

118TH CONGRESS
2D SESSION

S. 4875

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

IN THE SENATE OF THE UNITED STATES

JULY 31, 2024

Mr. COONS (for himself, Mrs. BLACKBURN, Ms. KLOBUCHAR, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nurture Originals,
5 Foster Art, and Keep Entertainment Safe Act of 2024”
6 or the “NO FAKES Act of 2024”.

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

8 (a) DEFINITIONS.—In this section:

9 (1) DIGITAL REPLICA.—The term “digital rep-
10 lica” means a newly-created, computer-generated,

highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that—

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

(i) in which the actual individual did not actually perform or appear; or

(ii) that is a version of a sound recording, image, or audiovisual work in which the actual individual did perform or appear, in which the fundamental character of the performance or appearance has been materially altered; and

(B) does not include the electronic reproduction, use of a sample of one sound recording or audiovisual work into another, remixing, mastering, or digital remastering of a sound recording or audiovisual work authorized by the copyright holder.

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

(3) ONLINE SERVICE.—The term “online service” means—

(A)(i) any public-facing website, online application, mobile application, or virtual reality environment that predominantly provides a community forum for user generated content, such as sharing videos, images, games, audio files, or other material; or

(ii) a digital music provider, as defined in section 115(e) of title 17, United States Code; and

(B) may include a social media service, social network, or application store; provided, however, that the term does not include 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.

(4) PRODUCTION.—The term “production” means the creation of a digital replica.

(5) RIGHT HOLDER.—The term “right holder” means the individual whose voice or visual likeness is at issue with respect to a digital replica and any other person that has acquired, through a license,

1 inheritance, or otherwise, the right to authorize the
 2 use of such voice or visual likeness in a digital rep-
 3 lica.

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

8 (b) DIGITAL REPLICATION RIGHT.—

9 (1) IN GENERAL.—Subject to the other provi-
 10 sions of this section, each individual or right holder
 11 shall have the right to authorize the use of the voice
 12 or visual likeness of the individual in a digital rep-
 13 lica.

14 (2) NATURE OF RIGHT.—

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

18 (i) The right is—

19 (I) a property right;

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

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

1 (ii) The right shall not expire upon
2 the death of the individual, without regard
3 to whether the right is commercially ex-
4 ploited by the individual during the indi-
5 vidual's lifetime.

6 (iii) Upon the death of the indi-
7 vidual—

8 (I) the right is transferable and
9 licensable, in whole or in part, by the
10 executors, heirs, assigns, licensees, or
11 devisees of the individual; and

12 (II) ownership of the right may
13 be—

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

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

21 (iv) The right shall be exclusive to—

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

1 (II) the right holder—

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

5 (bb) if the right holder dem-
6 onstrates active and authorized
7 public use of the voice or visual
8 likeness of the individual during
9 the 2-year period preceding the
10 expiration of the 10-year period
11 described in item (aa), for an ad-
12 ditional 5-year period, subject to
13 renewal for additional 5-year pe-
14 riods, provided the right holder
15 can demonstrate authorized pub-
16 lic use of the voice or visual like-
17 ness of the individual during the
18 2-year period preceding the expi-
19 ration of each additional 5-year
20 period.

21 (v) The right shall terminate on the
22 date that is the earlier of—

23 (I) the date on which the 10-year
24 period or 5-year period described in

1 clause (iv)(II) terminates without re-
2 newal; or

3 (II) the date that is 70 years
4 after the death of the individual.

5 (B) REQUIREMENTS FOR LICENSE.—

6 (i) IN GENERAL.—A license described
7 in subparagraph (A)(i)(III)—

8 (I) while the individual is living,
9 is valid only to the extent that the li-
10 cense duration does not exceed 10
11 years; and

12 (II) shall be valid only if the li-
13 cense agreement—

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

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

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

1 (I) is valid only to the extent that
 2 the license duration does not exceed 5
 3 years, but in any case terminates
 4 when the individual reaches 18 years
 5 of age;

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

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

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

16 (III) the license is approved by a
 17 court in accordance with applicable
 18 State law.

19 (iii) COLLECTIVE BARGAINING AGREE-
 20 MENTS.—The provisions of clauses (i) and
 21 (ii) shall not apply if the license is gov-
 22 erned by a collective bargaining agreement
 23 that addresses digital replicas.

