



NURTURE ORIGINALS, FOSTER ART, AND KEEP ENTERTAINMENT SAFE (NO FAKES) ACT OF 2026

MANAGER'S AMENDMENT

SECTION-BY-SECTION

Section 2 – Voice and Visual Likeness Rights

➤ Subsection (a): **Definitions**

- Defines the following terms and phrases that are used in the bill: (1) digital fingerprint; (2) digital replica; (3) individual; (4) interactive computer service; (5) online service; (6) right holder; (7) sound recording artist; and (8) user uploaded material.

➤ Subsection (b): **Digital Replication Right**

- *Nature of the Right* – Provides individuals with a federal intellectual property right to authorize the use of their voice or visual likeness in a digital replica or a product or service for which authorization is required to avoid liability under subsection (c)(2)(B). The right is not assignable during the individual's lifetime but is licensable and does not expire upon the death of the individual.
- *Post-Mortem Scope* – Upon the death of the individual, the digital replication right is transferable, licensable, and exclusive to the executors, heirs, licensees, or devisees of the individual and the like for 10 years. The 10-year post-mortem term is renewable in 5-year increments so long as the right is actively and publicly used during the last two years of the original or renewed period up to a maximum of 70 years.
- *License Requirements* – For adults, the license duration is no longer than 10 years (it can be renewed), the license must be in writing, and the license agreement must describe intended uses of the digital replica. Includes additional guardrails for minors—the license duration can be no longer than 5 years (it can be renewed) and terminates when the individual turns 18; the license must also be in writing, must describe the intended uses of the digital replica, and must be approved by a court. The license requirements do not apply if the license is governed by a collective bargaining agreement and the license requirements do not affect terms and conditions of other licenses or contracts.
- *Post-Mortem Transfers* – Must be in writing and signed by the right holder or the right holder's authorized representative to be valid.
- *Registration for Post-Mortem Renewal* – Establishes a registration system and directory

for renewing the post-mortem term that the U.S. Copyright Office will maintain and make available to the public. The registration will include the name of the deceased individual, a statement under penalty of perjury that the right holder has engaged in active and public use of the voice or visual likeness, the identity and contact information of the right holder, and any other information that the Register of Copyrights determines is appropriate. A right holder may also voluntarily register the original post-mortem term with the Copyright Office.

- *Post-Expiration or Termination Utilization of Authorized Uses* – Establishes that a digital replica embodied in a sound recording, image, audiovisual work, or transmission authorized under a license may continue to be used under the terms of that license after the license expires or terminates.

➤ Subsection (c): **Liability**

- *General Liability for Prohibited Activities* – Creates liability for a person or entity that engages in certain activities in a manner affecting interstate commerce (or using a means or facility of interstate commerce). The prohibited activities are: (1) publicly communicating or otherwise making available to the public—including by acting as a third part commercial supplier of sound recordings to a digital music provider—a digital replica without consent of the applicable right holder; and (2) distributing a product or service that is primarily designed to produce unauthorized digital replicas of specific individuals, has only limited commercially significant purpose or use besides that, or is marketed for such use.
- *Notice or Knowledge Requirement* – Imposes removal obligations on online services only upon receipt of proper notice (or willful avoidance of such notice), and for others requires actual knowledge, which could be obtained from a notice received from the right holder (or a person authorized to act on behalf of the right holder or an eligible plaintiff), or willful avoidance of actual knowledge that the material is an unauthorized digital replica.
- *Exclusions* – Excludes from liability services by wire or radio that provide the capability to transmit data to and receive data from all, or substantially all, internet endpoints; online services for which it is not technologically or practically feasible to disable access to the offending material, or where doing so is prohibited by law; and entities that are not online services if, upon obtaining actual knowledge of the offending material, disables access to the offending material as soon as technologically and practically feasible.
- *Exclusion for Nonprofit Library, Archive, or Nonprofit Educational Institution* – Excludes a nonprofit library or archive that provides public or researcher access to its collections and has a public service mission from liability. Also excludes from liability accredit nonprofit educational institutions so long as the activity is not undertaken for the purpose of commercial advantage.
- *Additional Exclusions* – Excludes certain digital replicas from liability based on

recognized First Amendment principles. These protections apply when the applicable digital replica is:

1. Produced or used in a bona fide news, public affairs, or sports broadcast or account if the digital replica is the subject of, or materially relevant to the subject of the broadcast or account;
2. A representation of the applicable individual as the individual in a documentary or in a historical or biographical manner, including some degree of fictionalization, unless the production or use is intended to, and does, create the false impression that the work is an authentic work that the individual participated in or the digital replica is embodied in a sound recording that is synchronized to accompany a motion picture or other audiovisual work, except to the extent that the use of the digital replica is protected by the First Amendment;
3. Produced or used consistent with the public interest in bona fide commentary, criticism, scholarship, satire, or parody;
4. Used in a fleeting or negligible manner; and
5. Produced or used in an advertisement or commercial announcement for a purpose described in (1)–(4).

