

119TH CONGRESS  
1ST SESSION

# S. 1367

To protect intellectual property rights in the voice and visual likeness of individuals, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 9, 2025

Mr. COONS (for himself, Mrs. BLACKBURN, Ms. KLOBUCHAR, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To protect intellectual property rights in the voice and visual likeness of individuals, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Nurture Originals,  
5       Foster Art, and Keep Entertainment Safe Act of 2025”  
6       or the “NO FAKES Act of 2025”.

7       **SEC. 2. VOICE AND VISUAL LIKENESS RIGHTS.**

8       (a) DEFINITIONS.—In this section:

9               (1) DIGITAL FINGERPRINT.—The term “digital  
10       fingerprint” means an electronic label or identifier

created by a cryptographic hash function (or similar function), or any other digital process, tool, or technique selected by the provider of an online service, that is unique to a specific piece of material such that it is effectively certain that such piece of material will not be misidentified as a match for a different piece of material.

(2) DIGITAL REPLICA.—The term “digital replica”—

(A) means a newly created, computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that—

(i) is embodied in a sound recording, image, audiovisual work, including an audiovisual work that does not have any accompanying sounds, or transmission—

(I) in which the actual individual did not actually perform or appear; or

(II) that is a version of a sound recording, image, or audiovisual work in which the actual individual did perform or appear, in which the fundamental character of the performance

1 or appearance has been materially al-  
2 tered; and

3 (B) does not include the electronic repro-  
4 duction, use of a sample of one sound recording  
5 or audiovisual work into another, remixing,  
6 mastering, or digital remastering of a sound re-  
7 cording or audiovisual work authorized by the  
8 copyright holder.

9 (3) INDIVIDUAL.—The term “individual” means  
10 a human being, living or dead.

11 (4) INTERACTIVE COMPUTER SERVICE.—The  
12 term “interactive computer service” means any in-  
13 formation service, system, or access software pro-  
14 vider that provides or enables computer access by  
15 multiple users to a computer server, including spe-  
16 cifically—

17 (A) a service or system that provides ac-  
18 cess to the internet; and

19 (B) such systems operated, or services of-  
20 fered, by libraries or educational institutions.

21 (5) ONLINE SERVICE.—The term “online serv-  
22 ice”—

23 (A) means—

24 (i) any website, online application,  
25 mobile application, or virtual reality envi-

1           ronment that predominantly provides pub-  
2           lic access to user uploaded material;

3           (ii) any digital music provider to  
4           which section 115 of title 17, United  
5           States Code, applies that provides public  
6           access to user uploaded material if that  
7           digital music provider is not covered under  
8           clause (i); and

9           (iii) any online application, mobile ap-  
10          plication, virtual reality environment, ap-  
11          plication store, search engine (including  
12          any feature that provides web search re-  
13          sults), advertising service or network, on-  
14          line shopping service or platform, elec-  
15          tronic commerce provider, mapping service,  
16          cloud storage service, or website hosting  
17          service or any other interactive computer  
18          service that is not covered under clause (i)  
19          and that provides public access to user  
20          uploaded material, but only if the provider  
21          of that interactive computer service has  
22          registered a designated agent with the  
23          Copyright Office under subsection (d)(2);  
24          and

(B) does not include any website, online application, mobile application, virtual reality environment, application store, search engine, or cloud storage service that predominantly provides public access to user uploaded products or services, the primary function of which is to distribute, import, transmit, or otherwise make available to the public a product or service described in subsection (c)(2)(B).

(6) RIGHT HOLDER.—The term “right holder” means—

(A) the individual, the voice or visual likeness of whom is at issue with respect to a digital replica or a product or service described in subsection (c)(2)(B); and

(B) any other individual or entity that has acquired, through a license, inheritance, or otherwise, the right to authorize the use of the voice or visual likeness described in subparagraph (A).

(7) SOUND RECORDING ARTIST.—The term “sound recording artist” means an individual who creates or performs in sound recordings for economic gain or for the livelihood of the individual.

(8) USER UPLOADED MATERIAL.—

1 (A) IN GENERAL.—The term “user  
 2 uploaded material” means material, such as a  
 3 video, image, game, audio file, or other mate-  
 4 rial, that is placed on a service directly by or  
 5 at the direction of an end user of a service.

6 (B) SCOPE OF END USER.—For the pur-  
 7 poses of subparagraph (A), an end user, with  
 8 respect to an online service, does not include—

9 (i) a third-party commercial provider  
 10 of sound recordings to a digital music pro-  
 11 vider; or

12 (ii) an employee or agent of the online  
 13 service acting on behalf of the provider of  
 14 the online service.

