



May 10, 2024

Via E-Mail

Suzanne Wilson

General Counsel and Associate Register of Copyrights

Maria Strong

Associate Register of Copyrights and Director of Policy and International Affairs

U.S. Copyright Office

101 Independence Avenue SE

Washington, DC 20559-6003

Re: Summary of *ex parte* meeting regarding Docket No. 2023-6, Artificial Intelligence and Copyright

Dear Ms. Wilson and Ms. Strong:

This is to summarize the *ex parte* meeting between the Authors Guild and the U.S. Copyright Office in the above-referenced proceeding that took place via Zoom on May 6, 2024.

Participating on behalf of the Authors Guild were CEO Mary Rasenberger, Chief Legal Officer Kevin Amer, and Director of Policy & Advocacy Umair Kazi. Participating on behalf of the Copyright Office were Suzanne Wilson, Maria Strong, Emily Chapuis, Andrew Foglia, Chris Weston, Ben Brady, Jenee Iyer, John Riley, Nick Bartelt, Michael Druckman, and Isaac Klipstein.

During the meeting, the Authors Guild noted that authors see the rise of generative AI as an existential threat because of how easy it is to generate books using large language models. The Guild observed that fair use was not intended to allow uses that would destroy an entire ecosystem in the marketplace. The Guild also noted that the fair use analysis for professionally created and published commercial works is different from that which may apply to other online materials.

The Guild stated that it is currently developing a framework with a third party to allow copyright owners to collectively license books for AI training on an opt-in basis. To enable such licensing, the Guild is seeking legislation that would provide safeguards against antitrust liability for creators seeking to negotiate collectively. A proposed bill on this topic is attached as Exhibit A.

The Guild also discussed the need for labeling of AI-generated material. Legislation proposed on this issue thus far would require AI model developers to include a permanent marker on such material—an approach that is more difficult and less effective for text than for other types of

works. The Guild believes Congress should adopt legislation to require anyone who publishes or distributes AI-generated literary works to label them as such.

Finally, the Guild noted its support of measures to provide greater right-of-publicity and moral rights protections against unauthorized use of AI-generated materials. The Guild supports the NO FAKES Act and the NO AI FRAUD Act and has asked their sponsors to add language specifically prohibiting unauthorized use of an author's name in connection with such content. Our proposed legislative language is attached as Exhibit B. In addition, the Guild supports expanding the Copyright Act's current moral right of attribution in connection with AI outputs for certain categories of copyrightable works. We noted that the need for such protection has increased in light of the ease with which materials lacking proper attribution can be created and disseminated by AI, as well as the recent explosion of false attribution for AI generated works.

Thank you for your attention to these important matters.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mary Rasenberger', is enclosed in a light blue rectangular box.

Mary Rasenberger
CEO

EXHIBIT A

A BILL

To authorize copyright owners to negotiate collective licenses for the use of their works to train creative content generators, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “*Responsible Ethical Standards for Protecting Everyone’s Copyright in Technologies for Creators Act*” or the “*RESPECT Creators Act*”.

SEC. 2. AUTHORIZATION FOR CERTAIN JOINT NEGOTIATIONS.

(a) IN GENERAL.—Chapter 1 of title 17, United States Code, is amended by adding after section 122 the following new section:

“§ 123. Negotiated collective licensing for training of creative content generators

“(a) AUTHORITY TO NEGOTIATE COLLECTIVE LICENSES. — Notwithstanding any provision of the antitrust laws, any owners of copyright in a work under section 106(1) of this title may negotiate and agree upon the terms and rates of royalty payments for licenses to creative content generator developers for use of the works to train creative content generators, as well as the proportionate division of payments among such copyright owners, and may designate common agents on a nonexclusive basis, subject to subsections (b) and (c), to negotiate, agree upon, pay, or receive royalties and license fees.

