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| To: | Members of the House Regulatory Affairs Committee |
| From: | Michelle Richardson, Director of Public Policy |
| Date: | April 7, 2015 |
| Re: | **Vote NO on HB 271, The True Origin of Digital Goods Act** |

The ACLU of Florida writes in opposition to HB 271, which compels certain website owners who post audiovisual content to list their true names and contact information. We believe this bill would violate the First Amendment if passed.

The ACLU has been at the forefront of protecting online freedom of expression in its myriad forms. We brought the first case in which the Supreme Court declared speech on the Internet equally worthy of the First Amendment's historical protections. In that case, *ACLU v Reno,* the Supreme Court held that the government can no more restrict a person's access to words or images on the Internet than it can snatch a book out of your hands. We remain vigilant against laws that risk censoring or burdening online content, including the unmasking of anonymous speakers without careful court scrutiny.

Unfortunately, HB 271 creates such a risk. This bill broadly targets any owner or operator of a website accessible in Florida that deals "in substantial part in the electronic dissemination of commercial recordings or audiovisual works, **directly or indirectly**" (emphasis added). It requires any such website operator to place his or her true name and contact information prominently on the website.

The First Amendment protects the right to speak anonymously.[1] The Supreme Court has long recognized that "an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment."[2] The Court has been emphatic: anonymous speech "is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent."[3] As such, this bill would be subject to constitutional scrutiny by the courts—scrutiny the bill is certain to fail.

First, it plainly discriminates based on the speaker and the content that speaker offers: it applies only to websites that host particular (that is, audiovisual) content. Requiring only certain speakers to unmask themselves is unquestionably a content-based burden on protected speech.[4] As a content-based prohibition of protected, non-obscene speech, the bill would be "'presumptively invalid,' and the

[1] *McIntyre v Ohio Elections Comm'n*, 514 U.S. 334 (1995).
[2] *Id.* at 342.
[3] *Id.*
[4] *See id.* at 345.

Government bears the burden to rebut that presumption."[5] Such prohibitions and regulations "cannot be tolerated under the First Amendment."[6]

Second, the breadth of this bill is potentially staggering. The bill text suggests that it would encompass any website—commercial or not—that posts *links* to audiovisual content; indeed, it is hard to divine any other meaning of the insertion of the phrase "directly or indirectly." Thus, a local non-profit blog chronicling events in its community by linking to local candidates' election videos, city council meeting recordings, or TV news websites, would be forced to list the true identity of the website operator. This is not only constitutionally problematic, but also risks impoverishing democracy and public debate. Anonymity is essential to truly robust public conversation; it offers cover for unpopular, critical, and controversial speech. Forcing anonymous website owners, hosts, or commenters to unmask themselves to the public would risk chilling such debate—unconstitutionally. A statute is unconstitutionally "'overbroad' in violation of the First Amendment if in its reach it prohibits constitutionally protected conduct."[7]

Finally, the bill's breadth is wholly unnecessary when anyone harmed by copyright infringement has the tools available to unmask *particular* anonymous speech—when he or she makes the proper showing in a court that the anonymous speaker has acted unlawfully. Specifically, in a series of cases beginning with *Dendrite Int'l, Inc. v. Doe No. 3*,[8] state courts have adopted a balancing standard to assess requests to identify anonymous online speakers to ensure that plaintiffs who have valid claims are able to pursue them. Notably, these requests are gauged in light of their facts. SB 604 would undermine this careful constitutional balance by presuming that *no* speaker sharing audiovisual content has the right to do so lawfully and anonymously—sweeping the modern-day Publius in with copyright violators. In short, the bill's identification requirements "suppress lawful speech as the means to suppress unlawful speech."[9] The constitution prohibits such an approach.

We believe that HB 271 would create bad policy and violate the First Amendment; we therefore urge you to vote against it.

For more information contact Michelle Richardson, Director of Public Policy at mrichardson@aclufl.org.

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[5] *United States v. Stevens*, 559 U.S. 460, 468 (2010).

[6] *Regan v. Time, Inc.*, 468 U. S. 641, 648-49 (1984) (citations omitted).

[7] *Grayned v. City of Rockford,* 408 U.S. 104, 114 (1972).

[8] 775 A.2d 756, 760-61 (N.J. App. Div. 2001).

[9] *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 255 (2002).