15 (b) DIGITAL REPLICATION RIGHT.—

16 (1) IN GENERAL.—Subject to the other provi-  
 17 sions of this section, each individual or right holder  
 18 shall have the right to authorize the use of the voice  
 19 or visual likeness of the individual—

20 (A) in a digital replica; or

21 (B) in connection with a product or service  
 22 for which authorization of the individual or  
 23 right holder is required to avoid liability with  
 24 respect to an activity described in subsection  
 25 (c)(2)(B).

1 (2) NATURE OF RIGHT.—

2 (A) IN GENERAL.—The right described in  
3 paragraph (1) shall have the following charac-  
4 teristics:

5 (i) The right is—

6 (I) a property right;

7 (II) not assignable during the life  
8 of the individual; and

9 (III) licensable, in whole or in  
10 part, exclusively or non-exclusively, by  
11 the right holder.

12 (ii) The right shall not expire upon  
13 the death of the individual, without regard  
14 to whether the right is commercially ex-  
15 ploited by the individual during the life-  
16 time of the individual.

17 (iii) Upon the death of the indi-  
18 vidual—

19 (I) the right is transferable and  
20 licensable, in whole or in part, by the  
21 executors, heirs, assignees, licensees,  
22 or devisees of the individual; and

23 (II) ownership of the right may  
24 be—

1 (aa) transferred, in whole or  
2 in part, by any means of convey-  
3 ance or by operation of law; and

4 (bb) bequeathed by will or  
5 pass as personal property by the  
6 applicable laws of intestate suc-  
7 cession.

8 (iv) The right shall be exclusive to—

9 (I) the individual, subject to the  
10 licensing of the right during the life-  
11 time of that individual under subpara-  
12 graph (B); and

13 (II) the right holder—

14 (aa) for a period of 10 years  
15 after the death of the individual;  
16 and

17 (bb) if the right holder dem-  
18 onstrates active and authorized  
19 public use of the voice or visual  
20 likeness of the individual during  
21 the 2-year period preceding the  
22 expiration of the 10-year period  
23 described in item (aa), for an ad-  
24 ditional 5-year period, subject to  
25 renewal for additional 5-year pe-

1                   riods, provided the right holder  
2                   can demonstrate authorized pub-  
3                   lic use of the voice or visual like-  
4                   ness of the individual during the  
5                   2-year period preceding the expi-  
6                   ration of each additional 5-year  
7                   period.

8                   (v) The right shall terminate on the  
9                   date that is the earlier of—

10                   (I) the date on which the 10-year  
11                   period or 5-year period described in  
12                   clause (iv)(II) terminates without re-  
13                   newal; or

14                   (II) the date that is 70 years  
15                   after the death of the individual.

16                   (B) REQUIREMENTS FOR LICENSE.—

17                   (i) IN GENERAL.—A license described  
18                   in subparagraph (A)(i)(III)—

19                   (I) while the individual is living,  
20                   is valid only to the extent that the li-  
21                   cense duration does not exceed 10  
22                   years; and

23                   (II) shall be valid only if the li-  
24                   cense agreement—

1 (aa) is in writing and signed  
 2 by the individual or an author-  
 3 ized representative of the indi-  
 4 vidual; and

5 (bb) includes a reasonably  
 6 specific description of the in-  
 7 tended uses of the applicable dig-  
 8 ital replica.

9 (ii) LICENSES INVOLVING A MINOR.—

10 A license described in subparagraph  
 11 (A)(i)(III) involving a living individual who  
 12 is younger than 18 years of age—

13 (I) is valid only to the extent that  
 14 the license duration does not exceed 5  
 15 years, but in any case terminates  
 16 when the individual reaches 18 years  
 17 of age; and

18 (II) shall be valid only if the li-  
 19 cense agreement—

20 (aa) is in writing and signed  
 21 by the individual or an author-  
 22 ized representative of the indi-  
 23 vidual;

24 (bb) includes a reasonably  
 25 specific description of the in-

1 tended uses of the digital replica;  
2 and  
3 (cc) is approved by a court  
4 in accordance with applicable  
5 State law.

6 (iii) COLLECTIVE BARGAINING AGREE-  
7 MENTS.—The provisions of clauses (i) and  
8 (ii) shall not apply with respect to a license  
9 if the license is governed by a collective  
10 bargaining agreement that addresses dig-  
11 ital replicas.

