

## Calendar No. 446

119TH CONGRESS  
2D SESSION**S. 4591**

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

MAY 20, 2026

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

JUNE 24, 2026

Reported by Mr. GRASSLEY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Nurture Originals,  
3 Foster Art, and Keep Entertainment Safe Act of 2026”  
4 or the “NO FAKES Act of 2026”.

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

6 (a) **DEFINITIONS.**—In this section:

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

16 (2) **DIGITAL REPLICA.**—The term “digital rep-  
17 lica”—

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

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

1                   (I) in which the actual individual  
 2                   did not actually perform or appear; or  
 3                   (H) that is a version of a sound  
 4                   recording, image, or audiovisual work  
 5                   in which the actual individual did per-  
 6                   form or appear, in which the funda-  
 7                   mental character of the performance  
 8                   or appearance has been materially al-  
 9                   tered; and

10               (B) does not include the electronic repro-  
 11               duction, use of a sample of one sound recording  
 12               or audiovisual work into another, remixing,  
 13               mastering, or digital remastering of a sound re-  
 14               cording or audiovisual work authorized by the  
 15               copyright holder.

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

18               (4) INTERACTIVE COMPUTER SERVICE.—The  
 19               term “interactive computer service” means any in-  
 20               formation service, system, or access software pro-  
 21               vider that provides or enables computer access by  
 22               multiple users to a computer server, including spe-  
 23               cifically—

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

1           (B) such systems operated, or services of-  
2           ferred, by libraries or educational institutions.

3           (5) ONLINE SERVICE.—The term “online serv-  
4           ice”—

5           (A) means—

6           (i) any website, online application,  
7           mobile application, or virtual reality envi-  
8           ronment that predominantly provides pub-  
9           lic access to user uploaded material;

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

20          (iii) any online application, mobile ap-  
21          plication, virtual reality environment, ap-  
22          plication store, search engine (including  
23          any feature that provides web search re-  
24          sults), advertising service or network, on-  
25          line shopping service or platform, elec-

1           tronic commerce provider, mapping service,  
 2           cloud storage service, aggregator of visual  
 3           and audiovisual works for licensing, or  
 4           website hosting service or any other inter-  
 5           active computer service that is not covered  
 6           under clause (i), and is not a digital music  
 7           provider to which section 115 of title 17,  
 8           United States Code, applies, but only if the  
 9           provider of that interactive computer serv-  
 10          ice has registered a designated agent with  
 11          the Copyright Office under subsection  
 12          (d)(2); and

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

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

24          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.—The term “user uploaded material” means material, such as a video, image, game, audio file, or other similar material, that is placed on a service directly by, or at the direction of, a consumer end user of a service.

(b) DIGITAL REPLICATION RIGHT.—

(1) IN GENERAL.—Subject to the other provisions of this section, each individual or right holder shall have the right to authorize the use of the voice or visual likeness of the individual—

(A) in a digital replica; or

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

(2) NATURE OF RIGHT.—

(A) IN GENERAL.—The right described in paragraph (1) shall have the following characteristics:

(i) The right is—

(I) a property right;

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

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

(ii) The right shall not expire upon the death of the individual, without regard to whether the right is commercially exploited by the individual during the lifetime of the individual.

(iii) Upon the death of the individual—

(I) the right is transferable and licensable, in whole or in part, by the

executors, heirs, assignees, licensees,  
or devisees of the individual; and

(II) ownership of the right may  
be—

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

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

(iv) The right shall be exclusive to—

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

(II) the right holder—

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

(bb) if the right holder dem-  
onstrates active and authorized  
public use of the voice or visual  
likeness of the individual in inter-  
state or foreign commerce during



1 the 2-year period preceding the  
 2 expiration of the 10-year period  
 3 described in item (aa), for an ad-  
 4 ditional 5-year period, subject to  
 5 renewal for additional 5-year pe-  
 6 riods, provided the right holder  
 7 can demonstrate authorized pub-  
 8 lic use of the voice or visual like-  
 9 ness of the individual in inter-  
 10 state or foreign commerce during  
 11 the 2-year period preceding the  
 12 expiration of each additional 5-  
 13 year period.

14 (v) The right shall terminate on the  
 15 date that is the earlier of—

16 (I) the date on which the 10-year  
 17 period or 5-year period described in  
 18 clause (iv)(II) terminates without re-  
 19 newal; or

20 (II) the date that is 70 years  
 21 after the death of the individual.

22 (B) REQUIREMENTS FOR LICENSE.—

23 (i) IN GENERAL.—A license described  
 24 in subparagraph (A)(i)(III)—

1           (I) while the individual is living;  
 2           is valid only to the extent that the li-  
 3           cense duration does not exceed 10  
 4           years; and

5           (II) shall be valid only if the li-  
 6           cense agreement—

7                   (aa) is in writing and signed  
 8                   by the individual or an author-  
 9                   ized representative of the indi-  
 10                  vidual; and

11                  (bb) includes a reasonably  
 12                  specific description of the in-  
 13                  tended uses of the applicable dig-  
 14                  ital replica.

15           (ii) LICENSES INVOLVING A MINOR.—

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

19                   (I) is valid only to the extent that  
 20                   the license duration does not exceed 5  
 21                   years; but in any case terminates  
 22                   when the individual reaches 18 years  
 23                   of age; and

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

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

5 (bb) includes a reasonably  
6 specific description of the in-  
7 tended uses of the digital replica;  
8 and

9 (cc) is approved by a court  
10 in accordance with applicable  
11 State law.

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

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

1           (C) REQUIREMENTS FOR POST-MORTEM  
 2 TRANSFER.—A post-mortem transfer or license  
 3 described in subparagraph (A)(iii)(I) shall be  
 4 valid only if the transfer agreement or license  
 5 agreement is in writing and signed by the right  
 6 holder or an authorized representative of the  
 7 right holder.

8           (D) REGISTRATION FOR POST-MORTEM RE-  
 9 NEWAL.—

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

21           (I) the name of the deceased in-  
 22 dividual;

23           (II) a statement, under penalty  
 24 of perjury, that the right holder has  
 25 engaged in active and authorized pub-

lie use of the voice or visual likeness  
in interstate or foreign commerce dur-  
ing the applicable 2-year period;

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

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

(ii) **DIRECTORY.**—The Register of  
Copyrights—

(I) shall—

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

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

(II) may require payment of a  
reasonable filing fee by the right hold-  
er 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 regarding form, content, and filing procedures as the Register of Copyrights may prescribe by regulation.

(II) AUTHORITY OF REGISTER OF COPYRIGHTS.—The Register of Copyrights may—

(aa) include a voluntary registration of the post-mortem right under subparagraph (A)(iv)(II)(aa) in the directory maintained under clause (ii)(I)(aa) of this subparagraph; and

(bb) require payment of a reasonable filing fee by a right holder registering a right under this clause, which may take into

1 consideration the costs of main-  
2 taining the directory.

3 (iv) ~~AUTHORITY OF REGISTER OF~~  
4 ~~COPYRIGHTS.~~—The Register of Copyrights  
5 may make such interpretations and resolve  
6 such ambiguities as may be appropriate to  
7 carry out this subparagraph.

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

18 (c) ~~LIABILITY.~~—

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

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

3           (A) The public display, distribution, trans-  
4       mission, or communication of, or the act of oth-  
5       erwise making available to the public, including  
6       by acting as a third party commercial supplier  
7       of sound recordings to a digital music provider,  
8       a digital replica without authorization by the  
9       applicable right holder.

10          (B) Distributing, importing, transmitting,  
11       or otherwise making available to the public a  
12       product or service that—

13           (i) is primarily designed to produce 1  
14       or more digital replicas 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;

21           (ii) has only limited commercially sig-  
22       nificant purpose or use other than to  
23       produce a digital replica of a specifically  
24       identified individual or individuals without  
25       the authorization of—



1 (I) such individual or individuals;

2 (II) the applicable right holder;

3 or

4 (III) the law; or

5 (iii) is marketed, advertised, or other-

6 wise promoted by the individual or entity

7 described in paragraph (1), or another in-

8 dividual or entity acting in concert with

9 the individual or entity described in para-

10 graph (1) with the knowledge of the indi-

11 vidual or entity described in paragraph (1),

12 as a product or service designed to produce

13 a digital replica of a specifically identified

14 individual or individuals without the au-

15 thorization of—

16 (I) such individual or individuals;

17 (II) the applicable right holder;

18 or

19 (III) the law.

20 (3) NOTICE OR KNOWLEDGE REQUIRED.—To

21 incur liability under this subsection, the following

22 shall apply:

23 (A)(i) With respect to an activity carried

24 out under paragraph (2) by the provider of an

25 online service described in clause (ii), the des-

1           ignated agent with respect to the provider must  
 2           have received a notification that satisfies the re-  
 3           quirements under subsection ~~(d)(3)~~; or a court  
 4           order stating; or must have willfully avoided re-  
 5           ceipt of such a notification or court order; that  
 6           the applicable material is—

7                   (I) a digital replica that was not au-  
 8                   thorized by the applicable right holder; or

9                   (II) a product or service described in  
 10                  paragraph ~~(2)(B)~~.

11           (ii) An online service described in this  
 12           clause is an online service that is—

13                   (I)       described       in       subsection  
 14                   ~~(a)(5)(A)(i)~~;

15                   (II)       described       in       subsection  
 16                   ~~(a)(5)(A)(ii)~~; with respect to sound record-  
 17                   ings that are predominantly the fixation of  
 18                   sounds of a performance of a musical com-  
 19                   position and are user uploaded material; or

20                   (III)       described       in       subsection  
 21                   ~~(a)(5)(A)(iii)~~; with respect to material  
 22                   placed on that online service by or at the  
 23                   direction of a third party.