“(b) ELIGIBILITY REQUIREMENTS FOR COMMON AGENTS. — The Register of Copyrights shall promulgate regulations specifying requirements that a common agent must satisfy to be eligible to conduct the activities under subparagraph (a). Such regulations shall—

- (1) Ensure that the common agent accepts members based on objective, transparent, and non-discriminatory criteria;
- (2) Ensure that the common agent implements methods for fair allocation of distributions to copyright owners, with annual review by a board of the common agent;
- (3) Ensure that the common agent regularly, diligently, and accurately pays amounts due to copyright owners;
- (4) Ensure that the common agent provides members with sufficient information on deductions made to offset reasonable administrative costs associated with the collection, distribution, and calculation of royalties and license fees;
- (5) Specify information that the common agent must make publicly available on its website on at least an annual basis; and
- (6) Include such other requirements as the Register determines appropriate to ensure transparency, accountability, and good governance with respect to the common agent’s operations.

“(c) VERIFICATION OF PAYMENTS BY COMMON AGENTS. — A copyright owner entitled to receive payments of royalties from a common agent under a license issued pursuant to subparagraph (a) may, individually or with other copyright owners, conduct an audit of the common agent to verify the accuracy of royalty payments to such copyright owner, as follows:

- (1) A copyright owner may audit a common agent only once in a year for any or all of the 3 calendar years preceding the year in which the audit is commenced, and may not audit records for any calendar year more than once.
- (2) The audit shall be conducted by a qualified auditor, who shall perform the audit according to generally accepted auditing standards.
- (3) The common agent shall make such books, records, and data available to the qualified auditor and respond to reasonable requests for relevant information, and shall use commercially reasonable efforts to facilitate access to relevant information maintained by third parties.
- (4) The auditing copyright owner or owners shall bear the cost of the audit.

“(c) DEFINITIONS. — For purposes of this section —

- (1) a “creative content generator” is a machine-based system that is trained by a set of data ingested or accessed by any other means for the purposes of finding, analyzing, or predicting patterns and elements within that data and generating content (including text, image, video, audio, multimedia, or other forms of output) based upon or drawn from such data pursuant to human-defined or machine-developed objectives, instructions, or prompts.
- (2) a “creative content generator developer” is a person or entity who creates, updates, refines, retrains, or otherwise alters a creative content generator that the person makes available—
 - (A) for use by businesses or consumers;
 - (B) to a third party that directly or indirectly uses the artificial intelligence model in a consumer-facing manner; or
 - (C) to influence the decisions of, or decisions about, consumers.”

EXHIBIT B

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. DEFINITIONS.

10 In this section:

- 11 (1) ARTIFICIAL INTELLIGENCE.—The term “artificial intelligence” or “AI” means the
12 class of models and algorithms that use deep learning algorithms or other statistical
13 techniques to generate new data that has similar characteristics and properties to the data
14 with respect to which such models and algorithms have been trained, including any form
15 of digital content.
16
- 17 (2) AUTHOR. —The term “author” has the meaning used in the Copyright Act, Title 17.
18
- 19 (3) DIGITAL REPLICA.—The term “digital replica” means a newly-created, computer
20 generated, electronic representation of the image, voice, or visual likeness of an individual
21 that—
22 (A) is [nearly indistinguishable] from the actual image, voice, or visual likeness of that
23 individual; and
24 (B) is fixed in a sound recording or audiovisual work in which that individual did not
25 actually perform or appear.
- 26 (4) INDIVIDUAL.—The term “individual” means a human being, living or dead.
- 27 (5) NAME.—The term “name” means an author’s full name, surname, first name, nickname,
28 professional name, pseudonym, or any other variation of the author’s name by which they
29 are publicly known.
- 30 (6) SOUND RECORDING ARTIST.—The term “sound recording artist” means an individual
31 who creates or performs in sound recordings for economic gain or for the livelihood of the
32 individual.
- 33 (7) VISUAL LIKENESS.—The term “visual likeness” means the actual visual image or
34 likeness of an individual, without regard to the means of creation, that is readily
35 identifiable as the visual image or likeness of the individual—
36 (A) because of a depiction of the face, image, likeness, or other visually identifiable
37 characteristic of the individual; or

