

TO: BOARD OF LEGISLATORS  
COUNTY OF WESTCHESTER

Your Committee recommends the adoption of “A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 610 in relation to prohibiting the unlawful use of digitally deceptive material.”

Your Committee is advised that untrustworthy and fraudulent uses of artificial intelligence are on the rise through the dissemination or publishing of a “deep fake,” an image or video that has been convincingly altered or manipulated to (1) misrepresent someone as saying or doing something that was not actually said or done or (2) replace a person in an image or video with another person, when, they were not actually present in the image or video. While “deep fakes” may be used for commercial or satirical purposes, they can also be used to spread mis- and disinformation. Further, “deep fakes” may involve explicit fraud, such as impersonating another individual to access protected information, or place a person in a pornographic still or video image for the purposes of humiliating, harassing, or blackmailing that individual.

Your Committee is informed there are efforts at the federal and state levels to protect persons from the harm that “deep fake” images can cause. Although still in committee, in September 2023, Congress proposed the “Deepfakes Accountability Act” (H.R. 5586) in an attempt to regulate the harmfulness of “deep fakes.” The bill, among other things, requires producers/creators to use digital watermarks and disclosures on the image or video that is considered a “deep fake,” establishes new criminal offenses for violations, and creates civil penalties and private rights of action for victims. Several states have created torts in regards to “deep fake” images that are used to damage reputations or influence elections, while at least one state has criminalized the creation of “deep fake” images which are intended to harm or defraud an individual. Because artificial intelligence is continuously

evolving, laws enacted to regulate and/or criminalize “deep fake” images should cast a wide net, yet not be so broad that these laws infringe on an individual’s First Amendment rights. Moreover, federal, state, and local legislative bodies must be prepared to amend any law to keep up with any advancements in artificial intelligence.

Your Committee is further advised that, currently a person may have claims of defamation, intentional infliction of emotional distress, and false light under the tort laws of the State of New York if a “deep fake” depicts a person in a false light that harms their reputation. New York State law also provides for a right of publicity claim, which protects individuals from having their name, likeness, or identity used without consent for commercial purposes, as well as a right of privacy claim, which further protects individuals from a “deep fake” involving pornography and other sensitive material. All of these tort claims present challenges, such as discovering the perpetrator, who often uses anonymous online identities, demonstrating that a court within Westchester County would have jurisdiction to hear the case, and proving damages including emotional harm or damage to a person’s reputation.

Your Committee is informed that New York State Governor Kathy Hochul signed legislation (Chapter 513 of the Laws of 2023) on September 29, 2023, which became effective in December 2023, to combat the use of pornographic images or videos with the intent to humiliate or blackmail. Chapter 513 amended Section 245.15 of the New York State Penal Law (NYPL) to provide for a Class A misdemeanor for intentionally disseminating or publishing an image or video depicting an identifiable person with their intimate parts exposed, including where an image or video is created or altered by digitization, without that person’s consent, with the intent to cause emotional, financial, or physical harm. For the purposes of the State legislation, digitization is defined as changes to images. Moreover, on April 20, 2024, Governor Hochul signed additional legislation (Chapter 58 of the Law of 2024)

that established a private right of action, in Section 52-b of the New York State Civil Rights Law (NYCRL). Specifically, the law authorizes a private right of action for false light invasion of privacy, where any person depicted in an image or video, created or altered by digitization, was depicted unclothed or with exposed intimate parts, and was disseminated or published without the depicted person's consent, where the person had a reasonable expectation that the image or video would remain private.

Your Committee recognizes that these State laws provide some regulation of the use of "deep fakes," but gaps remain. For instance, NYPL § 245.15 focuses on the emotional, financial or physical welfare of victims, as opposed to the intent of the perpetrator. Additionally, the State's definition of digitization does not address modifications to audio.

Your Committee notes that this proposed Local Law creates a Class B misdemeanor for disseminating or publishing images or videos, created or altered by digitization or digitally deceptive material, for exposing a person's intimate parts or engaging in obscene sexual conduct without the consent of the person depicted in the image or video, and the actor's intent is to harass, threaten, or alarm the depicted person. The proposed Local Law also provides a Class B misdemeanor for criminal impersonation through the use of digitally deceptive material. Further the proposed law elevates the offense to a Class A misdemeanor if any single violation occurs in the course of and/or in furtherance of the commission or attempted commission of another crime. The proposed law also elevates the offense to Class A misdemeanor if a person was previously convicted of violating the law within the last ten years.

