

119TH CONGRESS
2D SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Mr. COONS (for himself, Mrs. BLACKBURN, Ms. KLOBUCHAR, Mr. TILLIS, Mr. DURBIN, Mrs. BRITT, Ms. HIRONO, Mrs. MOODY, Mr. WELCH, Mr. CASIDY, Mr. SCHIFF, Mr. HAGERTY, Ms. SLOTKIN, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on _____

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 2026”
6 or the “NO FAKES Act of 2026”.

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

8 (a) DEFINITIONS.—In this section:

1 (1) DIGITAL FINGERPRINT.—The term “digital
2 fingerprint” means an electronic label or identifier
3 created by a cryptographic hash function (or similar
4 function), or any other digital process, tool, or tech-
5 nique selected by the provider of an online service,
6 that is unique to a specific piece of material such
7 that it is effectively certain that such piece of mate-
8 rial will not be misidentified as a match for a dif-
9 ferent piece of material.

10 (2) DIGITAL REPLICA.—The term “digital rep-
11 lica”—

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

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

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

22 (II) that is a version of a sound
23 recording, image, or audiovisual work
24 in which the actual individual did per-
25 form or appear, in which the funda-

1 mental character of the performance
2 or appearance has been materially al-
3 tered; and

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

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

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

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

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

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

24 (A) means—

1 (i) any website, online application,
2 mobile application, or virtual reality envi-
3 ronment that predominantly provides pub-
4 lic access to user uploaded material;

5 (ii) any digital music provider to
6 which section 115 of title 17, United
7 States Code, applies, to the extent that the
8 digital music provider provides public ac-
9 cess to a significant amount of sound re-
10 cordings that are predominantly the fixa-
11 tion of sounds of a performance of a musi-
12 cal composition and are user uploaded ma-
13 terial, if that digital music provider is not
14 covered under clause (i); and

15 (iii) any online application, mobile ap-
16 plication, virtual reality environment, ap-
17 plication store, search engine (including
18 any feature that provides web search re-
19 sults), advertising service or network, on-
20 line shopping service or platform, elec-
21 tronic commerce provider, mapping service,
22 cloud storage service, aggregator of visual
23 and audiovisual works for licensing, or
24 website hosting service or any other inter-
25 active computer service that is not covered

1 under clause (i), and is not a digital music
2 provider to which section 115 of title 17,
3 United States Code, applies, but only if the
4 provider of that interactive computer serv-
5 ice has registered a designated agent with
6 the Copyright Office under subsection
7 (d)(2); and

8 (B) does not include any website, online
9 application, mobile application, virtual reality
10 environment, application store, cloud storage
11 service, or search engine, if the primary func-
12 tion of that website, online application, mobile
13 application, virtual reality environment, applica-
14 tion store, cloud storage service, or search en-
15 gine is to distribute, import, transmit, or other-
16 wise make available to the public a product or
17 service described in subsection (c)(2)(B).

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

20 (A) the individual, the voice or visual like-
21 ness of whom is at issue with respect to a dig-
22 ital replica or a product or service described in
23 subsection (c)(2)(B); and

24 (B) any other individual or entity that has
25 acquired, through a license, inheritance, or oth-

1 erwise, the right to authorize the use of the
2 voice or visual likeness described in subpara-
3 graph (A).

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

8 (8) USER UPLOADED MATERIAL.—The term
9 “user uploaded material” means material, such as a
10 video, image, game, audio file, or other similar mate-
11 rial, that is placed on a service directly by, or at the
12 direction of, a consumer end user of a service.

13 (b) DIGITAL REPLICATION RIGHT.—

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

18 (A) in a digital replica; or

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

24 (2) NATURE OF RIGHT.—

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

4 (i) The right is—

5 (I) a property right;

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

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

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

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

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

22 (II) ownership of the right may
23 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 in inter-
21 state or foreign commerce during
22 the 2-year period preceding the
23 expiration of the 10-year period
24 described in item (aa), for an ad-
25 ditional 5-year period, subject to

1 renewal for additional 5-year pe-
2 riods, provided the right holder
3 can demonstrate authorized pub-
4 lic use of the voice or visual like-
5 ness of the individual in inter-
6 state or foreign commerce during
7 the 2-year period preceding the
8 expiration of each additional 5-
9 year period.