12 (iv) LIMITATION.—The provisions of  
13 clauses (i) and (ii) shall not affect terms  
14 and conditions of a license or related con-  
15 tract other than those described in this  
16 subparagraph, and the expiration of that  
17 license shall not affect the remainder of  
18 the license or related contract.

19 (C) REQUIREMENTS FOR POST-MORTEM  
20 TRANSFER.—A post-mortem transfer or license  
21 described in subparagraph (A)(iii)(I) shall be  
22 valid only if the transfer agreement or license  
23 agreement is in writing and signed by the right  
24 holder or an authorized representative of the  
25 right holder.

1 (D) REGISTRATION FOR POST-MORTEM RE-  
2 NEWAL.—

3 (i) IN GENERAL.—The renewal of a  
4 post-mortem right under subparagraph  
5 (A)(iv)(II)(bb) shall be effective if, during  
6 the applicable 2-year renewal period de-  
7 scribed in that subparagraph, the right  
8 holder files a notice with the Register of  
9 Copyrights that complies with such re-  
10 quirements regarding form and filing pro-  
11 cedures as the Register of Copyrights may  
12 prescribe by regulation, which shall in-  
13 clude—

14 (I) the name of the deceased in-  
15 dividual;

16 (II) a statement, under penalty  
17 of perjury, that the right holder has  
18 engaged in active and authorized pub-  
19 lic use of the voice or visual likeness  
20 during the applicable 2-year period;

21 (III) the identity of and contact  
22 information for the right holder; and

23 (IV) such other information as  
24 the Register of Copyrights may pre-  
25 scribe by regulation.

(ii) DIRECTORY.—The Register of Copyrights—

(I) shall—

(aa) maintain a current directory of post-mortem digital replication rights registered under this subparagraph; and

(bb) make the directory described in item (aa) available to the public for inspection online; and

(II) may require payment of a reasonable filing fee by the right holder filing notice under clause (i), which may take into consideration the costs of maintaining the directory described in subclause (I) of this clause.

(iii) VOLUNTARY INITIAL REGISTRATION.—

(I) IN GENERAL.—A right holder may voluntarily register the post-mortem right under subparagraph (A)(iv)(II)(aa) by filing a notice with the Register of Copyrights that complies with such requirements regard-

1 ing form, content, and filing proce-  
2 dures as the Register of Copyrights  
3 may prescribe by regulation.

4 (II) AUTHORITY OF REGISTER OF  
5 COPYRIGHTS.—The Register of Copy-  
6 rights may—

7 (aa) include a voluntary reg-  
8 istration of the post-mortem  
9 right under subparagraph  
10 (A)(iv)(II)(aa) in the directory  
11 maintained under clause  
12 (ii)(I)(aa) of this subparagraph;  
13 and

14 (bb) require payment of a  
15 reasonable filing fee by a right  
16 holder registering a right under  
17 this clause, which may take into  
18 consideration the costs of main-  
19 taining the directory.

20 (iv) AUTHORITY OF REGISTER OF  
21 COPYRIGHTS.—The Register of Copyrights  
22 may make such interpretations and resolve  
23 such ambiguities as may be appropriate to  
24 carry out this subparagraph.

1                   (E) POST-EXPIRATION OR TERMINATION  
 2                   UTILIZATION OF AUTHORIZED USES.—A digital  
 3                   replica that is embodied in a sound recording,  
 4                   image, audiovisual work, including an audio-  
 5                   visual work that does not have any accom-  
 6                   panying sounds, or transmission, and the use of  
 7                   which is authorized pursuant to the terms of a  
 8                   license, may continue to be utilized in a manner  
 9                   consistent with the terms of that license after  
 10                  the expiration or termination of the license.

11               (c) LIABILITY.—

12               (1) IN GENERAL.—Any individual or entity  
 13               that, in a manner affecting interstate commerce (or  
 14               using any means or facility of interstate commerce),  
 15               engages in an activity described in paragraph (2)  
 16               shall be liable in a civil action brought under sub-  
 17               section (e).

18               (2) ACTIVITIES DESCRIBED.—An activity de-  
 19               scribed in this paragraph is either of the following:

20               (A) The public display, distribution, trans-  
 21               mission, or communication of, or the act of oth-  
 22               erwise making available to the public, a digital  
 23               replica without authorization by the applicable  
 24               right holder.

