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## Between Protection and Censorship: The TAKE IT DOWN Act's Privacy Promise and Free Speech Pitfalls

April 9, 2025 - The Take It Down Act, recently passed by the House Energy and Commerce Committee with a 49-1 vote, aims to combat the distribution of non-consensual intimate imagery (NCII), including deepfake pornography. This legislation seeks to criminalize the publication of such material and mandates online platforms to remove reported content within 48 hours.

The Act is designed to enhance personal privacy by providing victims with a mechanism to swiftly remove unauthorized explicit content. By criminalizing the dissemination of NCII and requiring prompt takedown by platforms, the law intends to reduce the proliferation of such material, thereby protecting individuals from further harm and potential exploitation.

Despite its protective intentions, the act has raised concerns among free speech advocates. Critics argue that the broad definitions and lack of safeguards in the bill could lead to the removal of lawful content, including satire, journalism, and political speech. The Electronic Frontier Foundation (EFF) warns that the mandated notice-and-takedown system may incentivize platforms to over-remove content to avoid liability, potentially infringing on First Amendment rights.

While it addresses pressing issues related to NCII, its enforcement mechanisms may also conflict with existing legal standards. The American Action Forum highlights that the bill's requirements could undermine user privacy, particularly concerning platforms that utilize end-to-end encryption. Compliance with the Act might necessitate breaking such encryption, raising significant privacy and legal concerns.

The act is a significant legislative effort to protect individuals from the harms of non-consensual intimate imagery. However, it is imperative that its implementation carefully balances the protection of personal privacy with the preservation of constitutional free speech rights. If this issue isn't addressed now, it will certainly be addressed by the courts in the myriad of lawsuits that are sure to arise from it. And based on the recent vote in congress, this is a bill which is almost sure to be passed into law.

by Jim Malmberg

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