10 (v) The right shall terminate on the
11 date that is the earlier of—

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

16 (II) the date that is 70 years
17 after the death of the individual.

18 (B) REQUIREMENTS FOR LICENSE.—

19 (i) IN GENERAL.—A license described
20 in subparagraph (A)(i)(III)—

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

1 (II) shall be valid only if the li-
2 cense agreement—

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

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

11 (ii) LICENSES INVOLVING A MINOR.—
12 A license described in subparagraph
13 (A)(i)(III) involving a living individual who
14 is younger than 18 years of age—

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

20 (II) shall be valid only if the li-
21 cense agreement—

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

1 (bb) includes a reasonably
2 specific description of the in-
3 tended uses of the digital replica;
4 and

5 (cc) is approved by a court
6 in accordance with applicable
7 State law.

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

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

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

1 holder or an authorized representative of the
2 right holder.

3 (D) REGISTRATION FOR POST-MORTEM RE-
4 NEWAL.—

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

16 (I) the name of the deceased in-
17 dividual;

18 (II) a statement, under penalty
19 of perjury, that the right holder has
20 engaged in active and authorized pub-
21 lic use of the voice or visual likeness
22 in interstate or foreign commerce dur-
23 ing the applicable 2-year period;

24 (III) the identity of and contact
25 information for the right holder; and

1 (IV) such other information as
2 the Register of Copyrights may pre-
3 scribe by regulation.

4 (ii) DIRECTORY.—The Register of
5 Copyrights—

6 (I) shall—

7 (aa) maintain a current di-
8 rectory of post-mortem digital
9 replication rights registered
10 under this subparagraph; and

11 (bb) make the directory de-
12 scribed in item (aa) available to
13 the public for inspection online;
14 and

15 (II) may require payment of a
16 reasonable filing fee by the right hold-
17 er filing notice under clause (i), which
18 may take into consideration the costs
19 of maintaining the directory described
20 in subclause (I) of this clause.

21 (iii) VOLUNTARY INITIAL REGISTRA-
22 TION.—

23 (I) IN GENERAL.—A right holder
24 may voluntarily register the post-
25 mortem right under subparagraph

1 (A)(iv)(II)(aa) by filing a notice with
2 the Register of Copyrights that com-
3 plies with such requirements regard-
4 ing form, content, and filing proce-
5 dures as the Register of Copyrights
6 may prescribe by regulation.

7 (II) AUTHORITY OF REGISTER OF
8 COPYRIGHTS.—The Register of Copy-
9 rights may—

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

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

23 (iv) AUTHORITY OF REGISTER OF
24 COPYRIGHTS.—The Register of Copyrights
25 may make such interpretations and resolve

1 such ambiguities as may be appropriate to
2 carry out this subparagraph.

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

13 (c) LIABILITY.—

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

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

22 (A) The public display, distribution, trans-
23 mission, or communication of, or the act of oth-
24 erwise making available to the public, including
25 by acting as a third party commercial supplier

1 of sound recordings to a digital music provider,
2 a digital replica without authorization by the
3 applicable right holder.

4 (B) Distributing, importing, transmitting,
5 or otherwise making available to the public a
6 product or service that—

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

11 (I) such individual or individuals;

12 (II) the applicable right holder;

13 or

14 (III) the law;

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

20 (I) such individual or individuals;

21 (II) the applicable right holder;

22 or

23 (III) the law; or

24 (iii) is marketed, advertised, or other-
25 wise promoted by the individual or entity

1 described in paragraph (1), or another in-
2 dividual or entity acting in concert with
3 the individual or entity described in para-
4 graph (1) with the knowledge of the indi-
5 vidual or entity described in paragraph (1),
6 as a product or service designed to produce
7 a digital replica of a specifically identified
8 individual or individuals without the au-
9 thorization of—

10 (I) such individual or individuals;

11 (II) the applicable right holder;

12 or

13 (III) the law.