24 (iv) LIMITATION.—The provisions of
 25 clauses (i) and (ii) shall not affect terms

1 and conditions of a license or related con-
2 tract other than those described in this
3 subparagraph, and the expiration of such
4 license does not affect the remainder of the
5 license or related contract.

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

13 (D) REGISTRATION FOR POST-MORTEM RE-
14 NEWAL.—

15 (i) IN GENERAL.—The renewal of a
16 post-mortem right under subparagraph
17 (A)(iv)(II)(bb) shall be effective if, during
18 the applicable 2-year renewal period speci-
19 fied in that subparagraph, the right holder
20 files a notice with the Register of Copy-
21 rights that complies with such require-
22 ments regarding form and filing proce-
23 dures as the Register of Copyrights may
24 prescribe by regulation and that con-
25 tains—

1 (I) the name of the deceased in-
2 dividual;

3 (II) a statement, under penalty
4 of perjury, that the right holder has
5 engaged in active and authorized pub-
6 lic use of the voice or visual likeness
7 during the applicable 2-year period;

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

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

13 (ii) DIRECTORY.—The Register of
14 Copyrights—

15 (I) shall—

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

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

24 (II) may require payment of a
25 reasonable filing fee by the registrant,

1 which may take into consideration the
 2 costs of maintaining the directory de-
 3 scribed in subclause (I).

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

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

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

18 (aa) include a voluntary reg-
 19 istration of the post-mortem
 20 right under subparagraph
 21 (A)(iv)(II)(aa) in the directory
 22 required by clause (ii)(I)(aa); and
 23 (bb) require payment of a
 24 reasonable filing fee by the reg-
 25 istrant, which may take into con-

1 sideration the costs of maintain-
2 ing 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 person that, in a man-
20 ner affecting interstate commerce (or using any
21 means or facility of interstate commerce), engages in
22 an activity described in paragraph (2) shall be liable
23 in a civil action brought under subsection (e).

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

1 (A) The production of a digital replica
2 without consent of the applicable right holder.

3 (B) The publication, reproduction, display,
4 distribution, transmission of, or otherwise mak-
5 ing available to the public, a digital replica
6 without consent of the applicable right holder.

7 (3) KNOWLEDGE REQUIRED.—To incur liability
8 under this subsection, a person engaging in an activ-
9 ity shall have actual knowledge, which could be ob-
10 tained through a notification that satisfies sub-
11 section (d)(3), or shall willfully avoid having such
12 knowledge, that—

13 (A) the applicable material is a digital rep-
14 lica; and

15 (B) the digital replica was not authorized
16 by the applicable right holder.

17 (4) EXCLUSIONS.—

18 (A) IN GENERAL.—It shall not be a viola-
19 tion of paragraph (1) if—

20 (i) the applicable digital replica is pro-
21 duced or used in a bona fide news, public
22 affairs, or sports broadcast or account,
23 provided that the digital replica is the sub-
24 ject of, or is materially relevant to, the
25 subject of such 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, un-
6 less—

7 (I) the production or use of that
8 digital replica creates the false im-
9 pression that the work is an authentic
10 sound recording, image, transmission,
11 or audiovisual work in which the indi-
12 vidual participated; or

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

21 (iii) the applicable digital replica is
22 produced or used consistent with the public
23 interest in bona fide commentary, criti-
24 cism, scholarship, satire, or parody;

1 (iv) the use of the applicable digital
2 replica is fleeting or negligible; or

3 (v) the applicable digital replica is
4 used in an advertisement or commercial
5 announcement for a purpose described in
6 any of clauses (i) through (iv) and the ap-
7 plicable digital replica is relevant to the
8 subject of the work so advertised or an-
9 nounced.

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

15 (d) SAFE HARBORS.—

16 (1) IN GENERAL.—

17 (A) PRODUCTS AND SERVICES CAPABLE OF
18 PRODUCING DIGITAL REPLICAS.—No person
19 shall be secondarily liable for a violation of this
20 section for manufacturing, importing, offering
21 to the public, providing, or otherwise distrib-
22 uting a product or service unless the product or
23 service—

24 (i) is primarily designed to produce 1
25 or more unauthorized digital replicas;

(ii) has only limited commercially significant purpose or use other than to produce an unauthorized digital replica; or

(iii) is marketed, advertised, or otherwise promoted by that person or another acting in concert with that person with that person's knowledge for use in producing an unauthorized digital replica.