1 (B) Distributing, importing, transmitting,  
2 or otherwise making available to the public a  
3 product or service that—

4 (i) is primarily designed to produce 1  
5 or more digital replicas of a specifically  
6 identified individual or individuals without  
7 the authorization of—

8 (I) such individual or individuals;

9 (II) the applicable right holder;

10 or

11 (III) the law;

12 (ii) has only limited commercially sig-  
13 nificant purpose or use other than to  
14 produce a digital replica of a specifically  
15 identified individual or individuals without  
16 the authorization of—

17 (I) such individual or individuals;

18 (II) the applicable right holder;

19 or

20 (III) the law; or

21 (iii) is marketed, advertised, or other-  
22 wise promoted by the individual or entity  
23 described in paragraph (1), or another in-  
24 dividual or entity acting in concert with  
25 the individual or entity described in para-

graph (1) with the knowledge of the individual described in paragraph (1), as a product or service designed to produce a digital replica of a specifically identified individual or individuals without the authorization of—

(I) such individual or individuals;

(II) the applicable right holder;

or

(III) the law.

(3) NOTICE OR KNOWLEDGE REQUIRED.—To incur liability under this subsection—

(A) with respect to an activity carried out under paragraph (2) by the provider of an on-line service, the provider must have received a notification that satisfies the requirements under subsection (d)(3), or a court order stating (or must have willfully avoided receipt of such a notification or court order), that the applicable material is—

(i) a digital replica that was not authorized by the applicable right holder; or

(ii) a product or service described in paragraph (2)(B); and

(B) with respect to an activity carried out under paragraph (2) by an individual or entity that is not a provider of an online service, the individual or entity must have actual knowledge, or must willfully avoid having such knowledge, that the applicable material is—

(i) a digital replica that was not authorized by the applicable right holder; or

(ii) a product or service described in paragraph (2)(B).

(4) EXCLUSIONS.—Liability under this subsection shall not extend to—

(A) a service by wire or radio that provides the capability to transmit data to and receive data from all, or substantially all, internet endpoints, including any capabilities that are incidental to enable the operation of the communications service of a provider of online services or network access, or the operator of facilities for such service; or

(B) a provider of an online service alleged to have undertaken an activity described in paragraph (2) if—

(i) it is not technologically feasible for that provider to disable access to the of-

fending material, or disable the reference  
or link to that material, at the specific lo-  
cation identified in the applicable notifica-  
tion sent under subsection (d)(3); or

(ii) disabling access to the offending  
material is prohibited by law.

(5) ADDITIONAL EXCLUSIONS.—

(A) IN GENERAL.—An activity shall not be  
considered to be an activity described in para-  
graph (2) if—

(i) the applicable digital replica is pro-  
duced or used in a bona fide news, public  
affairs, or sports broadcast or account,  
provided that the digital replica is the sub-  
ject of, or is materially relevant to, the  
subject of that broadcast or account;

(ii) the applicable digital replica is a  
representation of the applicable individual  
as the individual in a documentary or in a  
historical or biographical manner, includ-  
ing some degree of fictionalization, un-  
less—

(I) the production or use of that  
digital replica creates the false im-  
pression that the work is an authentic

1 sound recording, image, transmission,  
2 or audiovisual work in which the indi-  
3 vidual participated; or

4 (II) the digital replica is em-  
5 bodied in a musical sound recording  
6 that is synchronized to accompany a  
7 motion picture or other audiovisual  
8 work, except to the extent that the  
9 use of that digital replica is protected  
10 by the First Amendment to the Con-  
11 stitution of the United States;

12 (iii) the applicable digital replica is  
13 produced or used consistent with the public  
14 interest in bona fide commentary, criti-  
15 cism, scholarship, satire, or parody;

16 (iv) the use of the applicable digital  
17 replica is fleeting or negligible; or

18 (v) the applicable digital replica is  
19 used in an advertisement or commercial  
20 announcement for a purpose described in  
21 any of clauses (i) through (iv) and the ap-  
22 plicable digital replica is relevant to the  
23 subject of the work so advertised or an-  
24 nounced.

1 (B) APPLICABILITY.—Subparagraph (A)  
 2 shall not apply where the applicable digital rep-  
 3 lica is used to depict sexually explicit conduct,  
 4 as defined in section 2256(2)(A) of title 18,  
 5 United States Code.

6 (d) SAFE HARBORS.—

7 (1) IN GENERAL.—

8 (A) PRODUCTS AND SERVICES CAPABLE OF  
 9 PRODUCING DIGITAL REPLICAS.—No individual  
 10 or entity shall be directly or secondarily liable  
 11 under this section for an activity described in  
 12 subsection (c)(2)(A) by virtue of distributing,  
 13 importing, transmitting, or otherwise making  
 14 available to the public a product or service un-  
 15 less the product or service is a product or serv-  
 16 ice described in subsection (c)(2)(B).