14 (3) NOTICE OR KNOWLEDGE REQUIRED.—To
15 incur liability under this subsection, the following
16 shall apply:

17 (A)(i) With respect to an activity carried
18 out under paragraph (2) by the provider of an
19 online service described in clause (ii), the des-
20 ignated agent with respect to the provider must
21 have received a notification that satisfies the re-
22 quirements under subsection (d)(3), or a court
23 order stating, or must have willfully avoided re-
24 ceipt of such a notification or court order, that
25 the applicable material is—

1 (I) a digital replica that was not au-
2 thORIZED by the applicable right holder; or

3 (II) a product or service described in
4 paragraph (2)(B).

5 (ii) An online service described in this
6 clause is an online service that is—

7 (I) described in subsection
8 (a)(5)(A)(i);

9 (II) described in subsection
10 (a)(5)(A)(ii), with respect to sound record-
11 ings that are predominantly the fixation of
12 sounds of a performance of a musical com-
13 position and are user uploaded material; or

14 (III) described in subsection
15 (a)(5)(A)(iii), with respect to material
16 placed on that online service by or at the
17 direction of a third party.

18 (B) With respect to an activity carried out
19 under paragraph (2) by an individual or entity
20 that is not an online service, or an activity car-
21 ried out under paragraph (2) by the provider of
22 an online service that is not described in sub-
23 paragraph (A)(ii), the individual or entity must
24 have actual knowledge, or must willfully avoid

1 having such knowledge, that the applicable ma-
2 terial is—

- 3 (i) a digital replica that was not au-
4 thorized by the applicable right holder; or
5 (ii) a product or service described in
6 paragraph (2)(B).

7 (4) EXCLUSIONS.—Liability under this sub-
8 section shall not extend to—

9 (A) a service by wire or radio that provides
10 the capability to transmit data to and receive
11 data from all, or substantially all, internet
12 endpoints, including any capabilities that are
13 incidental to enable the operation of the com-
14 munications service of a provider of online serv-
15 ices or network access, or the operator of facili-
16 ties for such service;

17 (B) a provider of an online service de-
18 scribed in paragraph (3)(A)(ii) alleged to have
19 undertaken an activity described in paragraph
20 (2) if—

21 (i) it is not technologically or prac-
22 tically feasible for that provider to disable
23 access to the offending material, or disable
24 the reference or link to that material, at
25 the specific location identified in the appli-

1 cable notification sent under subsection
2 (d)(3); or

3 (ii) disabling access to the offending
4 material is prohibited by law;

5 (C) a nonprofit library or archives—

6 (i) that is eligible for the limitations
7 on exclusive rights under section 108 of
8 title 17, United States Code;

9 (ii) the collections of which are—

10 (I) open to the public; or

11 (II) available not only to re-
12 searchers affiliated with the library or
13 archives, or with the institution of
14 which the library or archives is a part,
15 but also to other persons doing re-
16 search in a specialized field;

17 (iii) that has a public service mission;

18 (iv) the trained staff or volunteers of
19 which provide professional services nor-
20 mally associated with libraries and ar-
21 chives; and

22 (v) the collections of which are com-
23 posed of lawfully acquired or licensed ma-
24 terials that are made available consistent

1 with the requirements of title 17, United
2 States Code;

3 (D) an accredited nonprofit educational in-
4 stitution with respect to an activity undertaken
5 without any purpose of direct or indirect com-
6 mercial advantage;

7 (E) an employee of an institution described
8 in subparagraph (C) or (D) acting within the
9 scope of the employment of that individual;

10 (F) any other person solely with respect to
11 providing online or network access services to
12 an institution described in subparagraph (C) or
13 (D) in the course of providing those services to
14 that institution; or

15 (G) an individual or entity that is not an
16 online service, if, upon obtaining actual knowl-
17 edge of an activity described in paragraph (2),
18 the individual or entity acts as soon as techno-
19 logically and practically feasible to remove or
20 disable access to the applicable material.

21 (5) ADDITIONAL EXCLUSIONS.—

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

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

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

13 (I) the production or use of that
14 digital replica creates the false im-
15 pression that the work is an authentic
16 sound recording, image, transmission,
17 or audiovisual work in which the indi-
18 vidual participated; or

19 (II) the digital replica is em-
20 bodied in a musical sound recording
21 that is synchronized to accompany a
22 motion picture or other audiovisual
23 work, except to the extent that the
24 use of that digital replica is protected

1 by the First Amendment to the Con-
2 stitution of the United States;

3 (iii) the applicable digital replica is
4 produced or used consistent with the public
5 interest in bona fide commentary, criti-
6 cism, scholarship, satire, or parody;

7 (iv) the use of the applicable digital
8 replica is fleeting or negligible; or

9 (v) the applicable digital replica is
10 used in an advertisement or commercial
11 announcement for a purpose described in
12 any of clauses (i) through (iv) and the ap-
13 plicable digital replica is relevant to the
14 subject of the work so advertised or an-
15 nounced.