The exclusions do not apply when the applicable digital replica is used to depict sexually explicit conduct as defined in 18 U.S.C. § 2256(2)(A).

- *Voluntary Use of Tools to Remove or Disable Access* – Clarifies that an entity or individual that chooses to use a tool to disable access to content does not, on its own, establish actual knowledge of any particular violation.

➤ Subsection (d): **Safe Harbors**

- *Products and Services Capable of Producing Digital Replicas* – Provides a safe harbor from direct and secondary liability for making available or publicly communicating an unauthorized digital replica where the claim is based solely on distributing, importing, transmitting, or otherwise making available to the public a product or service unless the product or service is primarily designed to produce unauthorized digital replicas of specific individuals, has only limited commercially significant purpose or use besides that, or is marketed for such use.
- *Online Services* – Establishes a notice-and-takedown and counter-notification framework and safe harbor for online services.
 1. Online services and digital music providers that predominantly provide public access to user uploaded material are not liable for a violation if upon receipt of a notice that meets the statutory requirements they remove or disable access to the violative material as soon as is technologically and practically feasible and

prevent material with the same digital fingerprint from being uploaded in the future.

2. Other online services that opted in by designating an agent are not liable for a violation if they remove or disable access to the violative material as soon as is technically and practically feasible after receipt of a notice and implement a repeat violator policy.
 3. If an online service receives a counter-notification that meets the statutory requirements and opts to remove the violative material, it must take reasonable steps to inform the individual or entity that provided the initial notice and replace the removed material no earlier than 14 days after receiving the counter-notification unless an eligible plaintiff has initiated a legal action.
- *Designated Agent* – Explains that to qualify for lesser damages associated with “good faith” adherence to this section, an online service must designate an agent to receive notices by providing the name, address, phone number, and e-mail address of the agent and other contact information on its website and to the Register of Copyrights. The Register of Copyrights will maintain a directory of agents.
 - *Elements of the Notice* – Requires an effective notice to include: (1) the right holder’s (or person authorized to act on the right holder’s behalf or eligible plaintiff’s) signature; (2) identification of the individual whose voice or visual likeness is at issue; (3) identification of the material containing an unauthorized digital replica or product or service and sufficient information to allow the service to locate them; (4) the notifying party’s contact information; (5) a statement asserting a good faith belief that the digital replica or product or service is unauthorized and that the First Amendment exclusions do not apply; (6) if not the right holder or eligible plaintiff, a statement, under penalty of perjury, that the notifying party is authorized to act on behalf of the right holder; and (7) information sufficient to identify the reference or link to the material or activity claimed to be or containing an unauthorized digital replica and to permit the online service to locate that reference or link.
 - *Elements of the Counter-notice* – Requires an effective counter-notice to include: (1) a physical signature, witnessed or attested to in person by a licensed notary public, of the individual or entity that originally placed the application material on the online service; (2) identification of the material that has been removed and the location at which the material appeared before it was removed; (3) the counter-notifying party’s contact information; (4) a statement under the penalty of perjury that the material is not a digital replica, not an unauthorized digital replica, or is an unauthorized digital replica that satisfies a First Amendment exclusion; and (5) a statement that the party providing the counter-notice consents to federal court jurisdiction.
 - *Penalties for a False or Deceptive Notice or Counter-notice* – Provides that it is unlawful to knowingly materially misrepresent that the material requested in a notice to be removed is an unauthorized digital replica or that the First Amendment exclusions do not apply; that a person filing the notice is authorized to act on behalf of the right

holder; that, in a counter-notice, the material is not a digital replica or that a First Amendment exclusion applies; or that the digital replica or product or service is unauthorized. Requires notice sender and counter-notice sender to undertake a good faith review of relevant considerations before filing a notice or counter-notice. A person who sends a false or deceptive notice or counter-notice is liable for the greater of \$25,000 or any actual damages, including the costs and attorney's fees the alleged violator and any online service injured in relying on that notice to remove or disable access to material or activity.

