

Antitrust Law Daily Wrap Up, CONSUMER PROTECTION NEWS: Platforms seen as facing onus of TAKE IT DOWN enforcement, (Jun 4, 2025)

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The recently enacted law targeting nonconsensual AI depictions will be enforced by the FTC.

The Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks (TAKE IT DOWN) Act ([S. 146, Public Law 119-12](#)) is going to place “a lot of the onus” for enforcement on social media platforms and other tech companies, according to Morgan, Lewis & Bockius LLP partner Loyaan Egal, former chief of the FCC’s Enforcement Bureau and former assistant U.S. attorney.

The limited resources of the Justice Department and the FTC to pursue criminal and noncriminal enforcement, respectively, especially in light of the Trump administration’s efforts to reduce the size of government, will require them to “be strategic in who they go after,” Mr. Egal said, which means they may prefer targeting platforms for not meeting the 48-hour take-down window in the statute rather than the individual posters of videos and images. “That’s where I see DoJ and FTC,” he said.

Local or state law enforcement “might have a better way to go after individuals” that post the content, but “being able to identify who is behind this is also resource intensive,” he said. “If someone is circulating videos [to other individuals], ... it’s pretty easy to figure out who had the phone, who took the video. That’s kind of bread-and-butter local law enforcement,” Mr. Egal said.

The TAKE IT DOWN Act, which was recently signed by President Trump, requires covered platforms to remove “nonconsensual intimate visual depictions,” including those created using artificial intelligence (AI), within 48 hours of notification from the individual depicted, 2025 Pub. L. No. 119-12. It would also criminalize the publication of such depictions without the consent of the individual depicted.

The Federal Trade Commission is poised to hear input on its implementation of the TAKE IT DOWN Act at its workshop tomorrow on the “attention economy.”

During an interview with *TR Daily*, Mr. Egal said that it makes sense that Congress assigned noncriminal enforcement of the Act to the FTC, given that the FCC has only limited regulatory jurisdiction over broadband services since the U.S. Court of Appeals for the Sixth Circuit (Cincinnati) ruled that they are information services under Title I of the Communications Act.

Determinations on how to decide whether a given depiction actually represents a particular individual will have to “evolve through court decisions and rulemakings,” Mr. Egal said.

“I think that it is going to be interesting to see how that evolves,” he added. “If a platform gets a request to take down a video image, how are they going to vet that it is that person making the request?” The platforms themselves will also have to develop a process of “vetting, or proactive searching,” for content that violates the law, he said. “I would assume because of the liabilities associated with this, companies are going to be conservative, [and] not take the position, ‘let’s ask for forgiveness’” instead of permission.

Mr. Egal also raised the question of whether AI will be employed to identify images that violate the law and proactively take them down. “You’re still going to have to balance civil liberties ... with [law enforcement] using such tools,” he said. “Is that going to mean a surveillance apparatus that looks for these things without any prompt? Does it come across other information that becomes the basis [for an unrelated investigation]?”

If the platforms use AI to conduct such search, privacy is an issue, but “it’s definitely not the same level of concern if

a private company” does it, as opposed to law enforcement, he said.

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