24           ~~(B)~~ With respect to an activity carried out  
 25           under paragraph ~~(2)~~ by an individual or entity

that is not an online service, or an activity carried out under paragraph (2) by the provider of an online service that is not described in subparagraph (A)(ii), 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;

(B) a provider of an online service described in paragraph (3)(A)(ii) alleged to have undertaken an activity described in paragraph (2) if—

1           (i) it is not technologically or prac-  
 2           tically feasible for that provider to disable  
 3           access to the offending material; or disable  
 4           the reference or link to that material; at  
 5           the specific location identified in the appli-  
 6           cable notification sent under subsection  
 7           (d)(3); or

8           (ii) disabling access to the offending  
 9           material is prohibited by law;

10          (C) a nonprofit library or archives—

11           (i) that is eligible for the limitations  
 12           on exclusive rights under section 108 of  
 13           title 17, United States Code;

14           (ii) the collections of which are—

15                  (I) open to the public; or

16                  (II) available not only to re-  
 17                  searchers affiliated with the library or  
 18                  archives; or with the institution of  
 19                  which the library or archives is a part;  
 20                  but also to other persons doing re-  
 21                  search in a specialized field;

22           (iii) that has a public service mission;

23           (iv) the trained staff or volunteers of  
 24           which provide professional services nor-

1 mally associated with libraries and ar-  
2 chives; and

3 (v) the collections of which are com-  
4 posed of lawfully acquired or licensed ma-  
5 terials that are made available consistent  
6 with the requirements of title 17, United  
7 States Code;

8 (D) an accredited nonprofit educational in-  
9 stitution with respect to an activity undertaken  
10 without any purpose of direct or indirect com-  
11 mercial advantage;

12 (E) an employee of an institution described  
13 in subparagraph (C) or (D) acting within the  
14 scope of the employment of that individual;

15 (F) any other person solely with respect to  
16 providing online or network access services to  
17 an institution described in subparagraph (C) or  
18 (D) in the course of providing those services to  
19 that institution; or

20 (G) an individual or entity that is not an  
21 online service; if, upon obtaining actual knowl-  
22 edge of an activity described in paragraph (2);  
23 the individual or entity acts as soon as techno-  
24 logically and practically feasible to remove or  
25 disable access to the applicable material.

(5) ADDITIONAL EXCLUSIONS.—

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

(i) the applicable digital replica is produced or used in a bona fide news, public affairs, or sports broadcast or account, provided that the digital replica is the subject 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, including some degree of fictionalization, unless—

(I) the production or use of that digital replica creates the false impression that the work is an authentic sound recording, image, transmission, or audiovisual work in which the individual participated; or

(II) the digital replica is embodied in a musical sound recording that is synchronized to accompany a

1 motion picture or other audiovisual  
 2 work, except to the extent that the  
 3 use of that digital replica is protected  
 4 by the First Amendment to the Con-  
 5 stitution of the United States;

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

10 (iv) the use of the applicable digital  
 11 replica is fleeting or negligible; or

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

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

24 (6) VOLUNTARY USE OF TOOLS TO REMOVE OR  
 25 DISABLE ACCESS.—The voluntary use of any tool to

1 remove or disable access to content shall not alone  
 2 confer actual knowledge of a particular violation of  
 3 this section.

4 ~~(d) SAFE HARBORS.—~~

5 ~~(1) IN GENERAL.—~~

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

15 ~~(B) ONLINE SERVICES.—~~The provider of  
 16 an online service shall not be liable for an activ-  
 17 ity that violates subsection ~~(c)~~, or for referring  
 18 or linking to the material containing an unau-  
 19 thorized digital replica or a product or service  
 20 described in subsection ~~(c)(2)(B)~~, 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)(I) upon receiving a notification  
13 that satisfies the requirements under para-  
14 graph (3), the provider—

15 (aa) 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 nologically and practically feasible for  
24 that provider;

1           ~~(bb)~~ for the provider of an online  
2           service described in subsection  
3           ~~(a)(5)(A)(i)~~, as soon as is techno-  
4           logically and practically feasible for  
5           that provider, removes or disables ac-  
6           cess to all other publicly available in-  
7           stances of the work embodying the  
8           claimed unauthorized digital replica  
9           that—

10                   ~~(AA)~~ match the digital fin-  
11                   gerprint of an unauthorized dig-  
12                   ital replica specifically identified  
13                   in a notification sent under para-  
14                   graph ~~(3)~~; and

15                   ~~(BB)~~ are uploaded after  
16                   valid, applicable notice was sub-  
17                   mitted to, and processed by, the  
18                   provider;

19           ~~(cc)~~ for the provider of an online  
20           service described in subsection  
21           ~~(a)(5)(A)(ii)~~, with respect to sound re-  
22           cordings that are predominantly the  
23           fixation of sounds of a performance of  
24           a musical composition and are user  
25           uploaded material, as soon as is tech-

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

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

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

16 (dd) takes reasonable steps to  
17 promptly notify the right holder, and  
18 the party that placed the material on  
19 the online service, that the online  
20 service removed or disabled access to  
21 the material; and

22 (II) the provider, in the case that the  
23 provider receives a counter-notification  
24 that satisfies the requirements under para-  
25 graph (4) and opts to replace the removed

1 material or cease disabling access to that  
 2 material—

3 (aa) takes reasonable steps to  
 4 promptly provide the individual or en-  
 5 tity that provided the applicable noti-  
 6 fication under paragraph (3) with a  
 7 copy of the counter-notification; and

8 (bb) not less than 14 days after  
 9 the date on which the provider re-  
 10 ceives that counter-notification, re-  
 11 places the removed material or ceases  
 12 disabling access to that material, un-  
 13 less an eligible plaintiff described in  
 14 subsection (c) brings an action under  
 15 that subsection, in which case the pro-  
 16 vider shall remove the material or dis-  
 17 able access to the material as soon as  
 18 is technologically and practically fea-  
 19 sible for the provider.

20 ~~(2) DESIGNATED AGENT.—~~

21 ~~(A) DESIGNATION.—~~

22 ~~(i) IN GENERAL.—~~A provider of an  
 23 online service described in clause (i) or (ii)  
 24 of subsection (a)(5)(A) shall, and a pro-  
 25 vider of an online service that is described

1 in subsection (a)(5)(A)(iii) and is eligible  
 2 for registration may, register a designated  
 3 agent in accordance with this paragraph.

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

11 (I) The name, address, telephone  
 12 number, and electronic mail address  
 13 of the agent.

14 (II) Other contact information  
 15 that the Register of Copyrights may  
 16 determine appropriate.

17 (B) DIRECTORY.—The Register of Copy-  
 18 rights—

19 (i) shall—

20 (I) maintain a current directory  
 21 of designated agents for the purposes  
 22 of this paragraph; and

23 (II) make the directory described  
 24 in subclause (I) available to the public

1 for inspection; including through the  
 2 internet; and

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

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

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

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

20 ~~(3) ELEMENTS OF NOTIFICATION.—~~To be effec-  
 21 tive under this subsection, a notification of a claimed  
 22 violation of the right described in subsection (b)  
 23 shall be a written communication provided to the  
 24 designated agent registered under this subsection

1 with respect to the applicable provider of an online  
2 service that includes the following:

3 ~~(A) A physical or electronic signature of~~  
4 ~~the right holder, an individual or entity author-~~  
5 ~~ized to act on behalf of the right holder, or an~~  
6 ~~eligible plaintiff under subsection (c)(1).~~

7 ~~(B) Identification of the individual, the~~  
8 ~~voice or visual likeness of whom is at issue with~~  
9 ~~respect to an unauthorized digital replica or a~~  
10 ~~product or service described in subsection~~  
11 ~~(c)(2)(B).~~

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

18 ~~(D) Information reasonably sufficient to~~  
19 ~~permit the provider to contact the notifying~~  
20 ~~party, such as an address, telephone number,~~  
21 ~~and email address.~~

22 ~~(E) A statement that the notifying party~~  
23 ~~believes in good faith that—~~

24 ~~(i) the material is an unauthorized~~  
25 ~~use of a digital replica or a product or~~

1 service described in subsection (c)(2)(B);  
 2 and

3 (ii) the exclusions under subsection  
 4 (c)(5) do not apply.

5 (F) If not the right holder or an eligible  
 6 plaintiff under subsection (c)(1), a statement,  
 7 under penalty of perjury, that the notifying  
 8 party has the authority to act on behalf of the  
 9 right holder.

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

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

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

20 (4) ELEMENTS OF COUNTER-NOTIFICATION.—

21 To be effective under this subsection, a counter-noti-  
 22 fication with respect to a notification provided under  
 23 paragraph (3) shall be a written communication that  
 24 satisfies the following:

25 (A) The counter-notification is provided—



1 (i) to the designated agent of the on-  
2 line service provider to which that notifica-  
3 tion was submitted under paragraph (3);  
4 and

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

7 (B) The counter notification includes the  
8 following:

9 (i) A physical signature, witnessed or  
10 attested to in person by a licensed notary  
11 public, of the individual or entity that  
12 placed the applicable material on the online  
13 service.

14 (ii) An identification of the material  
15 that has been removed or to which access  
16 has been disabled and the location at  
17 which the material appeared before the  
18 material was removed or access to the ma-  
19 terial was disabled.

20 (iii) Information that is reasonably  
21 sufficient to permit the provider of the on-  
22 line service and the individual or entity  
23 that provided the notification under para-  
24 graph (3) to contact the party providing  
25 the counter-notification, including an ad-

1 dress, telephone number, and email ad-  
2 dress.