➤ Subsection (e): **Civil Action**

- *Eligible Plaintiffs* – Establishes the following as individuals that can bring a civil action for a violation: (1) a right holder; (2) the individual's parent or guardian if the individual is younger than 18; or (3) in the case of a digital replica involving a sound recording artist, any person that has entered into a contract for the exclusive personal services of the sound recording artist as a sound recording artist or any person that has entered into an exclusive license to distribute or transmit one or more works that capture the sound recording artist's audio performance.
- *Limitations Period* – Establishes a 3-year statute of limitations that runs from the date the plaintiff discovered, or with due diligence should have discovered, the violation.
- *Defense Not Permitted* – A defendant may not claim as a defense that it (1) displayed or publicly communicated a disclaimer stating that the digital replica or product or service was unauthorized; or (2) disclosed that the digital replica or product or service was generated through artificial intelligence or other technology.
- *Remedies* –
 1. Sets damages for making available or communicating to the public unlawful digital replicas for the following classes of defendant:
 - Individuals: the greater of \$5,000 per work or actual damages plus profits
 - Online services that have undertaken a good faith effort to comply with safe harbor requirements: the greater of \$25,000 per work or actual damages plus profits
 - Online services that have **not** undertaken a good faith effort to comply with safe harbor requirements: the greater of \$5,000 per instance of the work made available (up to \$750,000) or actual damages plus profits
 2. Sets damages for manufacturing, offering to the public, providing, or otherwise distributing a product or service that is primarily designed to produce unauthorized digital replicas of specific individuals, has only limited commercially significant purpose or use besides that, or is marketed for such use

for the following classes of defendant:

- Individuals: the greater of \$5,000 per work or actual damages plus profits
- Online services that have undertaken a good faith effort to comply with safe harbor requirements: the greater of \$25,000 per product or service or actual damages plus profits
- Online services that have **not** undertaken a good faith effort to comply with safe harbor requirements: the greater of \$750,000 per product or service or actual damages plus profits
- Entities that are not online services: the greater of \$25,000 per product or service or actual damages plus profits

3. In addition to these damages, parties may also seek injunctive or equitable relief, punitive damages, and attorney’s fees where appropriate.

- *Objectively Reasonable Belief* – An online service that has an objectively reasonable belief that material claimed to be an unauthorized digital replica does not actually qualify as a digital replica may be liable only for actual damages if the material is ultimately determined to be an unauthorized digital replica.
- Subsection (f): **Subpoena to Identify Violator** – Establishes a good faith subpoena for a right holder or individual/entity authorized to act on their behalf to request a United States district court to issue a subpoena to an online service for information to identify an alleged violator of this act.
- Subsection (g) **Preemption** – Preempts causes of action under State law for the protection of an individual’s voice and visual likeness rights in connection with a digital replica, as defined in the NO FAKES Act, in an expressive work. Notwithstanding that preemption, nothing in the NO FAKES Act preempts: (1) causes of action under State statutes or common law in existence as of January 2, 2025, regarding a digital replica as defined in the Act; (2) causes of action under State statutes specifically regulating a digital replica depicting sexually explicit conduct as defined in 18 U.S.C. § 2256(2)(A) or an election-related digital replica; or (3) causes of action under State statutes or common law for the distributing, importing, transmitting, or otherwise making available to the public a product or service capable of producing digital replicas.
- Subsection (h): **Rules of Construction**
 - *Law Pertaining to Intellectual Property* – Establishes that the NO FAKES Act is considered a law pertaining to intellectual property for purposes of 47 U.S.C. § 230(e)(2).
 - *No Duty to Monitor* – Asserts that online services shall have no affirmative duty to monitor their platforms, seek facts about a digital replica, or gain access to material.

- Subsection (i): **Severability** – Explains that if any provision of the NO FAKES Act, or the application of any provision of the Act, is held invalid, then the remainder of the Act is not affected by that holding.
- Subsection (j): **Retroactive Effect** – Establishes that the liabilities under the NO FAKES Act apply only to conduct occurring, or licenses or contracts executed, after the Act's enactment date and that the digital replication right applies to any individual, regardless of whether that individual dies before, on, or after the Act's enactment date. If a right holder has died before the date of enactment, the right vests in the right holder's executors, heirs, assigns, or devisees.
- Subsection (k): **Effective Date** – Notes that the Act will take effect 180 days after enactment.