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

21 (6) VOLUNTARY USE OF TOOLS TO REMOVE OR
22 DISABLE ACCESS.—The voluntary use of any tool to
23 remove or disable access to content shall not alone
24 confer actual knowledge of a particular violation of
25 this section.

1 (d) SAFE HARBORS.—

2 (1) IN GENERAL.—

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

12 (B) ONLINE SERVICES.—The provider of
13 an online service shall not be liable for an activ-
14 ity that violates subsection (c), or for referring
15 or linking to the material containing an unau-
16 thorized digital replica or a product or service
17 described in subsection (c)(2)(B), if—

18 (i) for the provider of an online serv-
19 ice described in subsection (a)(5)(A)(iii)
20 (other than a search engine or a search
21 component of a service), the provider has
22 adopted and reasonably implemented, and
23 has informed users of the online service of,
24 a policy that provides for the termination
25 in appropriate circumstances of account

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

9 (ii)(I) upon receiving a notification
10 that satisfies the requirements under para-
11 graph (3), the provider—

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

22 (bb) for the provider of an online
23 service described in subsection
24 (a)(5)(A)(i), as soon as is techno-
25 logically and practically feasible for

1 that provider, removes or disables ac-
2 cess to all other publicly available in-
3 stances of the work embodying the
4 claimed unauthorized digital replica
5 that—

6 (AA) match the digital fin-
7 gerprint of an unauthorized dig-
8 ital replica specifically identified
9 in a notification sent under para-
10 graph (3); and

11 (BB) are uploaded after
12 valid, applicable notice was sub-
13 mitted to, and processed by, the
14 provider;

15 (cc) for the provider of an online
16 service described in subsection
17 (a)(5)(A)(ii), with respect to sound re-
18 cordings that are predominantly the
19 fixation of sounds of a performance of
20 a musical composition and are user
21 uploaded material, as soon as is tech-
22 nologically and practically feasible for
23 that provider, removes or disables ac-
24 cess to all other publicly available in-
25 stances of the work embodying the

1 (ii) CONTENTS.—To designate an
2 agent under clause (i), the provider of an
3 online service shall make available through
4 that online service, in a location accessible
5 to the public, and provide to the Copyright
6 Office, substantially the following informa-
7 tion:

8 (I) The name, address, telephone
9 number, and electronic mail address
10 of the agent.

11 (II) Other contact information
12 that the Register of Copyrights may
13 determine appropriate.

14 (B) DIRECTORY.—The Register of Copy-
15 rights—

16 (i) shall—

17 (I) maintain a current directory
18 of designated agents for the purposes
19 of this paragraph; and

20 (II) make the directory described
21 in subclause (I) available to the public
22 for inspection, including through the
23 internet; and

24 (ii) may require payment of a fee by
25 the provider of an online service to cover

1 the costs of maintaining the directory de-
2 scribed in clause (i)(I).

3 (C) EFFECT OF FAILURE TO DES-
4 IGNATE.—There shall be established a presump-
5 tion that a provider of an online service de-
6 scribed in subparagraph (A)(i) has not under-
7 taken a good faith effort to comply with this
8 subsection if the provider has failed to register
9 a designated agent under this paragraph by the
10 later of—

11 (i) the date that is 90 days after the
12 effective date of this section; or

13 (ii) the date that is 90 days after the
14 date on which the provider becomes a pro-
15 vider described in subparagraph (A)(i).

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 registered under this subsection
21 with respect to the applicable provider of an online
22 service that includes the following:

23 (A) A physical or electronic signature of
24 the right holder, an individual or entity author-

1 ized to act on behalf of the right holder, or an
2 eligible plaintiff under subsection (e)(1).

