

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—119th Cong., 2d Sess.

S. 4591

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. COONS (for himself and Mrs.
BLACKBURN)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

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

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

8 (a) DEFINITIONS.—In this section:

9 (1) DIGITAL FINGERPRINT.—The term “digital
10 fingerprint” means an electronic label or identifier
11 created by a cryptographic hash function (or similar

1 function), or any other digital process, tool, or tech-
2 nique selected by the provider of an online service,
3 that is unique to a specific piece of material such
4 that it is effectively certain that such piece of mate-
5 rial will not be misidentified as a match for a dif-
6 ferent piece of material.

7 (2) DIGITAL REPLICA.—The term “digital rep-
8 lica”—

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

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

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

19 (II) that is a version of a sound
20 recording, image, or audiovisual work
21 in which the actual individual did per-
22 form or appear, in which the funda-
23 mental character of the performance
24 or appearance has been materially al-
25 tered; and

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

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

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

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

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

19 (5) ONLINE SERVICE.—The term “online serv-
20 ice”—

21 (A) means—

22 (i) any website, online application,
23 mobile application, or virtual reality envi-
24 ronment that predominantly provides pub-
25 lic access to user uploaded material;

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

11 (iii) any online application, mobile ap-
12 plication, virtual reality environment, ap-
13 plication store, search engine (including
14 any feature that provides web search re-
15 sults), advertising service or network, on-
16 line shopping service or platform, elec-
17 tronic commerce provider, mapping service,
18 cloud storage service, aggregator of visual
19 and audiovisual works for licensing, or
20 website hosting service or any other inter-
21 active computer service that is not covered
22 under clause (i), and is not a digital music
23 provider to which section 115 of title 17,
24 United States Code, applies, but only if the
25 provider of that interactive computer serv-

1 ice has registered a designated agent with
2 the Copyright Office under subsection
3 (d)(2); and

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

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

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

20 (B) any other individual or entity that has
21 acquired, through a license, inheritance, or oth-
22 erwise, the right to authorize the use of the
23 voice or visual likeness described in subpara-
24 graph (A).

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

5 (8) USER UPLOADED MATERIAL.—The term
6 “user uploaded material”—

7 (A) means material, such as a video,
8 image, audio file, or other similar material, that
9 is placed on a service directly by, or at the di-
10 rection of, a consumer end user of a service;
11 and

12 (B) does not include material that is—

13 (i) embodied in a video game; and

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

16 (b) DIGITAL REPLICATION RIGHT.—

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

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

22 (B) the use of the voice or visual likeness
23 of the individual in connection with a product
24 or service for which authorization of the indi-
25 vidual or right holder is required to avoid liabil-

1 ity with respect to an activity described in sub-
2 section (c)(2)(B).

3 (2) NATURE OF RIGHT.—

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

7 (i) The right is—

8 (I) a property right;

9 (II) not assignable during the life
10 of the individual, including through
11 involuntary transfer, such as by
12 means of bankruptcy, levy, lien en-
13 forcement, court order, or other legal
14 process; and

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

18 (ii) The right shall not expire upon
19 the death of the individual, without regard
20 to whether the right is commercially ex-
21 ploited by the individual during the life-
22 time of the individual.

23 (iii) Upon the death of the indi-
24 vidual—

1 (I) the right is transferable and
2 licensable, in whole or in part, by the
3 executors, heirs, assignees, licensees,
4 or devisees of the individual; and

5 (II) ownership of the right may
6 be—

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

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

14 (iv)(I) The right shall be exclusive
15 to—

16 (aa) the individual, subject to the
17 licensing of the right during the life-
18 time of that individual under subpara-
19 graph (B); and

20 (bb) the right holder—

21 (AA) for a period of 10
22 years after the death of the indi-
23 vidual; and

24 (BB) if the right holder
25 demonstrates active and author-

1 ized public use of the voice or vis-
2 ual likeness of the individual in
3 interstate or foreign commerce
4 during the 2-year period pre-
5 ceding the expiration of the 10-
6 year period described in subitem
7 (AA), for an additional 5-year pe-
8 riod, subject to renewal for addi-
9 tional 5-year periods, provided
10 the right holder can demonstrate
11 authorized public use of the voice
12 or visual likeness of the indi-
13 vidual in interstate or foreign
14 commerce during the 2-year pe-
15 riod preceding the expiration of
16 each additional 5-year period.