3 (iv) A statement made under penalty  
4 of perjury that the party providing the  
5 counter-notification has a good faith belief  
6 that the applicable material was removed,  
7 or access to that material was disabled, as  
8 a result of mistake or misidentification of  
9 the material to be removed or access to  
10 which was to be disabled, which shall in-  
11 clude a specific assertion by the party pro-  
12 viding the counter-notification that such  
13 material—

14 (I) is not a digital replica;

15 (II) is an authorized digital rep-  
16 lica; or

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

1                   (v) A statement that the individual or  
2                   entity described in clause (i)—

3                   (I) consents to the jurisdiction of  
4                   the district court of the United States  
5                   for the judicial district in which the  
6                   address provided under clause (iii) is  
7                   located (or, if that address is outside  
8                   of the United States, for any judicial  
9                   district of the United States in which  
10                  the provider may be found); and

11                  (II) will accept service of process  
12                  from—

13                   (aa) the individual or entity  
14                   that provided notification under  
15                   paragraph (3); or

16                   (bb) an agent of the indi-  
17                   vidual or entity described in item  
18                   (aa);

19                  (5) PENALTIES FOR FALSE OR DECEPTIVE NO-  
20                  TICE.—

21                   (A) KNOWING MATERIAL REPRESENTA-  
22                   TIONS.—

23                   (i) IN GENERAL.—It shall be unlawful  
24                   to knowingly materially misrepresent—

1                   (I) in a notification provided  
2 under paragraph (3)—

3                   (aa) that the material re-  
4 quested to be removed, or access  
5 to which is requested to be dis-  
6 abled, is an unauthorized digital  
7 replica;

8                   (bb) that the exclusions  
9 under subsection (e)(5) do not  
10 apply; or

11                   (cc) that an individual or en-  
12 tity has the authority to act on  
13 behalf of the right holder; or

14                   (II) in a counter-notification pro-  
15 vided under paragraph (4)—

16                   (aa) that the material re-  
17 moved, or to which access was  
18 disabled—

19                   (AA) was removed or  
20 disabled by mistake or  
21 misidentification;

22                   (BB) is not a digital  
23 replica; or

24                   (CC) is subject to an  
25 exclusion under subsection

1                                   (c)(5) or any other valid  
2                                   legal defense.

3                                   (ii) FAILURE TO PERFORM GOOD  
4                                   FAITH REVIEW.—The failure to consider in  
5                                   good faith any of the issues described in  
6                                   clause (i)(I) before providing a notification  
7                                   under paragraph (3), or any of the issues  
8                                   described in clause (i)(II) before providing  
9                                   a counter-notification under paragraph (4),  
10                                  shall constitute a knowing material mis-  
11                                  representation under this subparagraph.

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

21                               (i) \$25,000 per notification provided  
22                               under paragraph (3), or counter-notifica-  
23                               tion provided under paragraph (4), that  
24                               contains a misrepresentation described in  
25                               subparagraph (A) of this paragraph; or

(ii)(I) any actual damages incurred by the applicable right holder or alleged violator, as well as by any provider of an online service or other individual or entity injured by the misrepresentation; and

(II) any costs and attorney's fees incurred by the applicable recipient of a notification under paragraph (3), or a counter-notification under paragraph (4), that prevails in an action alleging that the notification or counter-notification, as applicable, was false or deceptive.

(e) CIVIL ACTION.—

(1) ELIGIBLE PLAINTIFFS.—A civil action against an individual or entity that, in a manner affecting interstate commerce (or using any means or facility of interstate commerce), commits a violation of subsection (c) may be brought by—

(A) the applicable right holder;

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

(C) in the case of a digital replica involving a sound recording artist, any individual or enti-

1           ty that has, directly or indirectly, entered  
2           into—

3                   (i) a contract for the exclusive per-  
4                   sonal services of the sound recording artist  
5                   as a sound recording artist; or

6                   (ii) an exclusive license to distribute  
7                   or transmit 1 or more works that capture  
8                   the audio performance of the sound record-  
9                   ing artist.

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

16           (3) DEFENSE NOT PERMITTED.—It shall not be  
17           a defense in a civil action brought under this sub-  
18           section that the defendant displayed or otherwise  
19           communicated to the public a disclaimer stating that  
20           the applicable digital replica, or the applicable prod-  
21           uct or service described in subsection (c)(2)(B), was  
22           unauthorized or disclosed that the digital replica,  
23           product, or service was generated through the use of  
24           artificial intelligence or other technology.

25           (4) REMEDIES.—

1           (A) IN GENERAL.—In any civil action  
2 brought under this subsection—

3           (i) an individual or entity found to  
4 have committed a violation of subsection  
5 (e) shall be liable to the injured party in  
6 an amount equal to the greater of—

7           (I)(aa) in the case of an indi-  
8 vidual, \$5,000 per work embodying  
9 the applicable unauthorized digital  
10 replica;

11          (bb) in the case of a provider of  
12 an online service that has undertaken  
13 a good faith effort to implement all  
14 applicable obligations of paragraphs  
15 (1) through (4) of subsection (d);  
16 \$25,000 per work embodying the ap-  
17 plicable unauthorized digital replica;

18          (cc) in the case of a provider of  
19 an online service that has not under-  
20 taken a good faith effort to implement  
21 all applicable obligations of para-  
22 graphs (1) through (4) of subsection  
23 (d), \$5,000 per display, copy made,  
24 transmission, and instance of the un-  
25 authorized digital replica being made



1 available on the online service in a  
2 sum of not more than \$750,000 per  
3 work embodying the applicable unau-  
4 thorized digital replica; and

5 (dd) in the case of an entity that  
6 is not a provider of an online service;  
7 \$25,000 per work embodying the ap-  
8 plicable unauthorized digital replica;  
9 or

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

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

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

(bb) in the case of a provider of an online service that has undertaken a good faith effort to implement all applicable obligations of paragraphs (1) through (4) of subsection (d), \$25,000 per product or service;

(cc) in the case of a provider of an online service that has not undertaken a good faith effort to implement all applicable obligations of paragraphs (1) through (4) of subsection (d), \$750,000 per product or service; or

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

(II) any actual damages suffered by the injured party as a result of the activity, plus any profits from the unauthorized use that are attributable to such use and are not taken into account in computing the actual damages;

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

(iv) in the case of willful activity in which the injured party has proven that the defendant acted with malice, fraud, knowledge, or willful avoidance of knowledge that the conduct violated the law, the court may award to the injured party punitive damages; and

(v) if the prevailing party is—

(I) the party bringing the action, the court shall award reasonable attorney's fees; or

(II) the party defending the action, the court shall award reasonable attorney's fees if the court determines that the action was not brought in good faith.

~~(B) OBJECTIVELY REASONABLE BELIEF.—~~

~~A provider of an online service that has designated an agent under subsection (d)(2) and has an objectively reasonable belief that material that is claimed to be an unauthorized digital replica does not qualify as a digital replica shall be liable only for actual damages under subparagraph (A) if the material is ultimately~~

1           determined to be an unauthorized digital rep-  
2           lica.

3       (f) SUBPOENA TO IDENTIFY VIOLATOR.—

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

11          (2) CONTENTS OF REQUEST.—A request under  
12          paragraph (1) may be made by filing with the  
13          clerk—

14               (A) a copy of a notification described in  
15               subsection (d)(3);

16               (B) a proposed subpoena; and

17               (C) a sworn declaration to the effect  
18          that—

19                   (i) the purpose of the subpoena is to  
20                   obtain the identity of an individual or enti-  
21                   ty alleged to be liable under subsection (e);  
22                   and

23                   (ii) the information described in  
24                   clause (i) will only be used for the purpose  
25                   of protecting rights under this section.

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

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

18       ~~(g)~~ PREEMPTION.—

19           ~~(1)~~ IN GENERAL.—The rights established under  
 20          this Act shall preempt any cause of action under  
 21          State law for the protection of an individual's voice  
 22          and visual likeness rights in connection with a dig-  
 23          ital replica, as defined in this Act, in an expressive  
 24          work.

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

4                 ~~(A) causes of action under State statutes~~  
 5                 ~~or common law in existence, as of January 2,~~  
 6                 ~~2025, regarding a digital replica;~~

7                 ~~(B) causes of action under State statutes~~  
 8                 ~~specifically regulating a digital replica depicting~~  
 9                 ~~sexually explicit conduct, as defined in section~~  
 10                ~~2256(2)(A) of title 18, United States Code, or~~  
 11                ~~an election-related digital replica; or~~

12                ~~(C) causes of action under State statutes~~  
 13                ~~or common law in existence, as of January 2,~~  
 14                ~~2025, for the distributing, importing, transmit-~~  
 15                ~~ting, or otherwise making available to the public~~  
 16                ~~a product or service capable of producing 1 or~~  
 17                ~~more digital replicas.~~

18           ~~(h) RULES OF CONSTRUCTION.—~~

19                ~~(1) LAWS PERTAINING TO INTELLECTUAL~~  
 20                ~~PROPERTY.—~~This section shall be considered to be a  
 21                ~~law pertaining to intellectual property for the pur-~~  
 22                ~~poses of section 230(e)(2) of the Communications~~  
 23                ~~Act of 1934 (47 U.S.C. 230(e)(2)).~~

24                ~~(2) NO DUTY TO MONITOR.—~~Except as ex-  
 25                ~~pressly provided in subsection (d)(1)(B)(ii), nothing~~

1 in this section may be construed to require the pro-  
 2 vider of an online service to—

3 ~~(A) monitor the online service for, or af-~~  
 4 ~~firmatively seek facts about, any digital replica;~~  
 5 ~~or~~

6 ~~(B) gain access to material.~~

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

13 (j) RETROACTIVE EFFECT.—

14 (1) LIABILITIES.—Liability under this section  
 15 shall apply only to—

16 ~~(A) conduct occurring after the date of en-~~  
 17 ~~actment of this Act; and~~

18 ~~(B) in the case of conduct covered by a li-~~  
 19 ~~cense or contract, a license or contract that is  
 20 ~~executed after the date of enactment of this  
 21 ~~Act.~~~~~~

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

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

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

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

11   **SECTION 1. SHORT TITLE.**

12          *This Act may be cited as the “Nurture Originals, Fos-*  
 13   *ter Art, and Keep Entertainment Safe Act of 2026” or the*  
 14   *“NO FAKES Act of 2026”.*

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

16          (a) DEFINITIONS.—*In this section:*

17           (1) DIGITAL FINGERPRINT.—*The term “digital*  
 18   *fingerprint” means an electronic label or identifier*  
 19   *created by a cryptographic hash function (or similar*  
 20   *function), or any other digital process, tool, or tech-*  
 21   *nique selected by the provider of an online service,*  
 22   *that is unique to a specific piece of material such that*  
 23   *it is effectively certain that such piece of material will*  
 24   *not be misidentified as a match for a different piece*  
 25   *of material.*



1           (2) *DIGITAL REPLICA*.—The term “digital rep-  
2       lica”—

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

7           (i) is embodied in a sound recording,  
8       image, audiovisual work, including an  
9       audiovisual work that does not have any ac-  
10      companying sounds, or transmission—

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

13           (II) that is a version of a sound  
14      recording, image, or audiovisual work  
15      in which the actual individual did per-  
16      form or appear, in which the funda-  
17      mental character of the performance or  
18      appearance has been materially al-  
19      tered; and

20           (B) does not include the electronic reproduc-  
21      tion, use of a sample of one sound recording or  
22      audiovisual work into another, remixing, mas-  
23      tering, or digital remastering of a sound record-  
24      ing or audiovisual work authorized by the copy-  
25      right holder.

