



May 21, 2025

The Honorable Marsha Blackburn  
Chair, Subcommittee on Privacy, Technology, and the Law  
Senate Judiciary Committee

The Honorable Amy Klobuchar  
Ranking Member, Subcommittee on Privacy, Technology, and the Law  
Senate Judiciary Committee

Dear Chair Blackburn and Ranking Member Klobuchar,

I am writing regarding the Subcommittee's hearing entitled "The Good, The Bad, and The Ugly: AI-Generated Deepfakes in 2025." I appreciate your attention to this important topic, and the opportunity to share DIMA's perspective.

Further to the testimony I gave to the Senate Judiciary Committee's Subcommittee on Intellectual Property in April of last year, DIMA remains deeply engaged on issues related to deepfakes and digital replicas as they pertain to music and music streaming services. Last year, I stated our belief that individuals must be able to protect themselves against the unauthorized creation and use of their name, image, likeness, and voice. DIMA maintains this position, along with our support for federal legislation to ensure that there is consistency in the application of protections to individual personhood rights.

In the context of today's hearing on the broad issue of AI-generated deepfakes, we encourage the Committee to be mindful of the fact that it is still early in the evolution of AI technology and any responses to it should be proportionate and not inhibit future legitimate use cases. DIMA also encourages the Committee to assess the various roles that different stakeholders in the music streaming economy have when it comes to the creation and distribution of AI generated material.

While today's hearing is not specific to any individual legislative proposal, we anticipate that the NO FAKES Act will be a topic of discussion. Therefore, it is important to recognize that significant effort has been put into improvements and adjustments to this legislation to address concerns regarding user uploaded material-focused platforms, and we appreciate the work that has been undertaken to date. While these amendments are to be welcomed, additional work is required to respond to broader internet services and to music streaming business models that do

not involve predominantly user uploaded music, but rather music received from labels and aggregators<sup>1</sup>.

Further improvements to the legislation would ensure that it is workable for different types of internet services and does not penalize or unduly burden good actors, preserves free speech, and takes into consideration long-standing, well-functioning commercial relationships and industry practice for different business models.

**DIMA seeks legislation that bolsters the vital role of music streaming in the music industry**

Music streaming services positively impact both creators and fans. Streaming services provide legal access to music and are responsible for year over year recorded music revenue growth. They pay approximately seventy percent of their revenues to music rights holders in the form of royalty payments. Music streaming services also provide fans with new ways to connect with artists and provide affordable access to music with innovative consumer experiences. The services we represent have invested personnel and resources throughout the world to support music creators, working with up-and-coming and established artists alike, and creating opportunities for visibility and engagement. Often, emerging artists get their first big break on streaming services, connecting with audiences and developing fans that would have been unreachable in the record store era.

Streaming services are central to the music ecosystem and their success is built on a foundation of strong working relationships with rights owners, intermediaries and partners. The industry operates on global supply chains that enable the distribution of tens of millions of recordings to listeners around the world. This is a complex process that involves detailed commercial agreements, precise technical specifications, and ever-evolving business practices to manage staggering volumes of data from sound recordings, album art, and lyrics, to the many points of metadata that accompany each song, to the usage reports provided by the services to a wide variety of rights owners in a wide variety of formats.

Relevant to today's hearing, rights holders and services have established robust processes to address and potentially remove content that violates the rights of third parties or is otherwise harmful in the context of this complex, finely tuned supply chain.

A well-functioning digital music supply chain is critical to the success of the music industry as a whole. And for this success story to continue, it is imperative that legislation be crafted to enable efficient compliance at scale, while allowing legitimate expression to flourish.

**DIMA members have nothing to gain from deceptive music in the supply chain**

AI technology, particularly generative AI, raises significant questions around the integrity of an individual's likeness and voice that have particular resonance in the music industry. DIMA members have nothing to gain from deceptive music being delivered to their services and believe

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<sup>1</sup> Aggregators are services that artists can use to distribute their songs to music streaming services. Notably, they are the service that has a direct relationship with the artist, who first uploads their music to the aggregator before it reaches music streaming services.

that those who would falsely capitalize on the creative identity and expression of the artists their customers love, or who recklessly distribute unauthorized digital replicas, should be held accountable. Accordingly, DIMA supports appropriate safeguards to protect an individual's personhood and is committed to working toward comprehensive solutions that ensure such protections in the age of AI.

**DIMA requests critical revisions to improve the NO FAKES Act**

DIMA has worked diligently and consistently to provide constructive feedback on the NO FAKES Act, and we appreciate the ongoing dialogue with your offices, and those of the other sponsors, to that effect.

While we were pleased to see that certain adjustments were made to the legislation introduced this Congress, including improvements to address the issue of potentially devastating damages in the prior version, we continue to have concerns with other elements of the bill and seek further improvements to address outstanding issues.

It is imperative that good actors, such as DIMA members, are not the unintended targets of provisions meant to address bad actors. Good actors, whatever their business model, must not be unduly burdened by legislation that imposes significant legal uncertainty or encourages unnecessary and counterproductive “deep pocket” litigation. Further, we believe that the legislation must take care not to chill free speech and creative freedom.