17 (II) The commercial availability of a
18 sound recording or audiovisual work in
19 which the voice or visual likeness of an in-
20 dividual is readily identifiable shall con-
21 stitute active and authorized public use of
22 that voice or visual likeness for the pur-
23 poses of subclause (I)(bb)(BB).

24 (v) The right shall terminate on the
25 date that is the earlier of—

1 (I) the date on which the 10-year
2 period or 5-year period described in
3 clause (iv)(I)(bb) terminates without
4 renewal; or

5 (II) the date that is 70 years
6 after the death of the individual.

7 (B) REQUIREMENTS FOR LICENSE.—

8 (i) IN GENERAL.—A license described
9 in subparagraph (A)(i)(III)—

10 (I) while the applicable individual
11 is living, is valid only to the extent
12 that the license duration does not ex-
13 ceed 10 years; and

14 (II) shall be valid only if the li-
15 cense agreement—

16 (aa) is in writing and signed
17 by—

18 (AA) the applicable in-
19 dividual; or

20 (BB) in the case of a
21 deceased individual, the
22 right holder or an author-
23 ized representative of the
24 right holder; and

1 (bb) includes a reasonably
2 specific description of the in-
3 tended uses of the applicable dig-
4 ital replica.

5 (ii) LICENSES INVOLVING A MINOR.—

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

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

14 (II) shall be valid only if the li-
15 cense agreement—

16 (aa) is in writing and signed
17 by the individual or an author-
18 ized representative of the indi-
19 vidual;

20 (bb) includes a reasonably
21 specific description of the in-
22 tended uses of the digital replica;
23 and

1 (cc) is approved by a court
2 in accordance with applicable
3 State law.

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

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

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

24 (D) REGISTRATION FOR POST-MORTEM RE-
25 NEWAL.—

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

12 (I) the name of the deceased in-
13 dividual;

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

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

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

1 (ii) DIRECTORY.—The Register of
2 Copyrights—

3 (I) shall—

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

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

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

18 (iii) VOLUNTARY INITIAL REGISTRA-
19 TION.—

20 (I) IN GENERAL.—A right holder
21 may voluntarily register the post-
22 mortem right under subparagraph
23 (A)(iv)(I)(bb)(AA) by filing a notice
24 with the Register of Copyrights that
25 complies with such requirements re-

1 garding form, content, and filing pro-
2 cedures as the Register of Copyrights
3 may prescribe by regulation.

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

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

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

20 (iv) INITIAL POST-MORTEM REGISTRA-
21 TION FOR INDIVIDUALS DECEASED 8
22 YEARS OR LONGER AS OF DATE OF ENACT-
23 MENT.—Notwithstanding any other provi-
24 sion of this paragraph—

1 (I) with respect to an individual
2 who died not fewer than 10 years be-
3 fore the date of enactment of this Act,
4 the applicable right holder may, not
5 later than 90 days after the effective
6 date of this section, voluntarily reg-
7 ister the post-mortem right under
8 subparagraph (A)(iv)(I)(bb)(BB) by
9 filing with the Register of Copyrights
10 a notice that complies with such re-
11 quirements as the Register of Copy-
12 rights may prescribe by regulation
13 under clause (i), if the right holder
14 demonstrates the required authorized
15 public use of the voice or visual like-
16 ness of the individual in interstate or
17 foreign commerce during the 2-year
18 period preceding the date of enact-
19 ment of this Act, subject to protection
20 during the periods of exclusivity and
21 termination under clauses (iv) and (v)
22 of subparagraph (A); and
23 (II) with respect to an individual
24 who died not fewer than 8, and fewer
25 than 10, years before the date of en-

1 actment of this Act, the applicable
2 right holder may file a notice under
3 clause (i) or subclause (I) of this
4 clause.

