



[DISCUSSION DRAFT]

118TH CONGRESS
1ST SESSION

H. R. _____

To provide for individual property rights in likeness and voice.

IN THE HOUSE OF REPRESENTATIVES

Ms. SALAZAR introduced the following bill; which was referred to the
Committee on _____

A BILL

To provide for individual property rights in likeness and
voice.

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 “No Artificial Intel-
5 ligence Fake Replicas and Unauthorized Duplications Act
6 of ~~2023~~ or as the “No AI FRAUD Act”.

7 **SEC. 2. FINDINGS.**

8 Congress finds that recent advancements in artificial
9 intelligence (AI) technology and the development of
10 deepfake software have adversely affected individuals’ abil-

1 ity to protect their voice and likeness from misappropria-
2 tion, including:

3 (1) On or around April 4, 2023, AI technology
4 was used to create the song titled "Heart on My
5 Sleeve," emulating the voices of recording artists
6 Drake and The Weeknd. It reportedly received more
7 than 11 million views.

8 (2) On or around October 1, 2023, AI tech-
9 nology was used to create a false endorsement fea-
10 turing Tom Hanks' face in an advertisement for a
11 dental plan.

12 (3) From October 16 to 20, 2023, AI tech-
13 nology was used to create false, nonconsensual inti-
14 mate images of high school girls in Westfield, New
15 Jersey.

16 (4) In fall 2023, AI technology was used to cre-
17 ate the song titled "Demo #5: nostalgia," manipu-
18 lating the voices of Justin Bieber, Daddy Yankee
19 and Bad Bunny. It reportedly received 22 million
20 views on Tik Tok and 1.2 million views on YouTube.

21 (5) A Department of Homeland Security report
22 : titled the "Increasing Threat of Deepfake Identities"
23 states that as of October 2020, researchers had re-
24 ported more than 100,000 computer-generated fake

1 nude images of women created without their consent
2 or knowledge.

3 (6) According to Pew Research Center, approxi-
4 mately 63 percent of American say made-up or al-
5 tered videos create "confusion about the basic facts
6 of current issues .

7 **SEC. 3. LIKENESS AND VOICE RIGHTS.**

8 (a) DEFINITIONS.—In this Act:

9 (1) The term “individual” means a human
10 being, living or dead.

11 (2) The term “digital depiction” means a rep-
12 lica, imitation, or approximation of the likeness of
13 an individual that is created or altered in whole or
14 in part using digital technology.

15 (3) The term “personalized cloning service”
16 means an algorithm, software, tool, or other tech-
17 nology, service, or device the primary purpose or
18 function of which is to produce one or more digital
19 voice replicas or digital depictions of particular,
20 identified individuals.

21 (4) The term “digital voice replica” means an
22 audio rendering that is created or altered in whole
23 or in part using digital technology and is fixed in a
24 sound recording or audiovisual work which includes

1 replications, imitations, or approximations of an in-
2 dividual that the individual did not actually perform.

3 (5) The term “voice” means sounds in any me-
4 dium containing the actual voice or a simulation of
5 the voice of an individual, whether recorded or gen-
6 erated by computer, artificial intelligence, algorithm,
7 or other digital technology, service, or device, to the
8 extent that the individual depicted or simulated is
9 readily identifiable from the sound of the voice or
10 simulation of the voice, or from other information
11 displayed in connection therewith.

12 (6) The term “likeness” means the actual or
13 simulated image or likeness of an individual, regard-
14 less of the means of creation, that is readily identifi-
15 able as the individual by virtue of the individual’s
16 face, likeness, or other distinguishing characteristic,
17 or from other information displayed in connection
18 with the likeness.

19 (7) The term “digital technology” means a
20 technology or device now known or hereafter created
21 such as computer software, artificial intelligence,
22 machine learning, quantum computing, or other
23 similar technologies or devices.

24 (b) PROPERTY RIGHT IN LIKENESS AND VOICE.—

1 (1) IN GENERAL.—Every individual has a prop-
2 erty right in their own likeness and voice.

