

ALERT

# Trump Signs Law Expanding Tech Platform Requirements and FTC Enforcement on Intimate AI Deepfakes and Images

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On May 19, President Trump signed into law the Take It Down Act to prevent and deter online publication of nonconsensual intimate images, including artificial intelligence (AI) deepfakes and “revenge” pornographic content. In addition to creating criminal penalties for posting this content, the new law creates FTC-enforced requirements for technology platforms to remove such content. It also expands FTC jurisdiction to enforce against nonprofits that violate this law. Below, we outline the law’s requirements, enforcement mechanisms, and exemptions, as well as the implications of the bipartisan support for FTC enforcement provisions and the expansion of jurisdiction to reach nonprofits.

## **Background and purpose of the Take It Down Act.**

Most states have laws protecting against revenge porn and other nonconsensual intimate imagery (NCII), and there is also a federal cause of action for victims to bring private litigation against those responsible for publishing NCII. But until now, there has been no comprehensive federal enforcement scheme to address the problem. Advocates of the law note that NCII can be especially harmful to children. First Lady Melania Trump posted on X that “advancing this legislation has been a key focus since I returned to my role as First Lady this past January. I am honored to have contributed to guiding it through Congress. By safeguarding children from hurtful online behavior today, we take a vital step in nurturing our leaders of tomorrow.”

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## **Practice Areas**

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In the Senate, the bipartisan bill was sponsored by Sens. Ted Cruz (R-TX) and Amy Klobuchar (D-MN), and it passed by unanimous consent without the need for a roll call vote. In the House, the bill passed 409-2. Support from industry and nonprofit organizations was broad and diverse, including child protection advocates, social media platforms and technology companies, law enforcement organizations, medical associations, and religious groups.

**The law imposes new requirements on a broad range of covered technology platforms.**

The law criminalizes nonconsensual posting of both authentic intimate visual depictions and digital forgeries, such as those created using AI. The scope of these sections is limited to NCII posted on “Interactive Computer Services,” as defined by Section 230 of the Communications Decency Act.

The Take It Down Act also requires “covered platforms” to create a process for victims of posting of NCII or their authorized representatives to notify platforms of the NCII and request it be taken down. The process must be created within one year of enactment, and covered platforms must provide clear and conspicuous notice of this process. Within 48 hours of receiving a request made through the posted process, covered platforms must remove the NCII.

The definition of a “covered platform,” unlike the scope of criminal liability provisions, is not tied to Section 230. Instead, the broader definition includes any “website, online service, online application, or mobile application” that “primarily provides a forum for user-generated content, including messages, videos, images, games, and audio files.” Covered platforms also include online services that routinely publish, curate, host, or make available NCII. But broadband internet providers and email service providers are excluded from the definition of a covered provider.

Although the definition of covered platforms is not tied to Section 230, the law does provide similar immunity to this broader set of online service providers. Covered platforms are provided immunity for their good faith efforts to remove NCII, even if the NCII is ultimately not found to be unlawful.

**The FTC may seek civil penalties against covered platforms, including nonprofits.**

The Take It Down Act provides for FTC enforcement of the requirements imposed on covered platforms. It includes standard legislative language that allows the FTC to seek civil penalties, consumer redress, and injunctive relief for violations. At present, the FTC can seek up to \$53,088 for each violation. Under the language of this statute, the FTC often employs creative arguments about calculating what constitutes a single violation, which experienced counsel can help anticipate and rebut.

Recognizing that this law may present covered platforms with difficult judgment calls that must be made on a short timeline, the statute contains language that requires platforms to comply “reasonably,” but not perfectly. The precise contours of what constitutes “reasonable” compliance efforts are not prescribed, and experienced FTC counsel also may be able to assist with developing such approaches.

The statute's enforcement section also contains unusual language on FTC jurisdiction, which explicitly extends enforcement authority to nonprofit entities. Under the FTC Act, the agency's ability to regulate and enforce against corporations is limited by the statutory definition of "corporation," which extends to any company "organized to carry on business for its own profit or that of its members." The Take It Down Act, however, explicitly states that the FTC "shall also enforce this section ... with respect to organizations that are not organized to carry on business for their own profit or that of their members."

**What does the bipartisan vote and coverage of nonprofits mean for future FTC enforcement bills?**

The Take It Down Act had a broad coalition of support, but it is unclear whether other pending FTC-related bills will receive similar support. Two specific candidates have already passed the House floor and have moved to the Senate.

First, the TICKET Act (H.R. 1402) has also been approved by the Senate Committee on Commerce, Science, and Transportation (CST), and it is related to President Trump's recent Executive Order directing the FTC to increase enforcement of an existing ticketing law, the BOTS Act, which Wiley has previously discussed. The TICKET Act would require that ticket sellers clearly and conspicuously disclose the total ticket price, including all fees, and prohibits speculative ticket sales that offer tickets for events that the seller does not yet possess. Second, the Informing Consumers About Smart Devices Act (H.R. 859) was approved unanimously by CST and has bipartisan co-sponsors. This bill would require manufacturers of connected household devices to disclose whether such devices contain a camera or a microphone.

Both the TICKET Act and the Inform Consumers About Smart Devices Act would authorize FTC enforcement that includes civil penalties, consumer redress, and injunctive relief. We will continue to watch whether these bills move forward in the coming months and further expand FTC authority.

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