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

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

20 (c) LIABILITY.—

21 (1) IN GENERAL.—Any individual or entity
22 that, in a manner affecting interstate or foreign
23 commerce (or using any means or facility of inter-
24 state or foreign commerce), engages in an activity

1 described in paragraph (2) shall be liable in a civil
2 action brought under subsection (e).

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

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

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

15 (i) is primarily designed to produce 1
16 or more digital replicas of a specifically
17 identified individual or individuals without
18 the authorization of—

19 (I) such individual or individuals;

20 (II) the applicable right holder;

21 or

22 (III) the law;

23 (ii) has only limited commercially sig-
24 nificant purpose or use other than to
25 produce a digital replica of a specifically

1 identified individual or individuals without
2 the authorization of—

3 (I) such individual or individuals;

4 (II) the applicable right holder;

5 or

6 (III) the law; or

7 (iii) is marketed, advertised, or other-
8 wise promoted by the individual or entity
9 described in paragraph (1), or another in-
10 dividual or entity acting in concert with
11 the individual or entity described in para-
12 graph (1) with the knowledge of the indi-
13 vidual or entity described in paragraph (1),
14 as a product or service designed to produce
15 a digital replica of a specifically identified
16 individual or individuals without the au-
17 thorization of—

18 (I) such individual or individuals;

19 (II) the applicable right holder;

20 or

21 (III) the law.

22 (3) NOTICE OR KNOWLEDGE REQUIRED.—To
23 incur liability under this subsection, the following
24 shall apply:

(A)(i) With respect to an activity carried out under paragraph (2) by the provider of an online service described in clause (ii), the designated agent with respect to the provider must have received a notification that satisfies the requirements under subsection (d)(3), or a court order stating, or must have willfully avoided receipt of such a notification or court order, that the applicable material is—

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

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

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

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

(II) described in subsection (a)(5)(A)(ii), with respect to sound recordings that are predominantly the fixation of sounds of a performance of a musical composition and are user uploaded material; or

(III) described in subsection (a)(5)(A)(iii), with respect to material

1 placed on that online service by or at the
2 direction of a third party.

3 (B) With respect to an activity carried out
4 under paragraph (2) by an individual or entity
5 that is not an online service, or an activity car-
6 ried out under paragraph (2) by the provider of
7 an online service that is not described in sub-
8 paragraph (A)(ii), the individual or entity must
9 have actual knowledge, or must willfully avoid
10 having such knowledge, that the applicable ma-
11 terial is—

12 (i) a digital replica, the use of which
13 was not authorized by the applicable right
14 holder; or

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

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

19 (A) a service by wire or radio that provides
20 the capability to transmit data to and receive
21 data from all, or substantially all, internet
22 endpoints, including any capabilities that are
23 incidental to enable the operation of the com-
24 munications service of a provider of online serv-

ices 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—

(i) it is not technologically or practically feasible for that provider to disable access to the offending material, or disable the reference or link to that material, at the specific location identified in the applicable notification sent under subsection (d)(3); or

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

(C) a nonprofit library or archives—

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

(ii) the collections of which are—

(I) open to the public; or

(II) available not only to researchers affiliated with the library or archives, or with the institution of which the library or archives is a part,

1 but also to other persons doing re-
2 search in a specialized field;

3 (iii) that has a public service mission;

4 (iv) the trained staff or volunteers of
5 which provide professional services nor-
6 mally associated with libraries and ar-
7 chives; and

8 (v) the collections of which are com-
9 posed of lawfully acquired or licensed ma-
10 terials that are made available consistent
11 with the requirements of title 17, United
12 States Code;

13 (D) an accredited nonprofit educational in-
14 stitution with respect to an activity undertaken
15 without any purpose of direct or indirect com-
16 mercial advantage;

17 (E) an employee of an institution described
18 in subparagraph (C) or (D) acting within the
19 scope of the employment of that individual;

20 (F) any other person solely with respect to
21 providing online or network access services to
22 an institution described in subparagraph (C) or
23 (D) in the course of providing those services to
24 that institution; or

1 (G) an individual or entity that is not an
2 online service, if, upon obtaining actual knowl-
3 edge of an activity described in paragraph (2),
4 the individual or entity acts as soon as techno-
5 logically and practically feasible to remove or
6 disable access to the applicable material.