17 (B) ONLINE SERVICES.—The provider of  
 18 an online service shall not be liable for referring  
 19 or linking to, or violating subsection (c) with re-  
 20 spect to, user uploaded material if—

21 (i) for the provider of an online serv-  
 22 ice described in subsection (a)(5)(A)(iii)  
 23 (other than a search engine or a search  
 24 component of a service), the provider has  
 25 adopted and reasonably implemented, and

1 has informed users of the online service of,  
2 a policy that provides for the termination  
3 in appropriate circumstances of account  
4 holders of the online service that are re-  
5 peat violators of subsection (c)(2), provided  
6 that the failure to terminate a particular  
7 account holder in accordance with that pol-  
8 icy shall subject the provider of the online  
9 service to potential liability only with re-  
10 spect to violating content posted by that  
11 account holder; and

12 (ii) upon receiving a notification that  
13 satisfies the requirements under paragraph  
14 (3), the provider—

15 (I) removes or disables access to  
16 the work embodying the claimed un-  
17 authorized digital replica or the prod-  
18 uct or service specifically identified in  
19 a notice sent under that paragraph,  
20 or, as applicable, the link or reference  
21 to the unauthorized digital replica or  
22 product or service, as soon as is tech-  
23 nically and practically feasible for that  
24 provider;

(II) for the provider of an online service described in clause (i) or (ii) of subsection (a)(5)(A), as soon as is technically and practically feasible for that provider, removes or disables access to all other publicly available instances of the work embodying the claimed unauthorized digital replica that—

(aa) match the digital fingerprint of an unauthorized digital replica specifically identified in a notification sent under paragraph (3); and

(bb) are uploaded after valid, applicable notice was submitted to, and processed by, the provider; and

(III) takes reasonable steps to promptly notify the right holder, and the end user that uploaded the material, that the online service removed or disabled access to the material.

(2) DESIGNATED AGENT.—

(A) DESIGNATION.—

1 (i) IN GENERAL.—A provider of an  
 2 online service described in clause (i) or (ii)  
 3 of subsection (a)(5)(A) shall register a des-  
 4 ignated agent in accordance with this para-  
 5 graph.

6 (ii) CONTENTS.—To designate an  
 7 agent under clause (i), the provider of an  
 8 online service shall make available through  
 9 the online service, including on the website  
 10 of the online service in a location accessible  
 11 to the public, and provide to the Copyright  
 12 Office, substantially the following informa-  
 13 tion:

14 (I) The name, address, telephone  
 15 number, and electronic mail address  
 16 of the agent.

17 (II) Other contact information  
 18 that the Register of Copyrights may  
 19 determine appropriate.

20 (B) DIRECTORY.—The Register of Copy-  
 21 rights—

22 (i) shall—

23 (I) maintain a current directory  
 24 of designated agents for the purposes  
 25 of this paragraph; and

1 (II) make the directory described  
2 in subclause (I) available to the public  
3 for inspection, including through the  
4 internet; and

5 (ii) may require payment of a fee by  
6 the provider of an online service to cover  
7 the costs of maintaining the directory de-  
8 scribed in clause (i)(I).

9 (C) EFFECT OF FAILURE TO DES-  
10 IGNATE.—The failure of a provider of an online  
11 service described in subparagraph (A)(i) to reg-  
12 ister a designated agent under this paragraph  
13 shall establish that the provider has not under-  
14 taken a good faith effort to comply with this  
15 subsection.

16 (3) ELEMENTS OF NOTIFICATION.—To be effec-  
17 tive under this subsection, a notification of a claimed  
18 violation of the right described in subsection (b)  
19 shall be a written communication provided to the  
20 designated agent of the provider of an online service  
21 that includes the following:

22 (A) A physical or electronic signature of  
23 the right holder, an individual or entity author-  
24 ized to act on behalf of the right holder, or an  
25 eligible plaintiff under subsection (e)(1).

1 (B) Identification of the individual, the  
2 voice or visual likeness of whom is at issue with  
3 respect to an unauthorized digital replica or a  
4 product or service described in subsection  
5 (c)(2)(B).

6 (C) Identification of the material con-  
7 taining an unauthorized digital replica or a  
8 product or service described in subsection  
9 (c)(2)(B), including information sufficient to  
10 allow the provider to locate the identified mate-  
11 rial.