1           (3) *INDIVIDUAL*.—The term “individual” means  
2           a human being, living or dead.

3           (4) *INTERACTIVE COMPUTER SERVICE*.—The  
4           term “interactive computer service” means any infor-  
5           mation service, system, or access software provider  
6           that provides or enables computer access by multiple  
7           users to a computer server, including specifically—

8                   (A) a service or system that provides access  
9                   to the internet; and

10                   (B) such systems operated, or services of-  
11                   ferred, by libraries or educational institutions.

12           (5) *ONLINE SERVICE*.—The term “online serv-  
13           ice”—

14                   (A) means—

15                           (i) any website, online application,  
16                           mobile application, or virtual reality envi-  
17                           ronment that predominantly provides pub-  
18                           lic access to user uploaded material;

19                           (ii) any digital music provider to  
20                           which section 115 of title 17, United States  
21                           Code, applies, to the extent that the digital  
22                           music provider provides public access to a  
23                           significant amount of sound recordings that  
24                           are predominantly the fixation of sounds of  
25                           a performance of a musical composition

1           and are user uploaded material, if that dig-  
2           ital music provider is not covered under  
3           clause (i); and

4           (iii) any online application, mobile  
5           application, virtual reality environment,  
6           application store, search engine (including  
7           any feature that provides web search re-  
8           sults), advertising service or network, online  
9           shopping service or platform, electronic  
10          commerce provider, mapping service, cloud  
11          storage service, aggregator of visual and  
12          audiovisual works for licensing, or website  
13          hosting service or any other interactive com-  
14          puter service that is not covered under  
15          clause (i), and is not a digital music pro-  
16          vider to which section 115 of title 17,  
17          United States Code, applies, but only if the  
18          provider of that interactive computer service  
19          has registered a designated agent with the  
20          Copyright Office under subsection (d)(2);  
21          and

22          (B) does not include any website, online ap-  
23          plication, mobile application, virtual reality en-  
24          vironment, application store, cloud storage serv-  
25          ice, or search engine, if the primary function of

1        *that website, online application, mobile applica-*  
 2        *tion, virtual reality environment, application*  
 3        *store, cloud storage service, or search engine is to*  
 4        *distribute, import, transmit, or otherwise make*  
 5        *available to the public a product or service de-*  
 6        *scribed in subsection (c)(2)(B).*

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

9                (A) *the individual, the voice or visual like-*  
 10                *ness of whom is at issue with respect to a digital*  
 11                *replica or a product or service described in sub-*  
 12                *section (c)(2)(B); and*

13                (B) *any other individual or entity that has*  
 14                *acquired, through a license, inheritance, or other-*  
 15                *wise, the right to authorize the use of the voice*  
 16                *or visual likeness described in subparagraph (A).*

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

21        (8) *USER UPLOADED MATERIAL.*—*The term*  
 22        *“user uploaded material”—*

23                (A) *means material, such as a video, image,*  
 24                *audio file, or other similar material, that is*

placed on a service directly by, or at the direction of, a consumer end user of a service; and

(B) does not include material that is—

(i) embodied in a video game; and

(ii) generated or customized by a consumer end user of that video game.

(b) *DIGITAL REPLICATION RIGHT.*—

(1) *IN GENERAL.*—Subject to the other provisions of this section, each individual or right holder shall have the right to authorize—

(A) the use of a digital replica embodying the voice or visual likeness of the individual; or

(B) the use of the voice or visual likeness of the individual in connection with a product or service for which authorization of the individual or right holder is required to avoid liability with respect to an activity described in subsection (c)(2)(B).

(2) *NATURE OF RIGHT.*—

(A) *IN GENERAL.*—The right described in paragraph (1) shall have the following characteristics:

(i) The right is—

(I) a property right;

1                   (ii) not assignable during the life  
 2                   of the individual, including through  
 3                   involuntary transfer, such as by means  
 4                   of bankruptcy, levy, lien enforcement,  
 5                   court order, or other legal process; and

6                   (iii) licensable, in whole or in  
 7                   part, exclusively or non-exclusively, by  
 8                   the right holder.

9                   (ii) The right shall not expire upon the  
 10                  death of the individual, without regard to  
 11                  whether the right is commercially exploited  
 12                  by the individual during the lifetime of the  
 13                  individual.

14                  (iii) Upon the death of the indi-  
 15                  vidual—

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

20                   (II) ownership of the right may  
 21                   be—

22                   (aa) transferred, in whole or  
 23                   in part, by any means of convey-  
 24                   ance or by operation of law; and

1                   (bb) bequeathed by will or  
 2                   pass as personal property by the  
 3                   applicable laws of intestate succes-  
 4                   sion.

5                   (iv)(I) The right shall be exclusive to—

6                   (aa) the individual, subject to the  
 7                   licensing of the right during the life-  
 8                   time of that individual under subpara-  
 9                   graph (B); and

10                  (bb) the right holder—

11                   (AA) for a period of 10 years  
 12                   after the death of the individual;  
 13                   and

14                   (BB) if the right holder dem-  
 15                   onstrates active and authorized  
 16                   public use of the voice or visual  
 17                   likeness of the individual in inter-  
 18                   state or foreign commerce during  
 19                   the 2-year period preceding the  
 20                   expiration of the 10-year period  
 21                   described in subitem (AA), for an  
 22                   additional 5-year period, subject  
 23                   to renewal for additional 5-year  
 24                   periods, provided the right holder  
 25                   can demonstrate authorized public

1                    *use of the voice or visual likeness*  
 2                    *of the individual in interstate or*  
 3                    *foreign commerce during the 2-*  
 4                    *year period preceding the expira-*  
 5                    *tion of each additional 5-year pe-*  
 6                    *riod.*

7                    *(II) The commercial availability of a*  
 8                    *sound recording or audiovisual work in*  
 9                    *which the voice or visual likeness of an in-*  
 10                    *dividual is readily identifiable shall con-*  
 11                    *stitute active and authorized public use of*  
 12                    *that voice or visual likeness for the purposes*  
 13                    *of subclause (I)(bb)(BB).*

14                    *(v) The right shall terminate on the*  
 15                    *date that is the earlier of—*

16                    *(I) the date on which the 10-year*  
 17                    *period or 5-year period described in*  
 18                    *clause (iv)(I)(bb) terminates without*  
 19                    *renewal; or*

20                    *(II) the date that is 70 years after*  
 21                    *the death of the individual.*

22                    *(B) REQUIREMENTS FOR LICENSE.—*

23                    *(i) IN GENERAL.—A license described*  
 24                    *in subparagraph (A)(i)(III)—*



1                   (I) while the applicable indi-  
 2                   vidual is living, is valid only to the ex-  
 3                   tent that the license duration does not  
 4                   exceed 10 years; and

5                   (II) shall be valid only if the li-  
 6                   cense agreement—

7                               (aa) is in writing and signed  
 8                   by—

9                               (AA) the applicable in-  
 10                   dividual; or

11                              (BB) in the case of a de-  
 12                   ceased individual, the right  
 13                   holder or an authorized rep-  
 14                   resentative of the right hold-  
 15                   er; and

16                              (bb) includes a reasonably  
 17                   specific description of the in-  
 18                   tended uses of the applicable dig-  
 19                   ital replica.

20                   (ii) *LICENSES INVOLVING A MINOR.*—A  
 21                   license described in subparagraph  
 22                   (A)(i)(III) involving a living individual  
 23                   who is younger than 18 years of age—

24                              (I) is valid only to the extent that  
 25                   the license duration does not exceed 5

1                    *years, but in any case terminates when*  
 2                    *the individual reaches 18 years of age;*  
 3                    *and*

4                    *(II) shall be valid only if the li-*  
 5                    *cense agreement—*

6                    *(aa) is in writing and signed*  
 7                    *by the individual or an author-*  
 8                    *ized representative of the indi-*  
 9                    *vidual;*

10                   *(bb) includes a reasonably*  
 11                   *specific description of the in-*  
 12                   *tended uses of the digital replica;*  
 13                   *and*

14                   *(cc) is approved by a court*  
 15                   *in accordance with applicable*  
 16                   *State law.*

17                   *(iii) COLLECTIVE BARGAINING AGREE-*  
 18                   *MENTS.—The provisions of clauses (i) and*  
 19                   *(ii) shall not apply with respect to a license*  
 20                   *if the license is governed by a collective bar-*  
 21                   *gaining agreement that addresses digital*  
 22                   *replicas.*

23                   *(iv) LIMITATION.—The provisions of*  
 24                   *clauses (i) and (ii) shall not affect terms*  
 25                   *and conditions of a license or related con-*

tract other than those described in this subparagraph, and the expiration of that license shall not affect the remainder of the license or related contract.