(B) REFERRAL OR LINKING.—An online service shall not be liable for violating the right described in subsection (b) by referring or linking a user to an unauthorized digital replica, or by carrying out an activity described in subsection (c)(2), if, upon receiving a notification described in paragraph (3), the online service removes or disables access to the material that is claimed to be an unauthorized digital replica as soon as is technically and practically feasible for that online service.

(C) ONLINE SERVICES HOSTING USER-UPLOADED MATERIAL.—An online service shall not be liable for violating the right described in subsection (b) by storing third-party provided material that resides on a system or network controlled or operated by or for the online serv-

1 ice, if, upon receiving a notification that satis-
2 fies paragraph (3), the online service—

3 (i) removes, or disables access to, all
4 instances of the material (or an activity
5 using the material) that is claimed to be
6 an unauthorized digital replica as soon as
7 is technically and practically feasible for
8 that online service; and

9 (ii) having done so, takes reasonable
10 steps to promptly notify the third-party
11 that provided the material that the online
12 service has removed or disabled access to
13 the material.

14 (2) DESIGNATED AGENT.—

15 (A) IN GENERAL.—The limitations on li-
16 ability established under this subsection shall
17 apply to an online service only if the online
18 service has designated an agent to receive noti-
19 fications under paragraph (3), by making avail-
20 able through the online service, including on the
21 website of the online service in a location acces-
22 sible to the public, and by providing to the
23 Copyright Office, substantially the following in-
24 formation:

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

4 (ii) Other contact information that the
 5 Register of Copyrights may determine ap-
 6 propriate.

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
 12 of 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 online services to cover the costs of main-
 19 taining the directory described in clause
 20 (i)(I).

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

1 designated agent of an online service that includes
2 the following:

3 (A) A physical or electronic signature of
4 the right holder, a person authorized to act on
5 behalf of the right holder, or an eligible plaintiff
6 under subsection (e)(1).

7 (B) Identification of the individual, the
8 voice or visual likeness of whom is being used
9 in an unauthorized digital replica.

10 (C) Identification of the material con-
11 taining an unauthorized digital replica, includ-
12 ing information sufficient to allow the online
13 service to locate the allegedly unauthorized dig-
14 ital replica.

15 (D) Information reasonably sufficient to
16 permit the online service to contact the noti-
17 fying party, such as an address, telephone num-
18 ber, and electronic mail address.

19 (E) A statement that the notifying party
20 believes in good faith that the material is an
21 unauthorized use of a digital replica.

22 (F) If not the right holder or an eligible
23 plaintiff under subsection (e)(1), a statement
24 that the notifying party has the authority to act
25 on behalf of the right holder.

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

(i) identify the reference or link to the
material or activity claimed to be an unau-
thorized digital replica that is to be re-
moved or to which access is to be disabled;
and

(ii) permit the online service to locate
the reference or link described in clause
(i).

(4) PENALTIES FOR FALSE OR DECEPTIVE NO-
TICE.—

(A) IN GENERAL.—It shall be unlawful to
knowingly materially misrepresent under para-
graph (3)—

(i) that the material requested to be
removed is an unauthorized digital replica;

(ii) that a person has the authority to
act on behalf of the right holder; or

(iii) that a digital replica is not au-
thorized by the right holder or by other
law.

(B) PENALTIES.—Any person that violates
subparagraph (A) shall be liable for an amount
equal to the greater of—

- 1 (i) \$5,000; or
- 2 (ii) any actual damages, including
- 3 costs and attorney's fees, incurred by the
- 4 alleged violator, as well as by any online
- 5 service injured by the reliance of the online
- 6 service on the misrepresentation in remov-
- 7 ing or disabling access to the material or
- 8 activity claimed to be an unauthorized dig-
- 9 ital replica.