12 (D) Information reasonably sufficient to  
13 permit the provider to contact the notifying  
14 party, such as an address, telephone number,  
15 and email address.

16 (E) A statement that the notifying party  
17 believes in good faith that the material is an  
18 unauthorized use of a digital replica or a prod-  
19 uct or service described in subsection (c)(2)(B).

20 (F) If not the right holder or an eligible  
21 plaintiff under subsection (e)(1), a statement  
22 that the notifying party has the authority to act  
23 on behalf of the right holder.

24 (G) For the purposes of paragraph (1)(B),  
25 information reasonably sufficient to—

(i) identify the reference or link to the material or activity claimed to be an unauthorized digital replica, or a product or service described in subsection (c)(2)(B), that is to be removed or to which access is to be disabled; and

(ii) permit the provider to locate the reference or link described in clause (i).

(4) PENALTIES FOR FALSE OR DECEPTIVE NOTICE.—

(A) KNOWING MATERIAL REPRESENTATIONS.—

(i) IN GENERAL.—It shall be unlawful to knowingly materially misrepresent under paragraph (3)—

(I) that the material requested to be removed is an unauthorized digital replica;

(II) that an individual or entity has the authority to act on behalf of the right holder; or

(III) that a digital replica or a product or service described in subsection (c)(2)(B) is not authorized by the right holder or by other law.

1                   (ii) FAILURE TO PERFORM GOOD  
 2 FAITH REVIEW.—The failure to undertake  
 3 a good faith review to determine whether  
 4 material with respect to which notice is  
 5 provided under paragraph (3) qualifies as  
 6 a digital replica shall constitute a knowing  
 7 material misrepresentation under this sub-  
 8 paragraph.

9                   (B) PENALTIES.—In addition to a cause of  
 10 action that is available under subsection (e),  
 11 any individual or entity that violates subpara-  
 12 graph (A) of this paragraph shall be liable to  
 13 the alleged violator that uploaded the applicable  
 14 material, or the provider of an online service in-  
 15 jured by the misrepresentation, for an amount  
 16 equal to the greater of—

17                   (i) \$25,000 per notification sent  
 18 under paragraph (3) that contains a mis-  
 19 representation described in subparagraph  
 20 (A) of this paragraph; or

21                   (ii) any actual damages, including  
 22 costs and attorney's fees, incurred by the  
 23 alleged violator, as well as by any provider  
 24 of an online service injured by the reliance  
 25 of the provider on the misrepresentation in

1 removing or disabling access to the mate-  
 2 rial or activity claimed to be an unauthor-  
 3 ized digital replica.

4 (e) CIVIL ACTION.—

5 (1) ELIGIBLE PLAINTIFFS.—A civil action  
 6 against an individual or entity that, in a manner af-  
 7 fecting interstate commerce (or using any means or  
 8 facility of interstate commerce), engages in an activ-  
 9 ity described in subsection (c)(2) may be brought  
 10 by—

11 (A) the applicable right holder;

12 (B) if the applicable right holder is an in-  
 13 dividual who is younger than 18 years of age,  
 14 a parent or guardian of that individual; or

15 (C) in the case of a digital replica involving  
 16 a sound recording artist, any individual or enti-  
 17 ty that has, directly or indirectly, entered  
 18 into—

19 (i) a contract for the exclusive per-  
 20 sonal services of the sound recording artist  
 21 as a sound recording artist; or

22 (ii) an exclusive license to distribute  
 23 or transmit 1 or more works that capture  
 24 the audio performance of the sound record-  
 25 ing artist.

1           (2) LIMITATIONS PERIOD.—A civil action may  
 2 not be brought under this subsection unless the civil  
 3 action is commenced not later than 3 years after the  
 4 date on which the party seeking to bring the civil ac-  
 5 tion discovered, or with due diligence should have  
 6 discovered, the applicable violation.

7           (3) DEFENSE NOT PERMITTED.—It shall not be  
 8 a defense in a civil action brought under this sub-  
 9 section that the defendant displayed or otherwise  
 10 communicated to the public a disclaimer stating that  
 11 the applicable digital replica, or the applicable prod-  
 12 uct or service described in subsection (c)(2)(B), was  
 13 unauthorized or disclosed that the digital replica,  
 14 product, or service was generated through the use of  
 15 artificial intelligence or other technology.