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

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

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

18 (E) A statement that the notifying party
19 believes in good faith that—

20 (i) the material is an unauthorized
21 use of a digital replica or a product or
22 service described in subsection (c)(2)(B);
23 and

24 (ii) the exclusions under subsection
25 (c)(5) do not apply.

1 (F) If not the right holder or an eligible
2 plaintiff under subsection (e)(1), a statement,
3 under penalty of perjury, that the notifying
4 party has the authority to act on behalf of the
5 right holder.

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

8 (i) identify the reference or link to the
9 material or activity claimed to be or con-
10 taining an unauthorized digital replica, or
11 a product or service described in subsection
12 (c)(2)(B), that is to be removed or to
13 which access is to be disabled; and

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

16 (4) ELEMENTS OF COUNTER-NOTIFICATION.—
17 To be effective under this subsection, a counter-noti-
18 fication with respect to a notification provided under
19 paragraph (3) shall be a written communication that
20 satisfies the following:

21 (A) The counter-notification is provided—

22 (i) to the designated agent of the on-
23 line service provider to which that notifica-
24 tion was submitted under paragraph (3);
25 and

1 (ii) by the party that placed the appli-
2 cable material on the online service.

3 (B) The counter notification includes the
4 following:

5 (i) A physical signature, witnessed or
6 attested to in person by a licensed notary
7 public, of the individual or entity that
8 placed the applicable material on the online
9 service.

10 (ii) An identification of the material
11 that has been removed or to which access
12 has been disabled and the location at
13 which the material appeared before the
14 material was removed or access to the ma-
15 terial was disabled.

16 (iii) Information that is reasonably
17 sufficient to permit the provider of the on-
18 line service and the individual or entity
19 that provided the notification under para-
20 graph (3) to contact the party providing
21 the counter-notification, including an ad-
22 dress, telephone number, and email ad-
23 dress.

24 (iv) A statement made under penalty
25 of perjury that the party providing the

1 counter-notification has a good faith belief
2 that the applicable material was removed,
3 or access to that material was disabled, as
4 a result of mistake or misidentification of
5 the material to be removed or access to
6 which was to be disabled, which shall in-
7 clude a specific assertion by the party pro-
8 viding the counter-notification that such
9 material—

10 (I) is not a digital replica;

11 (II) is an authorized digital rep-
12 lica; or

13 (III) is an unauthorized digital
14 replica that satisfies an exclusion
15 under paragraph (4) or (5) of sub-
16 section (c), or any other requirements
17 with respect to a valid legal defense,
18 which shall include a succinct expla-
19 nation of how such material satisfies
20 the applicable exclusion or require-
21 ment.

22 (v) A statement that the individual or
23 entity described in clause (i)—

24 (I) consents to the jurisdiction of
25 the district court of the United States

1 for the judicial district in which the
2 address provided under clause (iii) is
3 located (or, if that address is outside
4 of the United States, for any judicial
5 district of the United States in which
6 the provider may be found); and

7 (II) will accept service of process
8 from—

9 (aa) the individual or entity
10 that provided notification under
11 paragraph (3); or

12 (bb) an agent of the indi-
13 vidual or entity described in item
14 (aa).

15 (5) PENALTIES FOR FALSE OR DECEPTIVE NO-
16 TICE.—

17 (A) KNOWING MATERIAL REPRESENTA-
18 TIONS.—

19 (i) IN GENERAL.—It shall be unlawful
20 to knowingly materially misrepresent—

21 (I) in a notification provided
22 under paragraph (3)—

23 (aa) that the material re-
24 quested to be removed, or access
25 to which is requested to be dis-

1 abled, is an unauthorized digital
2 replica;

3 (bb) that the exclusions
4 under subsection (c)(5) do not
5 apply; or

6 (cc) that an individual or en-
7 tity has the authority to act on
8 behalf of the right holder; or

9 (II) in a counter-notification pro-
10 vided under paragraph (4)—

11 (aa) that the material re-
12 moved, or to which access was
13 disabled—

14 (AA) was removed or
15 disabled by mistake or
16 misidentification;

17 (BB) is not a digital
18 replica; or

19 (CC) is subject to an
20 exclusion under subsection
21 (c)(5) or any other valid
22 legal defense.