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

(D) *REGISTRATION FOR POST-MORTEM RENEWAL.*—

(i) *IN GENERAL.*—The renewal of a post-mortem right under subparagraph (A)(iv)(I)(bb)(BB) shall be effective if, during the applicable 2-year renewal period described in that subparagraph, the right holder files a notice with the Register of Copyrights that complies with such requirements regarding form and filing procedures as the Register of Copyrights may prescribe by regulation, which shall include—

(I) the name of the deceased individual;

1           (II) a statement, under penalty of  
 2           perjury, that the right holder has en-  
 3           gaged in active and authorized public  
 4           use of the voice or visual likeness in  
 5           interstate or foreign commerce during  
 6           the applicable 2-year period;

7           (III) the identity of and contact  
 8           information for the right holder; and

9           (IV) such other information as the  
 10          Register of Copyrights may prescribe  
 11          by regulation.

12          (ii) *DIRECTORY*.—The Register of  
 13          Copyrights—

14               (I) shall—

15                   (aa) maintain a current di-  
 16                   rectory of post-mortem digital  
 17                   replication rights registered under  
 18                   this subparagraph; and

19                   (bb) make the directory de-  
 20                   scribed in item (aa) available to  
 21                   the public for inspection online;  
 22                   and

23               (II) may require payment of a  
 24               reasonable filing fee by the right holder  
 25               filing notice under clause (i), which

1           *may take into consideration the costs*  
 2           *of maintaining the directory described*  
 3           *in subclause (I) of this clause.*

4           *(iii) VOLUNTARY INITIAL REGISTRA-*  
 5           *TION.—*

6                     *(I) IN GENERAL.—A right holder*  
 7           *may voluntarily register the post-*  
 8           *mortem right under subparagraph*  
 9           *(A)(iv)(I)(bb)(AA) by filing a notice*  
 10          *with the Register of Copyrights that*  
 11          *complies with such requirements re-*  
 12          *garding form, content, and filing pro-*  
 13          *cedures as the Register of Copyrights*  
 14          *may prescribe by regulation.*

15                    *(II) AUTHORITY OF REGISTER OF*  
 16          *COPYRIGHTS.—The Register of Copy-*  
 17          *rights may—*

18                             *(aa) include a voluntary reg-*  
 19                             *istration of the post-mortem right*  
 20                             *under                             subparagraph*  
 21                             *(A)(iv)(I)(bb)(AA) in the direc-*  
 22                             *tory maintained under clause*  
 23                             *(ii)(I)(aa) of this subparagraph;*  
 24                             *and*

1                   (bb) require payment of a  
 2                   reasonable filing fee by a right  
 3                   holder registering a right under  
 4                   this clause, which may take into  
 5                   consideration the costs of main-  
 6                   taining the directory.

7                   (iv) *INITIAL POST-MORTEM REGISTRA-*  
 8                   *TION FOR INDIVIDUALS DECEASED 8 YEARS*  
 9                   *OR LONGER AS OF DATE OF ENACTMENT.—*  
 10                  *Notwithstanding any other provision of this*  
 11                  *paragraph—*

12                   (I) with respect to an individual  
 13                   who died not fewer than 10 years be-  
 14                   fore the date of enactment of this Act,  
 15                   the applicable right holder may, not  
 16                   later than 90 days after the effective  
 17                   date of this section, voluntarily register  
 18                   the post-mortem right under subpara-  
 19                   graph (A)(iv)(I)(bb)(BB) by filing  
 20                   with the Register of Copyrights a no-  
 21                   tice that complies with such require-  
 22                   ments as the Register of Copyrights  
 23                   may prescribe by regulation under  
 24                   clause (i), if the right holder dem-  
 25                   onstrates the required authorized pub-

1            *lic use of the voice or visual likeness of*  
 2            *the individual in interstate or foreign*  
 3            *commerce during the 2-year period*  
 4            *preceding the date of enactment of this*  
 5            *Act, subject to protection during the*  
 6            *periods of exclusivity and termination*  
 7            *under clauses (iv) and (v) of subpara-*  
 8            *graph (A); and*

9            *(II) with respect to an individual*  
 10           *who died not fewer than 8, and fewer*  
 11           *than 10, years before the date of enact-*  
 12           *ment of this Act, the applicable right*  
 13           *holder may file a notice under clause*  
 14           *(i) or subclause (I) of this clause.*

15           *(v) AUTHORITY OF REGISTER OF COPY-*  
 16           *RIGHTS.—The Register of Copyrights may*  
 17           *make such interpretations and resolve such*  
 18           *ambiguities as may be appropriate to carry*  
 19           *out this subparagraph.*

20           *(E) POST-EXPIRATION OR TERMINATION*  
 21           *UTILIZATION OF AUTHORIZED USES.—A digital*  
 22           *replica that is embodied in a sound recording,*  
 23           *image, audiovisual work, including an audio-*  
 24           *visual work that does not have any accom-*  
 25           *panying sounds, or transmission, and the use of*

1           *which is authorized pursuant to the terms of a*  
 2           *license, may continue to be utilized in a manner*  
 3           *consistent with the terms of that license after the*  
 4           *expiration or termination of the license.*

5           *(c) LIABILITY.—*

6           *(1) IN GENERAL.—Any individual or entity that,*  
 7           *in a manner affecting interstate or foreign commerce*  
 8           *(or using any means or facility of interstate or for-*  
 9           *ign commerce), engages in an activity described in*  
 10           *paragraph (2) shall be liable in a civil action brought*  
 11           *under subsection (e).*

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

14           *(A) The public display, distribution, trans-*  
 15           *mission, or communication of, or the act of oth-*  
 16           *erwise making available to the public, including*  
 17           *by acting as a third party commercial supplier*  
 18           *of sound recordings to a digital music provider,*  
 19           *a digital replica without authorization by the*  
 20           *applicable right holder.*

21           *(B) Distributing, importing, transmitting,*  
 22           *or otherwise making available to the public a*  
 23           *product or service that—*

24           *(i) is primarily designed to produce 1*  
 25           *or more digital replicas of a specifically*



1 *identified individual or individuals without*  
2 *the authorization of—*

3 *(I) such individual or individ-*  
4 *uals;*

5 *(II) the applicable right holder; or*

6 *(III) the law;*

7 *(ii) has only limited commercially sig-*  
8 *nificant purpose or use other than to*  
9 *produce a digital replica of a specifically*  
10 *identified individual or individuals without*  
11 *the authorization of—*

12 *(I) such individual or individ-*  
13 *uals;*

14 *(II) the applicable right holder; or*

15 *(III) the law; or*

16 *(iii) is marketed, advertised, or other-*  
17 *wise promoted by the individual or entity*  
18 *described in paragraph (1), or another indi-*  
19 *vidual or entity acting in concert with the*  
20 *individual or entity described in paragraph*  
21 *(1) with the knowledge of the individual or*  
22 *entity described in paragraph (1), as a*  
23 *product or service designed to produce a*  
24 *digital replica of a specifically identified*

1                   *individual or individuals without the au-*  
 2                   *thorization of—*

3                   (I) *such individual or individ-*  
 4                   *uals;*

5                   (II) *the applicable right holder; or*

6                   (III) *the law.*

7           (3) *NOTICE OR KNOWLEDGE REQUIRED.—To*  
 8           *incur liability under this subsection, the following*  
 9           *shall apply:*

10           (A)(i) *With respect to an activity carried*  
 11           *out under paragraph (2) by the provider of an*  
 12           *online service described in clause (ii), the des-*  
 13           *ignated agent with respect to the provider must*  
 14           *have received a notification that satisfies the re-*  
 15           *quirements under subsection (d)(3), or a court*  
 16           *order stating, or must have willfully avoided re-*  
 17           *ceipt of such a notification or court order, that*  
 18           *the applicable material is—*

19                   (I) *a digital replica, the use of which*  
 20                   *was not authorized by the applicable right*  
 21                   *holder; or*

22                   (II) *a product or service described in*  
 23                   *paragraph (2)(B).*

24                   (ii) *An online service described in this*  
 25                   *clause is an online service that is—*

1                   (I) described in subsection (a)(5)(A)(i);

2                   (II)     described     in     subsection

3                   (a)(5)(A)(ii), with respect to sound record-

4                   ings that are predominantly the fixation of

5                   sounds of a performance of a musical com-

6                   position and are user uploaded material; or

7                   (III)     described     in     subsection

8                   (a)(5)(A)(iii), with respect to material

9                   placed on that online service by or at the

10                  direction of a third party.

11                  (B) With respect to an activity carried out

12                  under paragraph (2) by an individual or entity

13                  that is not an online service, or an activity car-

14                  ried out under paragraph (2) by the provider of

15                  an online service that is not described in sub-

16                  paragraph (A)(ii), the individual or entity must

17                  have actual knowledge, or must willfully avoid

18                  having such knowledge, that the applicable mate-

19                  rial is—

20                         (i) a digital replica, the use of which

21                         was not authorized by the applicable right

22                         holder; or

23                         (ii) a product or service described in

24                         paragraph (2)(B).