16           (4) REMEDIES.—

17           (A) IN GENERAL.—In any civil action  
 18 brought under this subsection—

19           (i) an individual or entity that en-  
 20 gages in an activity described in subsection  
 21 (c)(2)(A) shall be liable to the injured  
 22 party in an amount equal to the greater  
 23 of—

24           (I)(aa) in the case of an indi-  
 25 vidual, \$5,000 per work embodying

1 the applicable unauthorized digital  
2 replica;

3 (bb) in the case of a provider of  
4 an online service that has undertaken  
5 a good faith effort to comply with  
6 subsection (d), \$25,000 per work em-  
7 bodying the applicable unauthorized  
8 digital replica;

9 (cc) in the case of a provider of  
10 an online service that has not under-  
11 taken a good faith effort to comply  
12 with subsection (d), \$5,000 per dis-  
13 play, copy made, transmission, and in-  
14 stance of the unauthorized digital rep-  
15 lica being made available on the online  
16 service in a sum of not more than  
17 \$750,000 per work embodying the ap-  
18 plicable unauthorized digital replica;  
19 and

20 (dd) in the case of an entity that  
21 is not a provider of an online service,  
22 \$25,000 per work embodying the ap-  
23 plicable unauthorized digital replica;  
24 or

1 (II) any actual damages suffered  
2 by the injured party as a result of the  
3 activity, plus any profits from the un-  
4 authorized use that are attributable to  
5 such use and are not taken into ac-  
6 count in computing the actual dam-  
7 ages;

8 (ii) an individual or entity that en-  
9 gages in an activity described in subsection  
10 (c)(2)(B) shall be liable to the injured  
11 party in an amount equal to the greater  
12 of—

13 (I)(aa) in the case of an indi-  
14 vidual, \$5,000 per product or service;

15 (bb) in the case of a provider of  
16 an online service that has undertaken  
17 a good faith effort to comply with  
18 subsection (d), \$25,000 per product  
19 or service;

20 (cc) in the case of a provider of  
21 an online service that has not under-  
22 taken a good faith effort to comply  
23 with subsection (d), \$750,000 per  
24 product or service; or

1 (dd) in the case of an entity that  
2 is not a provider of an online service,  
3 \$25,000 per product or service; or

4 (II) any actual damages suffered  
5 by the injured party as a result of the  
6 activity, plus any profits from the un-  
7 authorized use that are attributable to  
8 such use and are not taken into ac-  
9 count in computing the actual dam-  
10 ages;

11 (iii) the plaintiff may seek injunctive  
12 or other equitable relief;

13 (iv) in the case of willful activity in  
14 which the injured party has proven that  
15 the defendant acted with malice, fraud,  
16 knowledge, or willful avoidance of knowl-  
17 edge that the conduct violated the law, the  
18 court may award to the injured party puni-  
19 tive damages; and

20 (v) if the prevailing party is—

21 (I) the party bringing the action,  
22 the court shall award reasonable at-  
23 torney's fees; or

24 (II) the party defending the ac-  
25 tion, the court shall award reasonable

1 attorney's fees if the court determines  
2 that the action was not brought in  
3 good faith.

4 (B) OBJECTIVELY REASONABLE BELIEF.—

5 A provider of an online service that has des-  
6 ignated an agent under subsection (d)(2) and  
7 has an objectively reasonable belief that mate-  
8 rial that is claimed to be an unauthorized dig-  
9 ital replica does not qualify as a digital replica  
10 shall be liable only for actual damages under  
11 subparagraph (A) if the material is ultimately  
12 determined to be an unauthorized digital rep-  
13 lica.

14 (C) REPLACEMENT OF REMOVED MATE-

15 RIAL.—If the end user that uploaded the mate-  
16 rial that the provider of an online service has  
17 removed, or to which the provider of an online  
18 service has disabled access, brings an action in  
19 a court of the United States against the sender  
20 of a notification under subsection (d)(3) claim-  
21 ing that such notification was false or deceptive,  
22 as described in subsection (d)(4), the provider  
23 may, if the action is brought not later than 14  
24 days after the end user receives notice that the  
25 provider has removed or disabled access to the

1 material, restore the removed material to the  
 2 network of the provider for access by members  
 3 of the public without monetary liability therefor  
 4 to either the notice sender or the end user that  
 5 uploaded the material to which the provider had  
 6 removed or disabled access.

7 (f) SUBPOENA TO IDENTIFY VIOLATOR.—

8 (1) REQUEST.—A right holder, an individual or  
 9 entity authorized to act on behalf of a right holder,  
 10 or an eligible plaintiff under subsection (e)(1) may  
 11 request the clerk of any district court of the United  
 12 States to issue a subpoena to a provider of an online  
 13 service for identification of an alleged violator of this  
 14 section in accordance with this subsection.