7 (5) ADDITIONAL EXCLUSIONS.—

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

11 (i) the applicable digital replica is
12 used in a bona fide news, public affairs, or
13 sports broadcast or account, provided that
14 the digital replica is the subject of, or is
15 materially relevant to, the subject of that
16 broadcast or account;

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

23 (I) the use of that digital replica
24 creates the false impression that the
25 work is an authentic sound recording,

1 image, transmission, or audiovisual
2 work in which the individual partici-
3 pated; or

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

12 (iii) the applicable digital replica is
13 used consistent with the public interest in
14 bona fide commentary, criticism, scholar-
15 ship, satire, or parody;

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

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

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

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

11 (d) SAFE HARBORS.—

12 (1) IN GENERAL.—

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

22 (B) ONLINE SERVICES.—The provider of
23 an online service shall not be liable for an activ-
24 ity that violates subsection (c), or for referring
25 or linking to the material embodying an unau-

1 thorized digital replica or a product or service
2 described in subsection (c)(2)(B), if—

3 (i) for the provider of an online serv-
4 ice described in subsection (a)(5)(A)(iii)
5 (other than a search engine or a search
6 component of a service), the provider has
7 adopted and reasonably implemented, and
8 has informed users of the online service of,
9 a policy that provides for the termination
10 in appropriate circumstances of account
11 holders of the online service that are re-
12 peat violators of subsection (c)(2), provided
13 that the failure to terminate a particular
14 account holder in accordance with that pol-
15 icy shall subject the provider of the online
16 service to potential liability only with re-
17 spect to violating content posted by that
18 account holder; and

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

22 (aa) removes or disables access to
23 the work embodying the claimed un-
24 authorized use of a digital replica or
25 the product or service specifically

1 identified in a notice sent under that
2 paragraph, or, as applicable, the link
3 or reference to the unauthorized use
4 of a digital replica or product or serv-
5 ice, as soon as is technologically and
6 practically feasible for that provider;

7 (bb) for the provider of an online
8 service described in subsection
9 (a)(5)(A)(i), as soon as is techno-
10 logically and practically feasible for
11 that provider, removes or disables ac-
12 cess to all other publicly available in-
13 stances of the work embodying the
14 claimed unauthorized use of a digital
15 replica that—

16 (AA) match the digital fin-
17 gerprint of an unauthorized use
18 of a digital replica specifically
19 identified in a notification sent
20 under paragraph (3); and

21 (BB) are uploaded after
22 valid, applicable notice was sub-
23 mitted to, and processed by, the
24 provider;

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

14 (AA) match the digital fin-
15 gerprint of an unauthorized use
16 of a digital replica specifically
17 identified in a notification sent
18 under paragraph (3); and

19 (BB) are uploaded after
20 valid, applicable notice was sub-
21 mitted to, and processed by, the
22 provider; and

23 (dd) takes reasonable steps to
24 promptly notify the right holder, and
25 the party that placed the material on

1 the online service, that the online
2 service removed or disabled access to
3 the material; and

4 (II) the provider, in the case that the
5 provider receives a counter-notification
6 that satisfies the requirements under para-
7 graph (4) and opts to replace the removed
8 material or cease disabling access to that
9 material—

10 (aa) takes reasonable steps to
11 promptly provide the individual or en-
12 tity that provided the applicable noti-
13 fication under paragraph (3) with a
14 copy of the counter-notification; and

15 (bb) not less than 14 days after
16 the date on which the provider re-
17 ceives that counter-notification, re-
18 places the removed material or ceases
19 disabling access to that material, un-
20 less an eligible plaintiff described in
21 subsection (e) brings an action under
22 that subsection, in which case the pro-
23 vider shall remove the material or dis-
24 able access to the material as soon as

1 is technologically and practically fea-
2 sible for the provider.

