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

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

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*]

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-

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

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

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

9 (ii) DIRECTORY.—The Register of
10 Copyrights—

11 (I) shall—

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

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

20 (II) may require payment of a
21 reasonable filing fee by the right hold-
22 er filing notice under clause (i), which
23 may take into consideration the costs
24 of maintaining the directory described
25 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 (H) 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 (H) 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.

1 (5) ADDITIONAL EXCLUSIONS.—

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

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

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

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

23 (II) the digital replica is em-
24 bodied in a musical sound recording
25 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

material or cease disabling access to that material—

(aa) takes reasonable steps to promptly provide the individual or entity that provided the applicable notification under paragraph (3) with a copy of the counter-notification; and

(bb) not less than 14 days after the date on which the provider receives that counter-notification, replaces the removed material or ceases disabling access to that material, unless an eligible plaintiff described in subsection (c) brings an action under that subsection, in which case the provider shall remove the material or disable access to the material as soon as is technologically and practically feasible for the provider.

(2) DESIGNATED AGENT.—

(A) DESIGNATION.—

(i) IN GENERAL.—A provider of an online service described in clause (i) or (ii) of subsection (a)(5)(A) shall, and a provider 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

for inspection; including through the internet; and

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

(C) EFFECT OF FAILURE TO DESIGNATE.—There shall be established a presumption that a provider of an online service described in subparagraph (A)(i) has not undertaken a good faith effort to comply with this subsection if the provider has failed to register a designated agent under this paragraph by the later of—

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

(ii) the date that is 90 days after the date on which the provider becomes a provider described in subparagraph (A)(i).

(3) ELEMENTS OF NOTIFICATION.—To be effective under this subsection, a notification of a claimed violation of the right described in subsection (b) shall be a written communication provided to the 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 (II) 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*

1 placed on a service directly by, or at the direc-
 2 tion of, a consumer end user of a service; and

3 (B) does not include material that is—

4 (i) embodied in a video game; and

5 (ii) generated or customized by a con-
 6 sumer end user of that video game.

7 (b) *DIGITAL REPLICATION RIGHT.*—

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

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

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

19 (2) *NATURE OF RIGHT.*—

20 (A) *IN GENERAL.*—The right described in
 21 paragraph (1) shall have the following character-
 22 istics:

23 (i) The right is—

24 (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

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

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

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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 *cense 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

119TH CONGRESS
2^D 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