10 (e) CIVIL ACTION.—

11 (1) ELIGIBLE PLAINTIFFS.—A civil action for a

12 violation of this section may be brought by—

13 (A) a right holder;

14 (B) if the individual is younger than 18

15 years of age, a parent or guardian of the indi-

16 vidual;

17 (C) any other person that controls, includ-

18 ing by virtue of a license, the right to authorize

19 the use of the voice or visual likeness of the

20 right holder described in subparagraph (A);

21 (D) any other person that owns or controls

22 the right to authorize the use of the voice or

23 visual likeness of a deceased individual de-

24 scribed in subparagraph (A); or

(E) in the case of a digital replica involving a sound recording artist, any person that has, directly or indirectly, entered into—

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

(ii) an exclusive license to distribute or transmit 1 or more works that capture the audio performance of the sound recording artist.

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

(3) 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 digital replica was unauthorized or disclosing that the digital replica was generated through the use of artificial intelligence or other technology.

(4) REMEDIES.—

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

3 (i) an individual or entity that en-
4 gages in an activity described in subsection
5 (c)(2) 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 an entity that
12 is an online service, \$5,000 per viola-
13 tion; and

14 (cc) in the case of an entity that
15 is not an online service, \$25,000 per
16 work embodying the applicable unau-
17 thorized digital replica; or

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

1 (ii) the plaintiff may seek injunctive
2 or other equitable relief;

3 (iii) in the case of willful activity in
4 which the injured party has proven that
5 the defendant acted with malice, fraud,
6 knowledge, or willful avoidance of knowl-
7 edge that the conduct violated the law, the
8 court may award to the injured party puni-
9 tive damages; and

10 (iv) if the prevailing party is—

11 (I) the party bringing the action,
12 the court shall award reasonable at-
13 torney’s fees; or

14 (II) the party defending the ac-
15 tion, the court shall award reasonable
16 attorney’s fees if the court determines
17 that the action was not brought in
18 good faith.

19 (B) VIOLATION DEFINED.—For purposes
20 of this paragraph, “violation” means each dis-
21 play, copy made, transmission, and each in-
22 stance of the unauthorized digital replica being
23 otherwise made available on the online service,
24 unless the online service has taken reasonable
25 steps to remove, or disable access to, the unau-

1 thorized digital replica as soon as is technically
2 and practically feasible for the online service
3 upon acquiring knowledge as set forth in sub-
4 section (c)(3).

5 (C) OBJECTIVELY REASONABLE BELIEF.—

6 An online service that has an objectively reason-
7 able belief that material that is claimed to be
8 an unauthorized digital replica does not qualify
9 as a digital replica under subsection (a)(1) shall
10 not be liable for statutory or actual damages
11 exceeding \$1,000,000, regardless of whether the
12 material is ultimately determined to be an un-
13 authorized digital replica.

14 (D) REPLACEMENT OF REMOVED MATE-

15 RIAL.—In the event that the third-party that
16 provided the material that the online service
17 has removed or to which the online service has
18 disabled access files a lawsuit in a court of the
19 United States against the sender of a notice
20 under subsection (d)(3) claiming that such no-
21 tice was false or deceptive as provided in sub-
22 section (d)(4), the online service may, provided
23 that the lawsuit was filed not later than 14
24 days after the user receives notice that the on-
25 line service has removed or disabled access to

1 the material, restore the removed material to its
2 network for access by members of the public
3 without monetary liability therefor to either the
4 notice sender or the third-party that provided
5 the material that the online service had re-
6 moved or disabled access.

7 (f) PREEMPTION.—

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

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

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

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 for the manufacturing, import-
3 ing, offering to the public, providing, making
4 available, or otherwise distributing a product or
5 service capable of producing 1 or more digital
6 replicas.

7 (g) RULE OF CONSTRUCTION.—This section shall be
8 considered to be a law pertaining to intellectual property
9 for the purposes of section 230(e)(2) of the Communica-
10 tions Act of 1934 (47 U.S.C. 230(e)(2)).

11 (h) SEVERABILITY.—If any provision of this section,
12 or the application of a provision of this section, is held
13 to be invalid, the validity of the remainder of this section,
14 and the application of that provision to other persons and
15 circumstances, shall not be affected by that holding.

16 (i) RETROACTIVE EFFECT.—

17 (1) LIABILITIES.—Liability under this section
18 shall apply only to—

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

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

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

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

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

10 (j) EFFECTIVE DATE.—This Act shall take effect on
11 the date that is 180 days after the date of enactment of
12 this Act.

○