1           (4) *EXCLUSIONS.—Liability under this sub-*  
2           *section shall not extend to—*

3                   (A) *a service by wire or radio that provides*  
4                   *the capability to transmit data to and receive*  
5                   *data from all, or substantially all, internet*  
6                   *endpoints, including any capabilities that are*  
7                   *incidental to enable the operation of the commu-*  
8                   *nications service of a provider of online services*  
9                   *or network access, or the operator of facilities for*  
10                  *such service;*

11                  (B) *a provider of an online service described*  
12                  *in paragraph (3)(A)(ii) alleged to have under-*  
13                  *taken an activity described in paragraph (2)*  
14                  *if—*

15                       (i) *it is not technologically or prac-*  
16                       *tically feasible for that provider to disable*  
17                       *access to the offending material, or disable*  
18                       *the reference or link to that material, at the*  
19                       *specific location identified in the applicable*  
20                       *notification sent under subsection (d)(3); or*

21                       (ii) *disabling access to the offending*  
22                       *material is prohibited by law;*

23                  (C) *a nonprofit library or archives—*

1           (i) that is eligible for the limitations  
2           on exclusive rights under section 108 of title  
3           17, United States Code;

4           (ii) the collections of which are—

5                 (I) open to the public; or

6                 (II) available not only to re-  
7           searchers affiliated with the library or  
8           archives, or with the institution of  
9           which the library or archives is a part,  
10          but also to other persons doing research  
11          in a specialized field;

12          (iii) that has a public service mission;

13          (iv) the trained staff or volunteers of  
14          which provide professional services nor-  
15          mally associated with libraries and ar-  
16          chives; and

17          (v) the collections of which are com-  
18          posed of lawfully acquired or licensed mate-  
19          rials that are made available consistent  
20          with the requirements of title 17, United  
21          States Code;

22          (D) an accredited nonprofit educational in-  
23          stitution with respect to an activity undertaken  
24          without any purpose of direct or indirect com-  
25          mercial advantage;

1           (E) an employee of an institution described  
 2           in subparagraph (C) or (D) acting within the  
 3           scope of the employment of that individual;

4           (F) any other person solely with respect to  
 5           providing online or network access services to an  
 6           institution described in subparagraph (C) or (D)  
 7           in the course of providing those services to that  
 8           institution; or

9           (G) an individual or entity that is not an  
 10          online service, if, upon obtaining actual knowl-  
 11          edge of an activity described in paragraph (2),  
 12          the individual or entity acts as soon as techno-  
 13          logically and practically feasible to remove or  
 14          disable access to the applicable material.

15          (5) *ADDITIONAL EXCLUSIONS.*—

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

19               (i) the applicable digital replica is  
 20               used in a bona fide news, public affairs, or  
 21               sports broadcast or account, provided that  
 22               the digital replica is the subject of, or is  
 23               materially relevant to, the subject of that  
 24               broadcast or account;

1           (ii) the applicable digital replica is a  
 2 representation of the applicable individual  
 3 as the individual in a documentary or in a  
 4 historical or biographical manner, includ-  
 5 ing some degree of fictionalization, unless—

6           (I) the use of that digital replica  
 7 creates the false impression that the  
 8 work is an authentic sound recording,  
 9 image, transmission, or audiovisual  
 10 work in which the individual partici-  
 11 pated; or

12           (II) the digital replica is em-  
 13 bodied in a musical sound recording  
 14 that is synchronized to accompany a  
 15 motion picture or other audiovisual  
 16 work, except to the extent that the use  
 17 of that digital replica is protected by  
 18 the First Amendment to the Constitu-  
 19 tion of the United States;

20           (iii) the applicable digital replica is  
 21 used consistent with the public interest in  
 22 bona fide commentary, criticism, scholar-  
 23 ship, satire, or parody;

24           (iv) the use of the applicable digital  
 25 replica is fleeting or negligible; or

1                   (v) the applicable digital replica is  
 2                   used in an advertisement or commercial an-  
 3                   nouncement for a purpose described in any  
 4                   of clauses (i) through (iv) and the applica-  
 5                   ble digital replica is relevant to the subject  
 6                   of the work so advertised or announced.

7                   (B) *APPLICABILITY.*—Subparagraph (A)  
 8                   shall not apply where the applicable digital rep-  
 9                   lica is used to depict sexually explicit conduct,  
 10                  as defined in section 2256(2)(A) of title 18,  
 11                  United States Code.

12               (6) *VOLUNTARY USE OF TOOLS TO REMOVE OR*  
 13               *DISABLE ACCESS.*—The voluntary use of any tool to  
 14               remove or disable access to content shall not alone  
 15               confer actual knowledge of a particular violation of  
 16               this section.

17               (d) *SAFE HARBORS.*—

18               (1) *IN GENERAL.*—

19               (A) *PRODUCTS AND SERVICES CAPABLE OF*  
 20               *PRODUCING DIGITAL REPLICAS.*—No individual  
 21               or entity shall be directly or secondarily liable  
 22               under this section for an activity described in  
 23               subsection (c)(2)(A) by virtue of distributing,  
 24               importing, transmitting, or otherwise making  
 25               available to the public a product or service un-



1        *less the product or service is a product or service*  
 2        *described in subsection (c)(2)(B).*

3                *(B) ONLINE SERVICES.—The provider of an*  
 4        *online service shall not be liable for an activity*  
 5        *that violates subsection (c), or for referring or*  
 6        *linking to the material embodying an unauthor-*  
 7        *ized digital replica or a product or service de-*  
 8        *scribed in subsection (c)(2)(B), if—*

9                *(i) for the provider of an online service*  
 10        *described in subsection (a)(5)(A)(iii) (other*  
 11        *than a search engine or a search component*  
 12        *of a service), the provider has adopted and*  
 13        *reasonably implemented, and has informed*  
 14        *users of the online service of, a policy that*  
 15        *provides for the termination in appropriate*  
 16        *circumstances of account holders of the on-*  
 17        *line service that are repeat violators of sub-*  
 18        *section (c)(2), provided that the failure to*  
 19        *terminate a particular account holder in*  
 20        *accordance with that policy shall subject the*  
 21        *provider of the online service to potential li-*  
 22        *ability only with respect to violating con-*  
 23        *tent posted by that account holder; and*

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

4                   (aa) removes or disables access to  
 5                   the work embodying the claimed unau-  
 6                   thorized use of a digital replica or the  
 7                   product or service specifically identi-  
 8                   fied in a notice sent under that para-  
 9                   graph, or, as applicable, the link or  
 10                  reference to the unauthorized use of a  
 11                  digital replica or product or service, as  
 12                  soon as is technologically and prac-  
 13                  tically feasible for that provider;

14                  (bb) for the provider of an online  
 15                  service described in subsection  
 16                  (a)(5)(A)(i), as soon as is techno-  
 17                  logically and practically feasible for  
 18                  that provider, removes or disables ac-  
 19                  cess to all other publicly available in-  
 20                  stances of the work embodying the  
 21                  claimed unauthorized use of a digital  
 22                  replica that—

23                   (AA) match the digital fin-  
 24                   gerprint of an unauthorized use of  
 25                   a digital replica specifically iden-

1                    *tified in a notification sent under*  
2                    *paragraph (3); and*

3                    *(BB) are uploaded after*  
4                    *valid, applicable notice was sub-*  
5                    *mitted to, and processed by, the*  
6                    *provider;*

7                    *(cc) for the provider of an online*  
8                    *service described in subsection*  
9                    *(a)(5)(A)(ii), with respect to sound re-*  
10                   *cordings that are predominantly the*  
11                   *fixation of sounds of a performance of*  
12                   *a musical composition and are user*  
13                   *uploaded material, as soon as is tech-*  
14                   *nologically and practically feasible for*  
15                   *that provider, removes or disables ac-*  
16                   *cess to all other publicly available in-*  
17                   *stances of the work embodying the*  
18                   *claimed unauthorized use of a digital*  
19                   *replica that—*

20                   *(AA) match the digital fin-*  
21                   *gerprint of an unauthorized use of*  
22                   *a digital replica specifically iden-*  
23                   *tified in a notification sent under*  
24                   *paragraph (3); and*

1                   (BB) are uploaded after  
2                   valid, applicable notice was sub-  
3                   mitted to, and processed by, the  
4                   provider; and

5                   (dd) takes reasonable steps to  
6                   promptly notify the right holder, and  
7                   the party that placed the material on  
8                   the online service, that the online serv-  
9                   ice removed or disabled access to the  
10                  material; and

11                (II) the provider, in the case that the  
12                provider receives a counter-notification that  
13                satisfies the requirements under paragraph  
14                (4) and opts to replace the removed mate-  
15                rial or cease disabling access to that mate-  
16                rial—

17                   (aa) takes reasonable steps to  
18                   promptly provide the individual or en-  
19                   tity that provided the applicable notifi-  
20                   cation under paragraph (3) with a  
21                   copy of the counter-notification; and

22                   (bb) not less than 14 days after  
23                   the date on which the provider receives  
24                   that counter-notification, replaces the  
25                   removed material or ceases disabling

1           *access to that material, unless an eligi-*  
 2           *ble plaintiff described in subsection (e)*  
 3           *brings an action under that subsection,*  
 4           *in which case the provider shall remove*  
 5           *the material or disable access to the*  
 6           *material as soon as is technologically*  
 7           *and practically feasible for the pro-*  
 8           *vider.*

9           (2) *DESIGNATED AGENT.*—

10           (A) *DESIGNATION.*—

11           (i) *IN GENERAL.*—A provider of an on-  
 12           line service described in clause (i) or (ii) of  
 13           subsection (a)(5)(A) shall, and a provider of  
 14           an online service that is described in sub-  
 15           section (a)(5)(A)(iii) and is eligible for reg-  
 16           istration may, register a designated agent  
 17           in accordance with this paragraph.