3 (2) DESIGNATED AGENT.—

4 (A) DESIGNATION.—

5 (i) IN GENERAL.—A provider of an
6 online service described in clause (i) or (ii)
7 of subsection (a)(5)(A) shall, and a pro-
8 vider of an online service that is described
9 in subsection (a)(5)(A)(iii) and is eligible
10 for registration may, register a designated
11 agent in accordance with this paragraph.

12 (ii) CONTENTS.—To designate an
13 agent under clause (i), the provider of an
14 online service shall make available through
15 that online service, in a location accessible
16 to the public, and provide to the Copyright
17 Office, substantially the following informa-
18 tion:

19 (I) The name, address, telephone
20 number, and electronic mail address
21 of the agent.

22 (II) Other contact information
23 that the Register of Copyrights may
24 determine appropriate.

1 (B) DIRECTORY.—The Register of Copy-
2 rights—

3 (i) shall—

4 (I) maintain a current directory
5 of designated agents for the purposes
6 of this paragraph; and

7 (II) make the directory described
8 in subclause (I) available to the public
9 for inspection, including through the
10 internet; and

11 (ii) may require payment of a fee by
12 the provider of an online service to cover
13 the costs of maintaining the directory de-
14 scribed in clause (i)(I).

15 (C) EFFECT OF FAILURE TO DES-
16 IGNATE.—There shall be established a presump-
17 tion that a provider of an online service de-
18 scribed in subparagraph (A)(i) has not under-
19 taken a good faith effort to comply with this
20 subsection if the provider has failed to register
21 a designated agent under this paragraph by the
22 later of—

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

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

4 (3) ELEMENTS OF NOTIFICATION.—To be effec-
5 tive under this subsection, a notification of a claimed
6 violation of the right described in subsection (b)
7 shall be a written communication provided to the
8 designated agent registered under this subsection
9 with respect to the applicable provider of an online
10 service that includes the following:

11 (A) A physical or electronic signature of
12 the right holder, an individual or entity author-
13 ized to act on behalf of the right holder, or an
14 eligible plaintiff under subsection (e)(1).

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

20 (C) Identification of the material embody-
21 ing an unauthorized use of a digital replica or
22 a product or service described in subsection
23 (c)(2)(B), including information sufficient to
24 allow the provider to locate the identified mate-
25 rial.

1 (D) Information reasonably sufficient to
2 permit the provider to contact the notifying
3 party, such as an address, telephone number,
4 and email address.

5 (E) A statement that the notifying party
6 believes in good faith that—

7 (i) the material is—

8 (I) a digital replica, the use of
9 which is unauthorized; or

10 (II) a product or service de-
11 scribed in subsection (c)(2)(B); and

12 (ii) the exclusions under subsection
13 (c)(5) do not apply.

14 (F) If not the right holder or an eligible
15 plaintiff under subsection (e)(1), a statement,
16 under penalty of perjury, that the notifying
17 party has the authority to act on behalf of the
18 right holder.

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

21 (i) identify the reference or link to the
22 material or activity claimed to be or em-
23 bodying an unauthorized use of a digital
24 replica, or a product or service described in

1 subsection (c)(2)(B), that is to be removed
2 or to which access is to be disabled; and
3 (ii) permit the provider to locate the
4 reference or link described in clause (i).

5 (4) ELEMENTS OF COUNTER-NOTIFICATION.—
6 To be effective under this subsection, a counter-noti-
7 fication with respect to a notification provided under
8 paragraph (3) shall be a written communication that
9 satisfies the following:

10 (A) The counter-notification is provided—

11 (i) to the designated agent of the on-
12 line service provider to which that notifica-
13 tion was submitted under paragraph (3);
14 and

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

17 (B) The counter notification includes the
18 following:

19 (i) A physical signature, witnessed or
20 attested to in person by a licensed notary
21 public, of the individual or entity that
22 placed the applicable material on the online
23 service.

24 (ii) An identification of the material
25 that has been removed or to which access

1 has been disabled and the location at
2 which the material appeared before the
3 material was removed or access to the ma-
4 terial was disabled.