15 (2) CONTENTS OF REQUEST.—A request under  
 16 paragraph (1) may be made by filing with the  
 17 clerk—

18 (A) a copy of a notification described in  
 19 subsection (d)(3);

20 (B) a proposed subpoena; and

21 (C) a sworn declaration to the effect  
 22 that—

23 (i) the purpose of the subpoena is to  
 24 obtain the identity of an individual or enti-

1                   ty alleged to be liable under subsection (c);  
 2                   and

3                   (ii) the information described in  
 4                   clause (i) will only be used for the purpose  
 5                   of protecting rights under this section.

6           (3) CONTENTS OF SUBPOENA.—A subpoena  
 7           issued under this subsection shall authorize and  
 8           order the provider of the applicable online service to  
 9           expeditiously disclose to the party that sought the  
 10          subpoena information sufficient to identify the al-  
 11          leged violator by virtue of the activity described in  
 12          the notification to the extent that information is  
 13          available to the provider of the online service.

14          (4) BASIS FOR GRANTING SUBPOENA.—If a  
 15          proposed subpoena under this subsection is in proper  
 16          form, the applicable notification filed satisfies the re-  
 17          quirements under subsection (d)(3), and the accom-  
 18          panying declaration is properly executed, the clerk  
 19          shall expeditiously issue and sign the proposed sub-  
 20          poena and return the subpoena to the requester for  
 21          delivery to the provider of the applicable online serv-  
 22          ice.

23          (g) PREEMPTION.—

24               (1) IN GENERAL.—The rights established under  
 25          this Act shall preempt any cause of action under

1 State law for the protection of an individual's voice  
2 and visual likeness rights in connection with a dig-  
3 ital replica, as defined in this Act, in an expressive  
4 work.

5 (2) RULE OF CONSTRUCTION.—Notwith-  
6 standing paragraph (1), nothing in this Act may be  
7 construed to preempt—

8 (A) causes of action under State statutes  
9 or common law in existence, as of January 2,  
10 2025, regarding a digital replica;

11 (B) causes of action under State statutes  
12 specifically regulating a digital replica depicting  
13 sexually explicit conduct, as defined in section  
14 2256(2)(A) of title 18, United States Code, or  
15 an election-related digital replica; or

16 (C) causes of action under State statutes  
17 or common law in existence, as of January 2,  
18 2025, for the distributing, importing, transmit-  
19 ting, or otherwise making available to the public  
20 a product or service capable of producing 1 or  
21 more digital replicas.

22 (h) RULES OF CONSTRUCTION.—

23 (1) LAWS PERTAINING TO INTELLECTUAL  
24 PROPERTY.—This section shall be considered to be a  
25 law pertaining to intellectual property for the pur-

1 poses of section 230(e)(2) of the Communications  
2 Act of 1934 (47 U.S.C. 230(e)(2)).

3 (2) NO DUTY TO MONITOR.—Except as ex-  
4 pressly provided in subsection (d)(1)(B)(ii), nothing  
5 in this section may be construed to require the pro-  
6 vider of an online service to—

7 (A) monitor the online service for, or af-  
8 firmatively seek facts about, any digital replica;  
9 or

10 (B) gain access to material.

11 (i) SEVERABILITY.—If any provision of this section,  
12 or the application of a provision of this section, is held  
13 to be invalid, the validity of the remainder of this section,  
14 and the application of that provision to other individuals,  
15 entities, and circumstances, shall not be affected by that  
16 holding.

17 (j) RETROACTIVE EFFECT.—

18 (1) LIABILITIES.—Liability under this section  
19 shall apply only to—

20 (A) conduct occurring after the date of en-  
21 actment of this Act; and

22 (B) in the case of conduct covered by a li-  
23 cense or contract, a license or contract that is  
24 executed after the date of enactment of this  
25 Act.

1           (2) DIGITAL REPLICATION RIGHT.—The right  
2           granted under subsection (b)—

3                   (A) shall apply to any individual, regard-  
4           less of whether the individual dies before or  
5           after the date of enactment of this Act; and

6                   (B) in the case of a right holder who has  
7           died before the date of enactment of this Act,  
8           shall vest in the executors, heirs, assignees, or  
9           devisees of the right holder.

10          (k) EFFECTIVE DATE.—This Act shall take effect on  
11   the date that is 180 days after the date of enactment of  
12   this Act.

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