18           (ii) *CONTENTS.*—To designate an  
 19           agent under clause (i), the provider of an  
 20           online service shall make available through  
 21           that online service, in a location accessible  
 22           to the public, and provide to the Copyright  
 23           Office, substantially the following informa-  
 24           tion:

1                   (I) *The name, address, telephone*  
 2                   *number, and electronic mail address of*  
 3                   *the agent.*

4                   (II) *Other contact information*  
 5                   *that the Register of Copyrights may*  
 6                   *determine appropriate.*

7                   (B) *DIRECTORY.—The Register of Copy-*  
 8                   *rights—*

9                   (i) *shall—*

10                   (I) *maintain a current directory*  
 11                   *of designated agents for the purposes of*  
 12                   *this paragraph; and*

13                   (II) *make the directory described*  
 14                   *in subclause (I) available to the public*  
 15                   *for inspection, including through the*  
 16                   *internet; and*

17                   (ii) *may require payment of a fee by*  
 18                   *the provider of an online service to cover the*  
 19                   *costs of maintaining the directory described*  
 20                   *in clause (i)(I).*

21                   (C) *EFFECT OF FAILURE TO DESIGNATE.—*

22                   *There shall be established a presumption that a*  
 23                   *provider of an online service described in sub-*  
 24                   *paragraph (A)(i) has not undertaken a good*  
 25                   *faith effort to comply with this subsection if the*

1            *provider has failed to register a designated agent*  
 2            *under this paragraph by the later of—*

3                    *(i) the date that is 90 days after the ef-*  
 4                    *fective date of this section; or*

5                    *(ii) the date that is 90 days after the*  
 6                    *date on which the provider becomes a pro-*  
 7                    *vider described in subparagraph (A)(i).*

8            *(3) ELEMENTS OF NOTIFICATION.—To be effec-*  
 9            *tive under this subsection, a notification of a claimed*  
 10           *violation of the right described in subsection (b) shall*  
 11           *be a written communication provided to the des-*  
 12           *ignated agent registered under this subsection with re-*  
 13           *spect to the applicable provider of an online service*  
 14           *that includes the following:*

15                    *(A) A physical or electronic signature of the*  
 16                    *right holder, an individual or entity authorized*  
 17                    *to act on behalf of the right holder, or an eligible*  
 18                    *plaintiff under subsection (e)(1).*

19                    *(B) Identification of the individual, the*  
 20                    *voice or visual likeness of whom is at issue with*  
 21                    *respect to an unauthorized use of a digital rep-*  
 22                    *lica or a product or service described in sub-*  
 23                    *section (c)(2)(B).*

24                    *(C) Identification of the material embody-*  
 25                    *ing an unauthorized use of a digital replica or*

1        *a product or service described in subsection*  
 2        *(c)(2)(B), including information sufficient to*  
 3        *allow the provider to locate the identified mate-*  
 4        *rial.*

5                *(D) Information reasonably sufficient to*  
 6        *permit the provider to contact the notifying*  
 7        *party, such as an address, telephone number,*  
 8        *and email address.*

9                *(E) A statement that the notifying party be-*  
 10        *lieves in good faith that—*

11                    *(i) the material is—*

12                                *(I) a digital replica, the use of*  
 13                                *which is unauthorized; or*

14                                *(II) a product or service described*  
 15                                *in subsection (c)(2)(B); and*

16                                *(ii) the exclusions under subsection*  
 17                                *(c)(5) do not apply.*

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

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



1           (i) identify the reference or link to the  
 2           material or activity claimed to be or em-  
 3           bodying an unauthorized use of a digital  
 4           replica, or a product or service described in  
 5           subsection (c)(2)(B), that is to be removed  
 6           or to which access is to be disabled; and

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

9           (4) *ELEMENTS OF COUNTER-NOTIFICATION.*—To  
 10          be effective under this subsection, a counter-notifica-  
 11          tion with respect to a notification provided under  
 12          paragraph (3) shall be a written communication that  
 13          satisfies the following:

14          (A) *The counter-notification is provided—*

15               (i) to the designated agent of the online  
 16               service provider to which that notification  
 17               was submitted under paragraph (3); and

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

20          (B) *The counter notification includes the*  
 21          *following:*

22               (i) *A physical signature, witnessed or*  
 23               *attested to in person by a licensed notary*  
 24               *public, of the individual or entity that*

1           *placed the applicable material on the online*  
2           *service.*

3           (ii) *An identification of the material*  
4           *that has been removed or to which access*  
5           *has been disabled and the location at which*  
6           *the material appeared before the material*  
7           *was removed or access to the material was*  
8           *disabled.*

9           (iii) *Information that is reasonably*  
10          *sufficient to permit the provider of the on-*  
11          *line service and the individual or entity*  
12          *that provided the notification under para-*  
13          *graph (3) to contact the party providing the*  
14          *counter-notification, including an address,*  
15          *telephone number, and email address.*

16          (iv) *A statement made under penalty*  
17          *of perjury that the party providing the*  
18          *counter-notification has a good faith belief*  
19          *that the applicable material was removed,*  
20          *or access to that material was disabled, as*  
21          *a result of mistake or misidentification of*  
22          *the material to be removed or access to*  
23          *which was to be disabled, which shall in-*  
24          *clude a specific assertion by the party pro-*

1            *viding the counter-notification that such*  
2            *material—*

3                    *(I) is not a digital replica;*

4                    *(II) is an authorized use of a dig-*  
5                    *ital replica; or*

6                    *(III) is an unauthorized use of a*  
7                    *digital replica that satisfies an exclu-*  
8                    *sion under paragraph (4) or (5) of*  
9                    *subsection (c), a limitation on liability*  
10                   *under subsection (e)(3), or any other*  
11                   *requirement with respect to a valid*  
12                   *legal defense, which shall include a suc-*  
13                   *cinct explanation of how such material*  
14                   *satisfies the applicable exclusion, limi-*  
15                   *tation, or requirement.*

16                   *(v) A statement that the individual or*  
17                   *entity that placed the applicable material*  
18                   *on the online service—*

19                   *(I) consents to the jurisdiction of*  
20                   *the district court of the United States*  
21                   *for the judicial district in which the*  
22                   *address provided under clause (iii) is*  
23                   *located (or, if that address is outside of*  
24                   *the United States, for any judicial dis-*  
25                   *trict of the United States in which that*

1                   *individual or entity may be found);*  
 2                   *and*

3                   *(II) will accept service of process*  
 4                   *from—*

5                   *(aa) the individual or entity*  
 6                   *that provided notification under*  
 7                   *paragraph (3); or*

8                   *(bb) an agent of the indi-*  
 9                   *vidual or entity described in item*  
 10                   *(aa).*

11                   *(5) PENALTIES FOR FALSE OR DECEPTIVE NO-*  
 12                   *TICE.—*

13                   *(A) KNOWING MATERIAL REPRESENTA-*  
 14                   *TIONS.—*

15                   *(i) IN GENERAL.—It shall be unlawful*  
 16                   *to knowingly materially misrepresent—*

17                   *(I) in a notification provided*  
 18                   *under paragraph (3)—*

19                   *(aa) that the material re-*  
 20                   *quested to be removed, or access to*  
 21                   *which is requested to be disabled,*  
 22                   *is a digital replica, the use of*  
 23                   *which is unauthorized;*

24                   *(bb) that the exclusions under*  
 25                   *subsection (c)(5) do not apply; or*

1                   (cc) *that an individual or*  
 2                   *entity has the authority to act on*  
 3                   *behalf of the right holder; or*

4                   (II) *in a counter-notification pro-*  
 5                   *vided under paragraph (4), that—*

6                   (aa) *material was removed,*  
 7                   *or access to material was disabled,*  
 8                   *by mistake or misidentification;*

9                   (bb) *the material removed, or*  
 10                  *to which access was disabled, is*  
 11                  *not a digital replica; or*

12                  (cc) *the material removed, or*  
 13                  *to which access was disabled, is*  
 14                  *subject to an exclusion under sub-*  
 15                  *section (c)(5), a limitation on li-*  
 16                  *ability under subsection (e)(3), or*  
 17                  *any other valid legal defense.*

18                  (ii) *FAILURE TO PERFORM GOOD*  
 19                  *FAITH REVIEW.—The failure to consider in*  
 20                  *good faith any of the issues described in*  
 21                  *clause (i)(I) before providing a notification*  
 22                  *under paragraph (3), or any of the issues*  
 23                  *described in clause (i)(II) before providing*  
 24                  *a counter-notification under paragraph (4),*

1           *shall constitute a knowing material mis-*  
 2           *representation under this subparagraph.*

3           *(B) PENALTIES.—In addition to the cause*  
 4           *of action and remedies made available under*  
 5           *subsection (e), any individual or entity that vio-*  
 6           *lates subparagraph (A) of this paragraph shall*  
 7           *be liable to the applicable right holder, the al-*  
 8           *leged violator that uploaded the applicable mate-*  
 9           *rial, or the provider of an online service injured*  
 10          *by the misrepresentation, for an amount equal to*  
 11          *the greater of—*

12                   *(i) \$25,000 per notification provided*  
 13                   *under paragraph (3), or counter-notifica-*  
 14                   *tion provided under paragraph (4), that*  
 15                   *contains a misrepresentation described in*  
 16                   *subparagraph (A) of this paragraph; or*

17                   *(ii) the sum of—*

18                           *(I) any actual damages incurred*  
 19                           *by the applicable right holder or al-*  
 20                           *leged violator, as well as by any pro-*  
 21                           *vider of an online service or other indi-*  
 22                           *vidual or entity injured by the mis-*  
 23                           *representation; and*

24                           *(II) any costs and attorney's fees*  
 25                           *incurred by the applicable recipient of*

1            *a notification under paragraph (3), or*  
 2            *a counter-notification under para-*  
 3            *graph (4), that prevails in an action*  
 4            *alleging that the notification or*  
 5            *counter-notification, as applicable, was*  
 6            *false or deceptive.*

7            *(e) CIVIL ACTION.—*

8            *(1) ELIGIBLE PLAINTIFFS.—A civil action*  
 9            *against an individual or entity that, in a manner af-*  
 10           *fecting interstate commerce (or using any means or*  
 11           *facility of interstate commerce), commits a violation*  
 12           *of subsection (c) may be brought by—*

13                    *(A) the applicable right holder;*

14                    *(B) if the applicable right holder is an indi-*  
 15                    *vidual who is younger than 18 years of age, a*  
 16                    *parent or guardian of that individual; or*

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

20                            *(i) a contract for the exclusive personal*  
 21                            *services of the sound recording artist as a*  
 22                            *sound recording artist; or*

23                            *(ii) an exclusive license to distribute or*  
 24                            *transmit 1 or more works that capture the*

