

1 Title: To protect the image, voice, and visual likeness of individuals, and for other purposes.
2
3

4 Be it enacted by the Senate and House of Representatives of the United States of America in
5 Congress assembled,

6 SECTION 1. SHORT TITLE.

7 This Act may be cited as the “Nurture Originals, Foster Art, and Keep Entertainment Safe Act
8 of 2023” or the “NO FAKES Act of 2023”.

9 SEC. 2. IMAGE, VOICE, AND VISUAL LIKENESS RIGHTS.

10 (a) Definitions.—In this section:

11 (1) DIGITAL REPLICA.—The term “digital replica” means a newly-created, computer-
12 generated, electronic representation of the image, voice, or visual likeness of an individual
13 that—

14 (A) is [nearly indistinguishable] from the actual image, voice, or visual likeness of
15 that individual; and

16 (B) is fixed in a sound recording or audiovisual work in which that individual did
17 not actually perform or appear.

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

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

22 (4) VISUAL LIKENESS.—The term “visual likeness” means the actual visual image or
23 likeness of an individual, without regard to the means of creation, that is readily identifiable
24 as the visual image or likeness of the individual—

25 (A) because of a depiction of the face, image, likeness, or other visually identifiable
26 characteristic of the individual; or

27 (B) from information displayed in connection with the face, image, likeness, or other
28 visually identifiable characteristic of the individual.

29 (b) Digital Replication Right.—

30 (1) IN GENERAL.—Subject to the other provisions of this section, each individual (and, in
31 the case of an individual who is dead, any executor, heir, assign, or devisee of the
32 individual) shall have the right to authorize the use of the image, voice, or visual likeness of
33 the individual in a digital replica.

34 (2) NATURE OF RIGHT.—

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

37 (i) The right is—

- 1 (I) a property right; and
2 (II) descendible and licensable in whole or in part, by the individual to
3 whom the right applies.
- 4 (ii) The right shall not expire upon the death of the individual to whom the right
5 applies, without regard to whether the right is commercially exploited by that
6 individual during the lifetime of the individual.
- 7 (iii) The right shall be exclusive to—
- 8 (I) the applicable individual, subject to the licensing of those rights, as
9 provided in this paragraph, during the lifetime of that individual; and
- 10 (II) the executors, heirs, assigns, or devisees of the applicable individual
11 for a period of 70 years after the death of the individual.
- 12 (B) REQUIREMENTS FOR LICENSE.—A license described in subparagraph (A) shall be
13 valid only if—
- 14 (i) the applicable individual was represented by counsel in the transaction and
15 the assignment agreement was in writing; or
- 16 (ii) the licensing of the right covered by the assignment is governed by a
17 collective bargaining agreement.
- 18 (c) Liability.—
- 19 (1) IN GENERAL.—Any person that, in a manner affecting interstate or foreign commerce
20 (or using any means or facility of interstate or foreign commerce), engages in an activity
21 described in paragraph (2) shall be liable in a civil action brought under subsection (d) for
22 any damages sustained by the individual or rights holder injured as a result of that activity.
- 23 (2) ACTIVITIES DESCRIBED.—An activity described in this paragraph is either of the
24 following:
- 25 (A) The production of a digital replica without consent of the applicable individual
26 or rights holder.
- 27 (B) The publication, distribution, or transmission of, or otherwise making available
28 to the public, an unauthorized digital replica, if the person engaging in that activity has
29 knowledge that the digital replica was not authorized by the applicable individual or
30 rights holder.
- 31 (3) EXCLUSIONS.—It shall not be a violation of paragraph (1) if, regardless of the degree
32 of [dramatization]—
- 33 (A) the applicable digital replica is used as part of a news, public affairs, or sports
34 broadcast or report;
- 35 (B) the applicable digital replica—
- 36 (i) is used part of a documentary, docudrama, or historical or biographical
37 work; and
- 38 (ii) uses a representation of the applicable individual as that individual;

1 (C) the applicable digital replica is used for purposes of comment, criticism,
2 scholarship, satire, or parody;

3 (D) the applicable digital replica is used in an advertisement or commercial
4 announcement for a purpose described in subparagraph (A), (B), or (C); or

5 (E) the use of the applicable digital replica is de minimis or incidental.

6 (d) Civil Action.—

7 (1) ELIGIBLE PLAINTIFFS.—A civil action for a violation of subsection (c) may be brought
8 by—

9 (A) an individual, the image, voice, or visual likeness of whom is used in the digital
10 replica that is the subject of the action;

11 (B) any other person that owns or controls, including by virtue of an exclusive
12 license, the rights to the image, voice, or visual likeness of the individual described in
13 subparagraph (A); or

14 (C) in the case of a digital replica involving a sound recording artist, any person that
15 has entered into a contract for the exclusive personal services of the sound recording
16 artist as a sound recording artist.

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

21 (3) DEFENSES NOT PERMITTED.—It shall not be a defense in a civil action brought under
22 this subsection that the defendant—

23 (A) displayed or otherwise communicated to the public a disclaimer stating that the
24 applicable digital replica was unauthorized; or

25 (B) did not participate in the creation, development, distribution, or dissemination of
26 the applicable digital replica.

27 (4) REMEDIES.—In any civil action brought under this subsection—

28 (A) the person committing a violation of subsection (c) shall be liable to the injured
29 party in an amount equal to the greater of—

30 (i) \$5,000 per violation; or

31 (ii) any damages suffered by the injured party as a result of the violation;

32 (B) in the case of a willful violation where the injured party has proven that the
33 defendant acted with malice, fraud, or oppression, the court may award to the injured
34 party punitive damages; and

35 (C) the court may award to the prevailing party reasonable attorneys' fees.

36 (e) Preemption.—Nothing in this section may be construed to limit any right an individual
37 may have under any other law that provides protection against the unauthorized use of the image,
38 voice, or visual likeness of the individual.

1 (f) Rule of Construction.—This section shall be considered to be a law pertaining to
2 intellectual property for the purposes of section 230(e)(2) of the Communications Act of 1934
3 (47 U.S.C. 230(e)(2)).

4 (g) Severability.—If any provision of this section, or the application of a provision of this
5 section, is held to be invalid, the validity of the remainder of this section, and the application of
6 that provision to other persons and circumstances, shall not be affected by that holding.

7 (h) No Retroactive Effect.—This section shall apply only to conduct occurring after the date
8 of enactment of this Act.

DRAFT