The introduced version of the NO FAKES Act includes important and welcome improvements for services that are in the business of offering predominantly user-generated content. But DIMA is concerned that the NO FAKES Act does not provide appropriate protection for services that make available content primarily provided by third-party business partners. In its current form, this could increase barriers to entry for new competition and have a chilling effect on the current operation of audio streaming and its future growth. With these principles in mind, we have outlined some of our key recommendations for how to address these issues and strengthen the bill.

- ***Recommendation 1: Safe Harbor Protections Should Be Available for All Legitimate Services that Comply with the Requirements***

As drafted, the NO FAKES Act only provides safe harbor protection in connection with “user uploaded material.” This limitation presents two significant issues for music streaming services.

First, it does not provide safe harbors for liability associated with content provided by third-party business partners – such as record labels or aggregators – that deliver the tens of millions of recordings to our members. Streaming has largely eliminated the barriers to music distribution that used to exist and, as a consequence, streaming services carry a vast amount of content that is available almost immediately upon delivery. This immediacy is by the content provider's designation: for those providing the music, time is often of the essence in a hits-driven business. Even if the material is provided by third-party business partners, and not consumer end users, the practical issues associated with large-scale delivery of content from multiple sources, made

available in real time, are largely the same: human review is simply not feasible. Even if it were, there is no reliable way to identify digital replicas and ascertain if they were authorized. In short, the only party that knows the details of what went into a given recording are the content providers themselves. Streaming services should therefore have access to a safe harbor from liability for claims based on that content, based on an appropriate notice and takedown regime.

Second, the bill singles out music streaming services from all other types of online content services by requiring music services that allow even a small amount of user-uploaded content to implement the same type of heightened “staydown” obligations that are imposed on platforms that “predominantly” distribute UGC. These obligations are *not* imposed on non-music services.

In other words, NO FAKES as drafted places a higher burden on music streaming services than on any other type of online service that happens to allow some form and amount of UGC. Simply put, there is no sound policy basis to treat music streaming services more harshly than other types of streaming or other online services.<sup>2</sup>

While DIMA members are comfortable with certain heightened obligations for ancillary user uploaded material, the legislation must recognize that user uploaded material is not the primary business of most on-demand music services.

This issue can be addressed by amending the NO FAKES Act to provide safe harbors for *all* services and include obligations suitable for the different business models.

- ***Recommendation 2: Takedown and Stay-down Obligations Should Be Clarified***

The scope and operation of the takedown and stay-down obligations in the bill should be further tailored and clarified. It must be made clearer that the takedown (or stay-down) obligation is only triggered if the service received sufficient information to identify and remove the actual replica in question and does not extend to third party content (such as apps) that provide access to content. For example, a service should not be required to takedown and stay-down an application such as the New York Times App in a situation where there may be an unauthorized digital replica in an advertisement contained within the app. It is why “technical and practical feasibility” should be the standard for any such obligations put on streaming services.

Likewise, to the extent that streaming services are subject to a stay-down obligation based on the use of a digital fingerprint, any such fingerprint must identify the work incorporating the replica,

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<sup>2</sup> On-demand music services may receive limited amounts of user-uploaded materials, be it music or non-music material, in comparison to the millions of recordings supplied by the principal supply chain involving record labels and aggregators. Examples of this material include when artists change the album cover displayed with their recordings, through dedicated artist tools and portals. These uploads by artists can provide important opportunities for fan engagement that help build audiences, but where they account for a limited part of the music service, this alone should not subject the music service to higher-level obligations applicable to businesses that are predominantly focused on material directly uploaded by consumer end-users. The bill as drafted fails to address the clear distinction of this type of activity from a service that predominantly provides access to user uploaded material. As currently drafted, the bill imposes the same heightened obligations on both types of services.

not just the replica itself. We believe that this was the intended goal, but the language in the legislation requires further tightening to ensure that this intent is fully reflected.

Furthermore, an appropriate counter-notification process in specific cases would strengthen the legislation by helping prevent unintended chilling effects on free speech.

- ***Recommendation 3: Definition of Digital Replica and Digital Fingerprint***

The NO FAKES Act would be improved by making the definition of a digital replica more specific. To provide clear boundaries to the digital replica right, and to prevent frivolous suits, the definition of digital replica should require that the replica is a realistic representation of a particular, actual individual that a reasonable person would believe is only of that individual.

Similarly, what is required to be taken down, and in the case of user uploaded material, also kept down, is defined by what has been notified and cannot extend beyond that. While we understand this to be the intent of the legislation, we are concerned that this principle may be ambiguous in the text and should be more clearly specified to avoid any confusion.

### **Next Steps**

It is critical to ensure that the NO FAKES Act – and any additional legislation related to AI-generated deepfakes – is workable for all business models. It is also essential that legislation ensures that free speech is not undermined. While we appreciate the improvements that have been made, those improvements have largely focused on specific business models. Ensuring that the legislation takes into account different business models would strengthen bill and better achieve the overarching goal of combatting unauthorized digital replicas.

DIMA remains committed to finding workable solutions that protect individuals, preserve free speech, and provide legal and creative certainty for good actors, and look forward to ongoing constructive dialogue with your offices. We share the goal of a federal right to protect individual personhood from unauthorized digital replicas.

Thank you again for holding today's hearing on the important topic of AI-generated deepfakes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Graham Davies', with a long horizontal flourish extending to the right.

Graham Davies  
President and CEO  
DIMA