1           *audio performance of the sound recording*  
 2           *artist.*

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

9           (3) *LIMITATION ON LIABILITY FOR PURELY COIN-*  
 10          *CIDENTAL RESEMBLANCE.*—

11           (A) *IN GENERAL.*—*An individual or entity*  
 12           *shall not be liable for engaging in an activity de-*  
 13           *scribed in subsection (c)(2)(A) if—*

14                   (i) *the resemblance of the voice or vis-*  
 15                   *ual likeness embodied in the applicable dig-*  
 16                   *ital replica to the voice or visual likeness of*  
 17                   *the actual individual is purely coincidental;*  
 18                   *and*

19                   (ii)(I) *the actual individual has not*  
 20                   *achieved public recognition; or*

21                   (II) *the voice or visual likeness of the*  
 22                   *actual individual does not have commercial*  
 23                   *value.*

24           (B) *DISCLAIMER NOT EVIDENCE.*—*A dis-*  
 25           *claimer regarding the resemblance of the voice or*



1       *visual likeness embodied in a digital replica to*  
 2       *the voice or visual likeness of any actual indi-*  
 3       *vidual shall not constitute evidence to support*  
 4       *the limitation under subparagraph (A).*

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

14       (5) *REMEDIES.—*

15       (A) *IN GENERAL.—In any civil action*  
 16       *brought under this subsection—*

17               (i) *an individual or entity found to*  
 18               *have committed a violation of subsection (c)*  
 19               *shall be liable to the injured party in an*  
 20               *amount equal to the greater of—*

21                       (I)(aa) *in the case of an indi-*  
 22                       *vidual, \$5,000 per work embodying the*  
 23                       *applicable unauthorized use of a dig-*  
 24                       *ital replica;*

1           (bb) in the case of a provider of  
2           an online service that has undertaken  
3           a good faith effort to implement all ap-  
4           plicable obligations of paragraphs (1)  
5           through (4) of subsection (d), \$25,000  
6           per work embodying the applicable un-  
7           authorized use of a digital replica;

8           (cc) in the case of a provider of  
9           an online service that has not under-  
10          taken a good faith effort to implement  
11          all applicable obligations of para-  
12          graphs (1) through (4) of subsection  
13          (d), \$5,000 per unauthorized display,  
14          copy made, transmission, and instance  
15          of the digital replica being made avail-  
16          able on the online service in a sum of  
17          not more than \$750,000 per work em-  
18          bodying the applicable unauthorized  
19          use of a digital replica; 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 appli-  
23          cable unauthorized use of a digital rep-  
24          lica; 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 found to  
 9                   have violated subsection (c) by virtue of en-  
 10                  gaging in an activity described in sub-  
 11                  section (c)(2)(B) shall be liable to the in-  
 12                  jured party in an amount equal to the  
 13                  greater of—

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

16                   (bb) in the case of a provider of  
 17                   an online service that has undertaken  
 18                   a good faith effort to implement all ap-  
 19                   plicable obligations of paragraphs (1)  
 20                   through (4) of subsection (d), \$25,000  
 21                   per product or service;

22                   (cc) in the case of a provider of  
 23                   an online service that has not under-  
 24                   taken a good faith effort to implement  
 25                   all applicable obligations of para-

- 1                    *graphs (1) through (4) of subsection*  
2                    *(d), \$750,000 per product or service; or*  
3                    *(dd) in the case of an entity that*  
4                    *is not a provider of an online service,*  
5                    *\$25,000 per product or service; 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                   *(iii) the plaintiff may seek injunctive*  
14                   *or other equitable relief;*  
15                   *(iv) in the case of willful activity in*  
16                   *which the injured party has proven that the*  
17                   *defendant acted with malice, fraud, knowl-*  
18                   *edge, or willful avoidance of knowledge that*  
19                   *the conduct violated the law, the court may*  
20                   *award to the injured party punitive dam-*  
21                   *ages; and*  
22                   *(v) if the prevailing party is—*  
23                   *(I) the party bringing the action,*  
24                   *the court shall award reasonable attor-*  
25                   *ney's fees; or*

1                   (II) the party defending the ac-  
 2                   tion, the court shall award reasonable  
 3                   attorney's fees if the court determines  
 4                   that the action was not brought in  
 5                   good faith.

6                   (B) OBJECTIVELY REASONABLE BELIEF.—A  
 7                   provider of an online service that has designated  
 8                   an agent under subsection (d)(2) and has an ob-  
 9                   jectively reasonable belief that material that is  
 10                  claimed to be a digital replica, the use of which  
 11                  is unauthorized, does not qualify as a digital  
 12                  replica shall be liable only for actual damages  
 13                  under subparagraph (A) if the material is ulti-  
 14                  mately determined to be a digital replica, the use  
 15                  of which is unauthorized.

16               (f) SUBPOENA TO IDENTIFY VIOLATOR.—

17               (1) REQUEST.—A right holder, an individual or  
 18               entity authorized to act on behalf of a right holder,  
 19               or an eligible plaintiff under subsection (e)(1) may  
 20               request the clerk of any district court of the United  
 21               States to issue a subpoena to a provider of an online  
 22               service for identification of an alleged violator of this  
 23               section in accordance with this subsection.

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

4                   (A) a copy of a notification described in  
 5           subsection (d)(3);

6                   (B) a proposed subpoena; and

7                   (C) a sworn declaration to the effect that—

8                           (i) the purpose of the subpoena is to  
 9                           obtain the identity of an individual or enti-  
 10                           ty alleged to be liable under subsection (c);  
 11                           and

12                           (ii) the information described in clause  
 13                           (i) will only be used for the purpose of pro-  
 14                           tecting rights under this section.

15           (3) *CONTENTS OF SUBPOENA.*—A subpoena  
 16           issued under this subsection shall authorize and order  
 17           the provider of the applicable online service to expedi-  
 18           tiously disclose to the party that sought the subpoena  
 19           information sufficient to identify the alleged violator  
 20           by virtue of the activity described in the notification  
 21           to the extent that information is available to the pro-  
 22           vider of the online service.

23           (4) *BASIS FOR GRANTING SUBPOENA.*—If a pro-  
 24           posed subpoena under this subsection is in proper  
 25           form, the applicable notification filed satisfies the re-

1        *quirements under subsection (d)(3), and the accom-*  
 2        *panying declaration is properly executed, the clerk*  
 3        *shall expeditiously issue and sign the proposed sub-*  
 4        *poena and return the subpoena to the requester for de-*  
 5        *livery to the provider of the applicable online service.*

6        *(g) PREEMPTION.—*

7            *(1) IN GENERAL.—The rights established under*  
 8        *this section shall preempt any cause of action under*  
 9        *State law for the protection of an individual’s voice*  
 10        *and visual likeness rights in connection with a digital*  
 11        *replica, as defined in this section, in an expressive*  
 12        *work.*

13           *(2) RULE OF CONSTRUCTION.—Notwithstanding*  
 14        *paragraph (1), nothing in this section may be con-*  
 15        *strued to preempt—*

16                *(A) causes of action under State statutes or*  
 17        *common law in existence, as of January 2, 2025,*  
 18        *regarding a digital replica;*

19                *(B) causes of action under State statutes*  
 20        *specifically regulating a digital replica depicting*  
 21        *sexually explicit conduct, as defined in section*  
 22        *2256(2)(A) of title 18, United States Code, or an*  
 23        *election-related digital replica; or*

24                *(C) causes of action under State statutes or*  
 25        *common law in existence, as of January 2, 2025,*

1           *for the distributing, importing, transmitting, or*  
 2           *otherwise making available to the public a prod-*  
 3           *uct or service capable of producing 1 or more*  
 4           *digital replicas.*

5           *(h) RULES OF CONSTRUCTION.—*

6                 *(1) LAWS PERTAINING TO INTELLECTUAL PROP-*  
 7           *ERTY.—This section shall be considered to be a law*  
 8           *pertaining to intellectual property for the purposes of*  
 9           *section 230(e)(2) of the Communications Act of 1934*  
 10           *(47 U.S.C. 230(e)(2)).*

11                *(2) NO DUTY TO MONITOR.—Except as expressly*  
 12           *provided in subsection (d)(1)(B)(ii), nothing in this*  
 13           *section may be construed to require the provider of an*  
 14           *online service to—*

15                         *(A) monitor the online service for, or af-*  
 16                         *firmatively seek facts about, any digital replica;*  
 17                         *or*

18                         *(B) gain access to material.*

19                 *(i) SEVERABILITY.—If any provision of this section,*  
 20           *or the application of a provision of this section, is held to*  
 21           *be invalid, the validity of the remainder of this section, and*  
 22           *the application of that provision to other individuals, enti-*  
 23           *ties, and circumstances, shall not be affected by that hold-*  
 24           *ing.*

25                 *(j) RETROACTIVE EFFECT.—*



1           (1) *LIABILITIES.—Liability under this section*  
2           *shall apply only to—*

3                   (A) *conduct occurring after the date of en-*  
4                   *actment of this Act; and*

5                   (B) *in the case of conduct covered by a li-*  
6                   *cence or contract, a license or contract that is ex-*  
7                   *ecuted after the date of enactment of this Act.*

8           (2) *DIGITAL REPLICATION RIGHT.—The right*  
9           *granted under subsection (b)—*

10                   (A) *shall apply to any individual, regard-*  
11                   *less of whether the individual dies before, on, or*  
12                   *after the date of enactment of this Act; and*

13                   (B) *in the case of a right holder who has*  
14                   *died before the date of enactment of this Act,*  
15                   *shall vest in the executors, heirs, assignees, or*  
16                   *devisees of the right holder.*

17           (k) *EFFECTIVE DATE.—This section shall take effect*  
18           *on the date that is 180 days after the date of enactment*  
19           *of this Act.*

Calendar No. 446

119<sup>TH</sup> CONGRESS  
2D Session

**S. 4591**

**A BILL**

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

JUNE 24, 2026

Reported with an amendment