Your Committee is advised that this proposed Local Law aims to close some of the gaps in the State law, as this Local Law is directed toward an actor's intention to harass, threaten, or alarm

another in order to commit fraud or extortion, and, among other things, applies to digitally modified audio, such as mimicking the voice of another person.

Your Committee is advised that, in order to maintain consistency with the NYPL, and to ensure that the proposed Local Law is interpreted and applied in a constitutional manner, the proposed Local Law refers to multiple definitions contained in the NYPL. By utilizing these definitions, the proposed Local Law will be interpreted in accordance with prevailing case law regarding those Penal Law definitions, and will benefit from any modifications to those definitions. Those definitions, as they currently exist, are presented here:

“Disseminate” means to give, provide, lend, deliver, mail, send, forward, transfer or transmit, electronically or otherwise to another person. (New York State Penal Law § 250.40[5]).

“Publish” means to (a) disseminate, as defined [above], with the intent that such image or images be disseminated to ten or more persons; or (b) disseminate with the intent that such images be sold by another person; or (c) post, present, display, exhibit, circulate, advertise or allows access, electronically or otherwise, so as to make an image or images available to the public; or (d) disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible, electronically or otherwise and to make such image or images available to the public. (New York State Penal Law § 250.40[6]).

“Obscene.” Any material or performance is “obscene” if (a) the average person, applying contemporary community standards, would find that considered as a whole, its predominant appeal is to the prurient interest in sex, and (b) it depicts or describes in a patently offensive manner, actual or simulated: vaginal sexual contact, a crime under the former sections 130.50, 130.45, and 130.40 of the penal law, oral sexual contact, anal sexual contact, sexual bestiality, masturbation, sadism, masochism, excretion or lewd exhibition of the genitals, and (c) considered as a whole, it lacks serious literary, artistic, political, and scientific value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other especially susceptible audience. (New York State Penal Law § 235.00[1]).

“Sexual conduct” means vaginal sexual contact, oral sexual contact, anal sexual contact, aggravated sexual contact, or sexual contact. (New York State Penal Law § 130.05[10]).

Your Committee is further informed that the proposed amendments do not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning dated January 8, 2024, which is on file with the Clerk of the Board of Legislators.

Your Committee recommends adoption of this Local Law.

Dated: \_\_\_\_\_, 2024  
White Plains, New York

COMMITTEE ON

**RESOLUTION NO. \_\_\_\_ – 2024**

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. \_\_\_\_ - 2024, entitled, “A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 610 in relation to prohibiting the unlawful use of digitally deceptive material.” The public hearing will be held at \_\_.m. on the \_\_\_\_ day of \_\_\_\_\_, 2024 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

# FISCAL IMPACT STATEMENT

SUBJECT: Digitally Deceptive Material

NO FISCAL IMPACT PROJECTED

## OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

### SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

### SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$                     -

Total Current Year Revenue \$                     -

Source of Funds (check one):  Current Appropriations  Transfer of Existing Appropriations

Additional Appropriations  Other (explain)

Identify Accounts: N/A

Potential Related Operating Budget Expenses: Annual Amount N/A

Describe: A local law amending the Laws of Westchester County by adding a new Chapter 610 in relation to prohibiting the unlawful use of digitally deceptive material.

Potential Related Operating Budget Revenues: Annual Amount N/A

Describe: \_\_\_\_\_

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: N/A

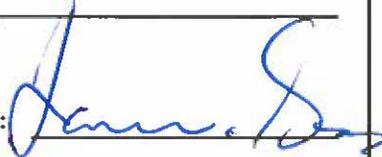
Next Four Years: N/A

Prepared by: Patricia Haggerty

Title: Sr. Budget Analyst

Department: Budget

Date: October 23, 2024

Reviewed By: 

Budget Director

Date: 10/23/24