



**MOTION PICTURE ASSOCIATION**

**WIPO CONVERSATION 12 - INTELLECTUAL PROPERTY AND  
SYNTHETIC MEDIA**

**PANEL 4: THROUGH THE CRYSTAL BALL: IS IP THE FUTURE WAY TO GO?  
PRACTICAL CONSIDERATIONS IN A NEW IP RIGHT**

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# **DIGITAL REPLICAS: WHY NEED NEW U.S. LAWS?**

- **Why aren't existing right of publicity laws adequate?**
- **Generally limited to commercial/advertising/merchandising uses**
- **Expressive works exemptions**
  - **E.g.: Cal. Civ. Code § 3344.1 (exempting “a play, book, magazine, newspaper, musical composition, audiovisual work, radio or television program, single and original work of art, work of political or newsworthy value, or an advertisement or commercial announcement for any of these works... if [they are] fictional or nonfictional entertainment, or a dramatic, literary, or musical work”)**
- **Concern about use of digital replicas in expressive works, so can't fully exempt them**

# **DIGITAL REPLICAS: LABOR AGREEMENTS**

- **2023 AMPTP/SAG-AFTRA Collective Bargaining Agreement (CBA)**
  - **Consent, compensation, control**
  - **“Employment-based” vs. “independently created” digital replicas**
    - **For independently created DRs, no consent needed for comment, criticism, scholarship, satire, parody, docudramas, historical or biographical works**
  - **Synthetic performers (i.e., not replication of specific performer)**
    - **Notice and opportunity to bargain with union if synthetic performer used in place of SAG-AFTRA human performer**

# **DIGITAL REPLICAS: Protections for free expression**

- **Exceptions (no consent needed):**
  - **News, public affairs, or sports broadcast or account**
  - **Documentaries, biopics, docudramas, even if fictionalized**
  - **Commentary, criticism, scholarship, satire, parody**
  - **Minor (“fleeting or negligible”) uses**
  - **Advertising/promotion for above works**

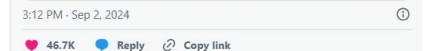
# DIGITAL REPLICAS: PROTECTED USES

## Forrest Gump



## For All Mankind

## Political Comment/Satire



# **FEDERAL LEGISLATION: NO FAKES ACT**

- **Introduced in US Senate July 2024, reintroduced 2025**
  - **Bi-partisan: Sens. Coons (D), Blackburn (R)**
  - **Endorsers: MPA, SAG-AFTRA, RIAA, Recording Academy, OpenAI, IBM, Google/YouTube, etc.**
- **Ongoing negotiations regarding notice/takedown/safe harbor provisions**

# FEDERAL LEGISLATION: NO FAKES ACT

- Federal IP right
- Only covers highly realistic digital replicas



- Does not cover cartoon versions
- Strong exemptions for docudramas, biopics, commentary, parody, satire, etc.



# **NO FAKES ACT: OTHER KEY PROVISIONS**

- **70-year post-mortem term**
- **Registry of post-mortem rights**
- **Limits on licenses/assignability**
- **Notice/takedown/safe harbor regime**
- **Partial preemption of state laws**



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