38 (B) from information displayed in connection with the face, image, likeness, or other
39 visually identifiable characteristic of the individual. (b) Digital Replication
40 Right.—

41 SECTION 3. IMAGE, VOICE, AND VISUAL LIKENESS RIGHTS.

42 (a) Digital Replication Right.—

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

47 (2) NATURE OF RIGHT.—

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

50 (i) The right is—

51 (I) a property right; and

52 (II) descendible and licensable in whole or in part, by the individual to
53 whom the right applies.

54 (ii) The right shall not expire upon the death of the individual to whom the right
55 applies, without regard to whether the right is commercially exploited by that
56 individual during the lifetime of the individual. (iii) The right shall be exclusive
57 to—

58 (I) the applicable individual, subject to the licensing of those rights, as
59 provided in this paragraph, during the lifetime of that individual; and

60 (II) the executors, heirs, assigns, or devisees of the applicable
61 individual for a period of 70 years after the death of the individual.

62 (B) REQUIREMENTS FOR LICENSE.—A license described in
63 subparagraph (A) shall be valid only if—

64 (i) the applicable individual was represented by counsel in the transaction
65 and the assignment agreement was in writing; or

66 (ii) the licensing of the right covered by the assignment is governed by a
67 collective bargaining agreement.

68 (b) Liability.—

69 (1) IN GENERAL.—Any person that, in a manner affecting interstate or foreign
70 commerce (or using any means or facility of interstate or foreign commerce), engages in an
71 activity described in paragraph (2) shall be liable in a civil action brought under subsection
72 (d) for any damages sustained by the individual or rights holder injured as a result of that
73 activity.

74 (2) ACTIVITIES DESCRIBED.—An activity described in this paragraph is either of
75 the following:

76 (A) The production of a digital replica without consent of the applicable
77 individual or rights holder.

78 (B) The publication, distribution, or transmission of, or otherwise making
79 available to the public, an unauthorized digital replica, if the person engaging in that
80 activity has knowledge that the digital replica was not authorized by the applicable
81 individual or rights holder.

82 (3) EXCLUSIONS.—It shall not be a violation of paragraph (1) if, regardless of the
83 degree of [dramatization]—

84 (A) the applicable digital replica is used as part of a news, public affairs, or
85 sports broadcast or report;

86 (B) the applicable digital replica—

87 (i) is used part of a documentary, docudrama, or historical or biographical
88 work; and

89 (ii) uses a representation of the applicable individual as that individual;

90 (B) the applicable digital replica is used for purposes of comment,
91 criticism, scholarship, satire, or parody;

92 (C) the applicable digital replica is used in an advertisement or
93 commercial announcement for a purpose described in subparagraph (A), (B), or
94 (C); or (E) the use of the applicable digital replica is de minimis or incidental.

95 (c) Civil Action.—

96 (1) ELIGIBLE PLAINTIFFS.—A civil action for a violation of subsection (b) may
97 be brought by—