5 (iii) Information that is reasonably
6 sufficient to permit the provider of the on-
7 line service and the individual or entity
8 that provided the notification under para-
9 graph (3) to contact the party providing
10 the counter-notification, including an ad-
11 dress, telephone number, and email ad-
12 dress.

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

24 (I) is not a digital replica;

1 (II) is an authorized use of a dig-
2 ital replica; or

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

13 (v) A statement that the individual or
14 entity that placed the applicable material
15 on the online service—

16 (I) consents to the jurisdiction of
17 the district court of the United States
18 for the judicial district in which the
19 address provided under clause (iii) is
20 located (or, if that address is outside
21 of the United States, for any judicial
22 district of the United States in which
23 that individual or entity may be
24 found); and

1 (II) will accept service of process
2 from—

3 (aa) the individual or entity
4 that provided notification under
5 paragraph (3); or

6 (bb) an agent of the indi-
7 vidual or entity described in item
8 (aa).

9 (5) PENALTIES FOR FALSE OR DECEPTIVE NO-
10 TICE.—

11 (A) KNOWING MATERIAL REPRESENTA-
12 TIONS.—

13 (i) IN GENERAL.—It shall be unlawful
14 to knowingly materially misrepresent—

15 (I) in a notification provided
16 under paragraph (3)—

17 (aa) that the material re-
18 quested to be removed, or access
19 to which is requested to be dis-
20 abled, is a digital replica, the use
21 of which is unauthorized;

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

1 (cc) that an individual or en-
2 tity 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)—

6 (aa) that the material re-
7 moved, or to which access was
8 disabled—

9 (AA) was removed or
10 disabled by mistake or
11 misidentification;

12 (BB) is not a digital
13 replica; or

14 (CC) is subject to an
15 exclusion under subsection
16 (c)(5), a limitation on liabil-
17 ity under subsection (e)(3),
18 or any other valid legal de-
19 fense.

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

1 a counter-notification under paragraph (4),
2 shall constitute a knowing material mis-
3 representation under this subparagraph.

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

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

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

23 (II) any costs and attorney's fees in-
24 curred by the applicable recipient of a noti-
25 fication under paragraph (3), or a counter-

1 notification under paragraph (4), that pre-
2 vails in an action alleging that the notifica-
3 tion or counter-notification, as applicable,
4 was false or deceptive.

5 (e) CIVIL ACTION.—

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

11 (A) the applicable right holder;

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

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

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

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

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

7 (3) LIMITATION ON LIABILITY FOR PURELY CO-
8 INCIDENTAL RESEMBLANCE.—

9 (A) IN GENERAL.—An individual or entity
10 shall not be liable for engaging in an activity
11 described in subsection (c)(2)(A) if—

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

17 (ii)(I) the actual individual has not
18 achieved public recognition; or

19 (II) the voice or visual likeness of the
20 actual individual does not have commercial
21 value.

22 (B) DISCLAIMER NOT EVIDENCE.—A dis-
23 claimer regarding the resemblance of the voice
24 or visual likeness embodied in a digital replica
25 to the voice or visual likeness of any actual in-

1 dividual shall not constitute evidence to support
2 the limitation under subparagraph (A).

(4) DEFENSE NOT PERMITTED.—It shall not be a defense in a civil action brought under this subsection that the defendant displayed or otherwise communicated to the public a disclaimer stating that the applicable use of a digital replica, or the applicable product or service described in subsection (c)(2)(B), was unauthorized or disclosed that the digital replica, product, or service was generated through the use of artificial intelligence or other technology.