3 (2) EXTENT.—The rights provided for in para-
4 graph (1) constitute intellectual property rights and
5 are freely transferable and descendible, in whole or
6 in part, and do not expire upon the death of the in-
7 dividual, whether or not such rights were commer-
8 cially exploited by the individual during the individ-
9 ual's lifetime.

10 (3) TRANSFERABILITY.—The rights provided
11 for in paragraph (1) shall be exclusive to the indi-
12 vidual, subject to the transfer of such rights as pro-
13 vided in paragraph (2), during such individual's life-
14 time and to the executors, heirs, transferees, or devi-
15 sees for a period of ten years after the death of the
16 individual, and shall be terminated by—

17 (A) proof of the non-use of the likeness or
18 voice of any individual for commercial purposes
19 by an executor, transferee, heir, or devisee to
20 such use for a period of two years subsequent
21 to the initial ten-year period following the indi-
22 vidual's death; or

23 (B) the death of all executors, transferees,
24 heirs, or devisees.

1 (4) VALIDITY OF USE.—An agreement author-
2 izing the use of a digital depiction or digital voice
3 replica for a new performance of the individual in an
4 advertisement or expressive work shall be valid only
5 if—

6 (A) the applicable individual was—

7 (i) represented by counsel in the
8 transaction and the agreement was in writ-
9 ing; and

10 (ii) 18 years of age or older at the
11 time of entry into the agreement, or, if
12 under 18 years of age at that time, the
13 agreement is approved by a court in ac-
14 cordance with applicable State law; or

15 (B) the terms of the agreement are gov-
16 erned by a collective bargaining agreement.

17 (c) UNAUTHORIZED SIMULATION OF VOICE OR LIKE-
18 NESS.—

19 (1) IN GENERAL.—Any person or entity who, in
20 a manner affecting interstate or foreign commerce
21 (or using any means or facility of interstate or for-
22 eign commerce), and without consent of the indi-
23 vidual holding the voice or likeness rights affected
24 thereby—

1 (A) distributes, transmits, or otherwise
2 makes available to the public a personalized
3 cloning service;

4 (B) publishes, performs, distributes, trans-
5 mits, or otherwise makes available to the public
6 a digital voice replica or digital depiction with
7 knowledge that the digital voice replica or dig-
8 ital depiction was not authorized by the indi-
9 vidual holding the voice or likeness rights af-
10 fected thereby; or

11 (C) materially contributes to, directs, or
12 otherwise facilitates any of the conduct pro-
13 scribed in subparagraphs (A) or (B) with
14 knowledge that the individual holding the af-
15 fected voice or likeness rights has not consented
16 to the conduct,

17 shall be liable for damages as set forth in paragraph
18 (2).

19 (2) REMEDIES.—In any action brought under
20 this section, the following shall apply:

21 (A) The person or entity who violated the
22 section shall be liable to the injured party or
23 parties in an amount equal to the greater of—

24 (i) in the case of an unauthorized dis-
25 tribution, transmission, or other making

1 available of a personalized cloning service,
2 fifty thousand dollars (\$50,000) per viola-
3 tion or the actual damages suffered by the
4 injured party or parties as a result of the
5 unauthorized use, plus any profits from the
6 unauthorized use that are attributable to
7 such use and are not taken into account in
8 computing the actual damages; and

9 (ii) in the case of an unauthorized
10 publication, performance, distribution,
11 transmission, or other making available of
12 a digital voice replica or digital depiction,
13 five thousand dollars (\$5,000) per violation
14 or the actual damages suffered by the in-
15 jured party or parties as a result of the
16 unauthorized use, plus any profits from the
17 unauthorized use that are attributable to
18 such use and are not taken into account in
19 computing the actual damages.

20 (B) In establishing profits under this sub-
21 division, the injured party or parties shall be re-
22 quired only to present proof of the gross rev-
23 enue attributable to the unauthorized use, and
24 the person or entity who violated this section

1 shall be required to prove his or her expenses
2 deductible therefrom.

3 (C) Punitive damages and reasonable at-
4 torneys' fees may also be awarded to the in-
5 jured party or parties.