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

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

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

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

- 110 (3) DEFENSES NOT PERMITTED.—It shall not be a defense in a civil action
111 brought under this subsection that the defendant—
- 112 (A) displayed or otherwise communicated to the public a disclaimer stating
113 that the applicable digital replica was unauthorized; or
- 114 (B) did not participate in the creation, development, distribution, or
115 dissemination of the applicable digital replica.
- 116 (4) REMEDIES.—In any civil action brought under this subsection—
- 117 (A) the person committing a violation of subsection (c) shall be liable to the
118 injured party in an amount equal to the greater of—
- 119 (i) \$5,000 per violation; or
120 (ii) any damages suffered by the injured party as a result of the violation;
- 121 (B) in the case of a willful violation where the injured party has proven that
122 the defendant acted with malice, fraud, or oppression, the court may award to the
123 injured party punitive damages; and
- 124 (C) the court may award to the prevailing party reasonable attorneys' fees.
- 125 (d) Preemption.—Nothing in this section may be construed to limit any right an individual may
126 have under any other law that provides protection against the unauthorized use of the image,
127 voice, or visual likeness of the individual.
- 128 (e) Rule of Construction.—This section shall be considered to be a law pertaining to
129 intellectual property for the purposes of section 230(e)(2) of the Communications Act of 1934
130 (47 U.S.C. 230(e)(2)).
- 131 (f) Severability.—If any provision of this section, or the application of a provision of this
132 section, is held to be invalid, the validity of the remainder of this section, and the application of
133 that provision to other persons and circumstances, shall not be affected by that holding.
- 134 (g) No Retroactive Effect.—This section shall apply only to conduct occurring after the date
135 of enactment of this Act.

136 SEC 4. NAME RIGHTS.

- 137 (a) Name rights.—
- 138 (1) IN GENERAL.—Subject to the other provisions of this section, an author of any
139 copyrighted work (and in the case of an individual who is dead, any executor, heir, assign,
140 or devisee of the individual) shall have the exclusive right to authorize the use of his name
141 in connection with the publication, distribution, transmission, public performance or display
142 of, or otherwise making available to the public, any result or output of a generative AI
143 model:
- 144 (2) NATURE OF RIGHT.—
- 145 (C) IN GENERAL.—The right described in paragraph (1) shall have the
146 following characteristics:

147 (i) The right is—
148 (III) a property right; and
149 (IV) descendible and licensable in whole or in part, by the individual to
150 whom the right applies.

151 (ii) The right shall not expire upon the death of the individual to whom the right
152 applies, without regard to whether the right is commercially exploited by that
153 individual during the lifetime of the individual. (iii) The right shall be exclusive
154 to—

155 (III) the applicable individual, subject to the licensing of those rights, as
156 provided in this paragraph, during the lifetime of that individual; and

157 (IV) the executors, heirs, assigns, or devisees of the applicable
158 individual for a period of 70 years after the death of the individual.

159 (D) REQUIREMENTS FOR LICENSE.—A license described in
160 subparagraph (A) shall be valid only if—

161 (iii) the applicable individual was represented by counsel in the transaction
162 and the assignment agreement was in writing; or

163 (iv) the licensing of the right covered by the assignment is governed by a
164 collective bargaining agreement.

165 (b) Liability.—

166 (4) IN GENERAL.—Any person that, in a manner affecting interstate or foreign
167 commerce (or using any means or facility of interstate or foreign commerce), engages in an
168 activity described in paragraph (2) shall be liable in a civil action brought under subsection
169 (d) for any damages sustained by the individual or rights holder injured as a result of that
170 activity.

171 (5) EXCLUSIONS.—It shall not be a violation of paragraph (1) if—

172 (A) the name is used as part of a human-authored news, public affairs, or
173 sports broadcast or report;

174 (B) the name is used part of a human-authored documentary, docudrama, or historical
175 or biographical work; or

176 (C) the name is used for purposes of comment, criticism, scholarship, or
177 parody.

178 (c) Civil Action.—

179 a. ELIGIBLE PLAINTIFFS.—A civil action for a violation of subsection (b) may be
180 brought by—

181 i. an individual author of one or more copyrighted works whose name is used
182 in connection with one or more AI-generated output or result that is the
183 subject of the action; or