13 (5) REMEDIES.—

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

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

(I)(aa) in the case of an individual, \$5,000 per work embodying the applicable unauthorized use of a digital replica;

(bb) in the case of a provider of
an online service that has undertaken

1 a good faith effort to implement all
2 applicable obligations of paragraphs
3 (1) through (4) of subsection (d),
4 \$25,000 per work embodying the ap-
5 plicable unauthorized use of a digital
6 replica;

7 (cc) in the case of a provider of
8 an online service that has not under-
9 taken a good faith effort to implement
10 all applicable obligations of para-
11 graphs (1) through (4) of subsection
12 (d), \$5,000 per unauthorized display,
13 copy made, transmission, and instance
14 of the digital replica being made avail-
15 able on the online service in a sum of
16 not more than \$750,000 per work em-
17 bodying the applicable unauthorized
18 use of a digital replica; and

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

24 (II) any actual damages suffered
25 by the injured party as a result of the

1 activity, plus any profits from the un-
2 authorized use that are attributable to
3 such use and are not taken into ac-
4 count in computing the actual dam-
5 ages;

6 (ii) an individual or entity found to
7 have violated subsection (c) by virtue of
8 engaging in an activity described in sub-
9 section (c)(2)(B) shall be liable to the in-
10 jured party in an amount equal to the
11 greater of—

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

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

20 (cc) in the case of a provider of
21 an online service that has not under-
22 taken a good faith effort to implement
23 all applicable obligations of para-
24 graphs (1) through (4) of subsection

1 (d), \$750,000 per product or service;
2 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
17 the defendant acted with malice, fraud,
18 knowledge, or willful avoidance of knowl-
19 edge that the conduct violated the law, the
20 court may award to the injured party puni-
21 tive damages; and

22 (v) if the prevailing party is—

23 (I) the party bringing the action,
24 the court shall award reasonable at-
25 torney'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.—

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

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

13 (ii) the information described in
14 clause (i) will only be used for the purpose
15 of protecting rights under this section.

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

24 (4) BASIS FOR GRANTING SUBPOENA.—If a
25 proposed subpoena under this subsection is in proper

1 form, the applicable notification filed satisfies the re-
2 quirements under subsection (d)(3), and the accom-
3 panying declaration is properly executed, the clerk
4 shall expeditiously issue and sign the proposed sub-
5 poena and return the subpoena to the requester for
6 delivery to the provider of the applicable online serv-
7 ice.

8 (g) PREEMPTION.—

9 (1) IN GENERAL.—The rights established under
10 this section shall preempt any cause of action under
11 State law for the protection of an individual’s voice
12 and visual likeness rights in connection with a dig-
13 ital replica, as defined in this section, in an expres-
14 sive work.

15 (2) RULE OF CONSTRUCTION.—Notwith-
16 standing paragraph (1), nothing in this section may
17 be construed to preempt—

18 (A) causes of action under State statutes
19 or common law in existence, as of January 2,
20 2025, regarding a digital replica;

21 (B) causes of action under State statutes
22 specifically regulating a digital replica depicting
23 sexually explicit conduct, as defined in section
24 2256(2)(A) of title 18, United States Code, or
25 an election-related digital replica; or

1 (C) causes of action under State statutes
2 or common law in existence, as of January 2,
3 2025, for the distributing, importing, transmit-
4 ting, or otherwise making available to the public
5 a product or service capable of producing 1 or
6 more digital replicas.

7 (h) RULES OF CONSTRUCTION.—

8 (1) LAWS PERTAINING TO INTELLECTUAL
9 PROPERTY.—This section shall be considered to be a
10 law pertaining to intellectual property for the pur-
11 poses of section 230(e)(2) of the Communications
12 Act of 1934 (47 U.S.C. 230(e)(2)).

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

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

20 (B) gain access to material.

21 (i) SEVERABILITY.—If any provision of this section,
22 or the application of a provision of this section, is held
23 to be invalid, the validity of the remainder of this section,
24 and the application of that provision to other individuals,

1 entities, and circumstances, shall not be affected by that
2 holding.

3 (j) RETROACTIVE EFFECT.—

4 (1) LIABILITIES.—Liability under this section
5 shall apply only to—

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

8 (B) in the case of conduct covered by a li-
9 cense or contract, a license or contract that is
10 executed after the date of enactment of this
11 Act.

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

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

17 (B) in the case of a right holder who has
18 died before the date of enactment of this Act,
19 shall vest in the executors, heirs, assignees, or
20 devisees of the right holder.

21 (k) EFFECTIVE DATE.—This section shall take effect
22 on the date that is 180 days after the date of enactment
23 of this Act.