23 (ii) FAILURE TO PERFORM GOOD
24 FAITH REVIEW.—The failure to consider in
25 good faith any of the issues described in

1 clause (i)(I) before providing a notification
2 under paragraph (3), or any of the issues
3 described in clause (i)(II) before providing
4 a counter-notification under paragraph (4),
5 shall constitute a knowing material mis-
6 representation under this subparagraph.

7 (B) PENALTIES.—In addition to a cause of
8 action and remedies made available under sub-
9 section (e), any individual or entity that violates
10 subparagraph (A) of this paragraph shall be lia-
11 ble to the applicable right holder, the alleged vi-
12 olator that uploaded the applicable material, or
13 the provider of an online service injured by the
14 misrepresentation, for an amount equal to the
15 greater of—

16 (i) \$25,000 per notification provided
17 under paragraph (3), or counter-notifica-
18 tion provided under paragraph (4), that
19 contains a misrepresentation described in
20 subparagraph (A) of this paragraph; or

21 (ii)(I) any actual damages incurred by
22 the applicable right holder or alleged viola-
23 tor, as well as by any provider of an online
24 service or other individual or entity injured
25 by the misrepresentation; and

1 (c) shall be liable to the injured party in
2 an amount equal to the greater of—

3 (I)(aa) in the case of an indi-
4 vidual, \$5,000 per work embodying
5 the applicable unauthorized digital
6 replica;

7 (bb) in the case of a provider of
8 an online service that has undertaken
9 a good faith effort to implement all
10 applicable obligations of paragraphs
11 (1) through (4) of subsection (d),
12 \$25,000 per work embodying the ap-
13 plicable unauthorized digital replica;

14 (cc) in the case of a provider of
15 an online service that has not under-
16 taken a good faith effort to implement
17 all applicable obligations of para-
18 graphs (1) through (4) of subsection
19 (d), \$5,000 per display, copy made,
20 transmission, and instance of the un-
21 authorized digital replica being made
22 available on the online service in a
23 sum of not more than \$750,000 per
24 work embodying the applica-
25 ble unauthorized digital replica; and

1 (dd) in the case of an entity that
2 is not a provider of an online service,
3 \$25,000 per work embodying the ap-
4 plicable unauthorized digital replica;
5 or

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

13 (ii) an individual or entity found to
14 have violated subsection (c) by virtue of
15 engaging in an activity described in sub-
16 section (c)(2)(B) shall be liable to the in-
17 jured party in an amount equal to the
18 greater of—

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

21 (bb) in the case of a provider of
22 an online service that has undertaken
23 a good faith effort to implement all
24 applicable obligations of paragraphs

1 (1) through (4) of subsection (d),
2 \$25,000 per product or service;

3 (cc) in the case of a provider of
4 an online service that has not under-
5 taken a good faith effort to implement
6 all applicable obligations of para-
7 graphs (1) through (4) of subsection
8 (d), \$750,000 per product or service;
9 or

10 (dd) in the case of an entity that
11 is not a provider of an online service,
12 \$25,000 per product or service; or

13 (II) any actual damages suffered
14 by the injured party as a result of the
15 activity, plus any profits from the un-
16 authorized use that are attributable to
17 such use and are not taken into ac-
18 count in computing the actual dam-
19 ages;

20 (iii) the plaintiff may seek injunctive
21 or other equitable relief;

22 (iv) in the case of willful activity in
23 which the injured party has proven that
24 the defendant acted with malice, fraud,
25 knowledge, or willful avoidance of knowl-

1 edge that the conduct violated the law, the
2 court may award to the injured party puni-
3 tive damages; and

4 (v) if the prevailing party is—

5 (I) the party bringing the action,
6 the court shall award reasonable at-
7 torney's fees; or

8 (II) the party defending the ac-
9 tion, the court shall award reasonable
10 attorney's fees if the court determines
11 that the action was not brought in
12 good faith.

13 (B) OBJECTIVELY REASONABLE BELIEF.—

14 A provider of an online service that has des-
15 ignated an agent under subsection (d)(2) and
16 has an objectively reasonable belief that mate-
17 rial that is claimed to be an unauthorized digi-
18 tal replica does not qualify as a digital replica
19 shall be liable only for actual damages under
20 subparagraph (A) if the material is ultimately
21 determined to be an unauthorized digital rep-
22 lica.