- 184 ii. any other person that owns or controls, including by virtue of an exclusive
185 license, the rights to the name or recognizable authorship style of the
186 individual described in subparagraph (A).
- 187 b. LIMITATIONS PERIOD.—A civil action may not be brought under this
188 subsection unless the action is commenced not later than 3 years after the date on
189 which the party seeking to bring the civil action discovered, or with due diligence
190 should have discovered, the applicable violation.
- 191 c. DEFENSES NOT PERMITTED.—It shall not be a defense in a civil action
192 brought under this subsection that the defendant—
- 193 i. displayed or otherwise communicated to the public a disclaimer stating that
194 the applicable name was unauthorized; or
- 195 ii. did not participate in the generation of the AI-generated output or result.
- 196 d. REMEDIES.—In any civil action brought under this subsection—
- 197 i. the person committing a violation of subsection (c) shall be liable to the
198 injured party in an amount equal to the greater of—
- 199 1. \$5,000 per violation; or
- 200 2. any damages suffered by the injured party as a result of the
201 violation;
- 202 ii. in the case of a willful violation where the injured party has proven that the
203 defendant acted with malice, fraud, or oppression, the court may award to
204 the injured party punitive damages; and
- 205 iii. the court may award to the prevailing party reasonable attorneys’ fees.
- 206 (d) Preemption.—Nothing in this section may be construed to limit any right an individual
207 may have under any other law that provides protection against the unauthorized use of the
208 individual’s name.
- 209 (e) Rule of Construction.—This section shall be considered to be a law pertaining to
210 intellectual property for the purposes of section 230(e)(2) of the Communications Act of
211 1934 (47 U.S.C. 230(e)(2)).
- 212 (f) Severability.—If any provision of this section, or the application of a provision of this
213 section, is held to be invalid, the validity of the remainder of this section, and the
214 application of that provision to other persons and circumstances, shall not be affected by
215 that holding.
- 216 (g) No Retroactive Effect.—This section shall apply only to conduct occurring after the date
217 of enactment of this Act.

218
219
220

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 (8) The term “author” has the meaning used in the Copyright
Act, Title 17.

24 (9) The term “name” means an author’s full name, surname,

first name, nickname, professional name, pseudonym, or any other variation of the author's name by which they are publicly known.

25 (b) PROPERTY RIGHT IN NAME, LIKENESS AND VOICE.—

1 (1) IN GENERAL.—Every individual has a prop-
2 erty right in their own name, 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 name, 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, or the use of the
 individual’s name in connection with the publication,
 distribution, transmission, public performance or display of,
 or otherwise making available to the public, any result or
 output of a generative AI model, 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 USE OF NAME, 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 n a m e , 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;

11 (C) publishes, performs, distributes, transmits, or
otherwise makes available to the public any result or output
of a generative AI model using an individual's name with
knowledge that the output was not authorized by the
individual holding the name rights affected thereby; or

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

17 to the conduct,
18 shall be liable for damages as set forth in paragraph
19 (2).

20 (2) REMEDIES.—In any action brought under

21 this section, the following shall apply:

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

25 (i) in the case of an unauthorized dis-
26 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 (iii) in the case of an unauthorized publication,
performance, distribution, transmission, or other
making available of any result or output of a
generative AI model using an individual's name,
five thousand dollars (\$5,000) per violation of the
actual damages suffered by the injured party or

parties as a result of the unauthorized use, plus any profits from the unauthorized use that are attributable to such use and are not taken into account in computing actual damages.

21 (B) In establishing profits under this sub-
22 division, the injured party or parties shall be re-
23 quired only to present proof of the gross rev-
24 enue attributable to the unauthorized use, and
25 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,
generative AI output, 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, generative AI
output, or personal-
16 ized cloning service.

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

19 (i) the individual whose name, 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 name, 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

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

17 (1) the use is commercial;

18 (2) the individual whose name, voice or likeness is
at

19 issue is necessary for and relevant to the primary
20 expressive purpose of the work in which the use ap-
21 pears; and

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

25 (e) LIMITATION.—

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

6 (2) HARM.—For purposes of this section, the
7 term “harm” includes—

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

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

16 (C) a likelihood that the use deceives the
17 public, a court, or tribunal.

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

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

 (A) whether the individual whose name, voice
 or
 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.