6 (D) It shall not be a defense to an allega-
7 tion of a violation of paragraph (1) that the un-
8 authorized user displayed or otherwise commu-
9 nicated to the public a disclaimer stating that
10 the digital depiction, digital voice replica, or
11 personalized cloning service was unauthorized
12 or that the individual rights owner did not par-
13 ticipate in the creation, development, distribu-
14 tion, or dissemination of the unauthorized dig-
15 ital depiction, digital voice replica, or personal-
16 ized cloning service.

17 (E) An action to enforce this section may
18 be brought by—

19 (i) the individual whose voice or like-
20 ness is at issue;

21 (ii) any other person or entity to
22 which the individual has assigned or exclu-
23 sively licensed their voice or likeness rights;

24 or

1 (iii) in the case of an individual who
2 performs music as a profession, and has
3 not authorized the use at issue, by any
4 person or entity that has entered into a
5 contract for the individual's exclusive per-
6 sonal services as a recording artist or an
7 exclusive license to distribute sound record-
8 ings that capture the individual's audio
9 performances.

10 (d) FIRST AMENDMENT DEFENSE.—First Amend-
11 ment protections shall constitute a defense to an alleged
12 violation of subsection (c). In evaluating any such defense,
13 the public interest in access to the use shall be balanced
14 against the intellectual property interest in the voice or
15 likeness. Factors to be considered may include whether—

16 (1) the use is commercial;

17 (2) the individual whose voice or likeness is at
18 issue is necessary for and relevant to the primary
19 expressive purpose of the work in which the use ap-
20 pears; and

21 (3) the use competes with or otherwise ad-
22 versely affects the value of the work of the owner or
23 licensee of the voice or likeness rights at issue.

24 (e) LIMITATION.—

1 (1) IN GENERAL.—A person or entity who uses
2 an individual's voice or likeness in a manner that
3 violates subsection (c) shall not be liable if the harm
4 caused by such conduct is negligible.

5 (2) HARM.—For purposes of this section, the
6 term "harm" includes—

7 (A) financial or physical injury, or an ele-
8 vated risk of such injury, to any person whose
9 voice or likeness rights are affected by the con-
10 duct at issue;

11 (B) severe emotional distress of any person
12 whose voice or likeness is used without consent;
13 and

14 (C) a likelihood that the use deceives the
15 public, a court, or tribunal.

16 (3) PER SE HARM.—Any digital depiction or
17 digital voice replica which includes child sexual
18 abuse material, is sexually explicit, or includes inti-
19 mate images constitutes harm.

20 (4) BALANCE OF EQUITIES.—Except when
21 paragraph (3) applies, alleged harms shall be
22 weighed against—

23 (A) whether the individual whose voice or
24 likeness is at issue is necessary for and relevant

1 to the primary expressive purpose of the work
2 in which the use appears;

3 (B) whether the use is transformative; and

4 (C) whether the use constitutes constitu-
5 tionally protected commentary on a matter of
6 public concern.

7 (f) LIMITATIONS PERIOD.—No civil action shall be
8 maintained under the provisions of this Act unless it is
9 commenced within four years after the party seeking to
10 bring the claim discovered, or with due diligence should
11 have discovered, the violation.

12 (g) NO PREEMPTION.—Nothing in this Act shall be
13 construed to limit any rights an individual may have under
14 any other law providing protections against the unauthor-
15 ized use of an individual's name, voice, or likeness.

16 (h) SEVERABILITY.—If any provision of this Act, or
17 the application thereof, is held invalid, the validity of the
18 remainder of this Act and the application of such provision
19 to other persons and circumstances shall not be affected
20 thereby.

21 (i) CONSTRUCTION.—Nothing in this Act shall alter
22 the application by a court of First Amendment protections
23 in the event such a defense is asserted to subsection (c).

24 (j) APPLICATION.—This section shall be considered
25 to be a law pertaining to intellectual property for the pur-

1 poses of section 230(e)(2) of the Communications Act of
2 1934 (47 U.S.C. 230(e)(2)).

3 (k) EFFECTIVE DATE.—This Act shall be effective
4 180 days after the enactment of this Act, and shall apply
5 regardless of whether the individual has died before such
6 effective date.