23 (f) SUBPOENA TO IDENTIFY VIOLATOR.—

24 (1) REQUEST.—A right holder, an individual or
25 entity authorized to act on behalf of a right holder,

1 or an eligible plaintiff under subsection (e)(1) may
2 request the clerk of any district court of the United
3 States to issue a subpoena to a provider of an online
4 service for identification of an alleged violator of this
5 section in accordance with this subsection.

6 (2) CONTENTS OF REQUEST.—A request under
7 paragraph (1) may be made by filing with the
8 clerk—

9 (A) a copy of a notification described in
10 subsection (d)(3);

11 (B) a proposed subpoena; and

12 (C) a sworn declaration to the effect
13 that—

14 (i) the purpose of the subpoena is to
15 obtain the identity of an individual or enti-
16 ty alleged to be liable under subsection (c);
17 and

18 (ii) the information described in
19 clause (i) will only be used for the purpose
20 of protecting rights under this section.

21 (3) CONTENTS OF SUBPOENA.—A subpoena
22 issued under this subsection shall authorize and
23 order the provider of the applicable online service to
24 expeditiously disclose to the party that sought the
25 subpoena information sufficient to identify the al-

1 leged violator by virtue of the activity described in
2 the notification to the extent that information is
3 available to the provider of the online service.

4 (4) BASIS FOR GRANTING SUBPOENA.—If a
5 proposed subpoena under this subsection is in proper
6 form, the applicable notification filed satisfies the re-
7 quirements under subsection (d)(3), and the accom-
8 panying declaration is properly executed, the clerk
9 shall expeditiously issue and sign the proposed sub-
10 poena and return the subpoena to the requester for
11 delivery to the provider of the applicable online serv-
12 ice.

13 (g) PREEMPTION.—

14 (1) IN GENERAL.—The rights established under
15 this Act shall preempt any cause of action under
16 State law for the protection of an individual’s voice
17 and visual likeness rights in connection with a dig-
18 ital replica, as defined in this Act, in an expressive
19 work.

20 (2) RULE OF CONSTRUCTION.—Notwith-
21 standing paragraph (1), nothing in this Act may be
22 construed to preempt—

23 (A) causes of action under State statutes
24 or common law in existence, as of January 2,
25 2025, regarding a digital replica;

1 (B) causes of action under State statutes
2 specifically regulating a digital replica depicting
3 sexually explicit conduct, as defined in section
4 2256(2)(A) of title 18, United States Code, or
5 an election-related digital replica; or

6 (C) causes of action under State statutes
7 or common law in existence, as of January 2,
8 2025, for the distributing, importing, transmit-
9 ting, or otherwise making available to the public
10 a product or service capable of producing 1 or
11 more digital replicas.

12 (h) RULES OF CONSTRUCTION.—

13 (1) LAWS PERTAINING TO INTELLECTUAL
14 PROPERTY.—This section shall be considered to be a
15 law pertaining to intellectual property for the pur-
16 poses of section 230(e)(2) of the Communications
17 Act of 1934 (47 U.S.C. 230(e)(2)).

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

22 (A) monitor the online service for, or af-
23 firmatively seek facts about, any digital replica;
24 or

25 (B) gain access to material.

1 (i) SEVERABILITY.—If any provision of this section,
2 or the application of a provision of this section, is held
3 to be invalid, the validity of the remainder of this section,
4 and the application of that provision to other individuals,
5 entities, and circumstances, shall not be affected by that
6 holding.

7 (j) RETROACTIVE EFFECT.—

8 (1) LIABILITIES.—Liability under this section
9 shall apply only to—

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

12 (B) in the case of conduct covered by a li-
13 cense or contract, a license or contract that is
14 executed after the date of enactment of this
15 Act.

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

18 (A) shall apply to any individual, regard-
19 less of whether the individual dies before, on, or
20 after the date of enactment of this Act; and

21 (B) in the case of a right holder who has
22 died before the date of enactment of this Act,
23 shall vest in the executors, heirs, assignees, or
24 devisees of the right holder.

1 (k) EFFECTIVE DATE.—This Act shall take effect on
2 the date that is 180 days after the date of enactment of
3 this Act.