nurture Originals, Foster Art, and Keep Entertainment Safe (“NO FAKES”) Act of 2025, S. 1367, would have on free speech. Further, as currently drafted, the NO FAKES Act would likely violate the Constitution’s IP Clause.<sup>2</sup> This letter, however, focuses specifically on the heavy burden the bill would place on libraries that provide digital repositories and other online platforms for their users.

The bill’s broad definition of “online services” appears to encompass digital repositories and other library-operated websites to which users may upload content. Accordingly, libraries could incur liability under the bill for the distribution of a digital replica uploaded by a user. For example, a public library might host a website where community members could upload comments and images, which might include materials that are unauthorized digital replicas. Because the library could not afford the filtering technology necessary to comply with the requirements of the bill’s notice-and-staydown safe harbor, the library would have to consider closing the website essential to community engagement in order to avoid liability for unauthorized digital replicas users might upload.

To prevent libraries from being inadvertently swept up within the scope of the bill, the following amendment should be adopted.

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<sup>1</sup> <https://cdt.org/insights/cdt-leads-civil-society-letter-opposing-the-no-fakes-act/>

<sup>2</sup> These Constitutional concerns are discussed in more detail in a White Paper circulated by the Re:Create Coalition. [www.recreatecoalition.org/wp-content/uploads/2024/08/Constitutional-Concerns-with-NO-FAKES-and-Similar-Acts.pdf](http://www.recreatecoalition.org/wp-content/uploads/2024/08/Constitutional-Concerns-with-NO-FAKES-and-Similar-Acts.pdf).

Add a new section 2(c)(4)(C):

(4) EXCLUSIONS.--Liability under this subsection shall not extend to –

(C) (i) a library or archives<sup>3</sup>:

(I) whose collections are open to the public, or are available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field,

(II) that has a public service mission;

(III) whose trained staff or volunteers provide professional services normally associated with libraries or archives; and

(IV) whose collections are composed of lawfully acquired or licensed materials;

(ii) a nonprofit educational institution;

(iii) an employee of an institution described in subparagraphs (i) or (ii) acting within the scope of his or her employment; or

(iv) any other person solely with regard to providing online or network access services to an institution described in subparagraphs (i) or (ii) in the course of providing such services to such institution.

Additionally, the exclusion in Section 2(c)(5)(A)(iii) for the production or use of “digital replicas consistent with the public interest in bona fide commentary, criticism, scholarship, satire, or parody” is not broad enough to include a range of legitimate activities, including for example educational activities such as student projects. Section 2(c)(5)(A)(iii) should be reworded to read:

(iii) the applicable digital replica is produced or used consistent with the public interest for purposes such as ~~in~~ bona fide commentary, criticism, scholarship, satire, or parody....

Alternatively, “education” should be added to this list of activities in the public interest.

We are happy to answer any questions you may have concerning these proposed amendments. We look forward to working with the Committee on this legislation.

Sincerely,

Jonathan Band  
LCA Counsel  
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<sup>3</sup> This definition of library or archives is based on that used in the section 1201 exemptions, 37 C.F.R. § 201.40.